

**AGREEMENT BETWEEN
WASHINGTON CONSERVATION DISTRICT AND
BROWN’S CREEK WATERSHED DISTRICT**

A. PARTIES

This agreement is made and entered into by Washington Conservation District, (WCD), and the Brown’s Creek Watershed District (Watershed District).

B. PURPOSE, AUTHORITY

WHEREAS, the Watershed District has requested assistance from the WCD to implement the policies specified in MINN. STAT. §§ 103A.206, 103B.201 and 103D.201;

WHEREAS, the WCD is authorized to enter agreements to provide such assistance pursuant to MINN. STAT. §§ 103C.331, SUBD. 3 and 7 and 103D.335, subd. 21; and

WHEREAS Minnesota Statutes section 471.59 authorizes the Watershed District and WCD to enter this agreement.

NOW, THEREFORE, the parties agree as follows:

C. TERM OF CONTRACT

The term of this agreement shall be from January 1, 2023 to December 31, 2024, unless extended or terminated earlier as provided herein.

D. SCOPE OF SERVICES

The WCD will perform all services and furnish and deliver work products described in Exhibits A through D, attached to and made part of this agreement and hereinafter referred to altogether as “the Services.”

E. COST

In consideration for the Services provided under this agreement, the WCD shall charge the Watershed District at the rates set forth in Section F and accompanying exhibits. The total payment under this agreement will not exceed \$390,513.50 in 2023 and \$398,556.50 in 2024. Payment for services performed and work product provided under each of the exhibits attached hereto will not exceed the following per-exhibit amounts:

<i>Exhibit</i>	<i>Service</i>	2023	2024
Exhibit A	Administrative Services	\$225,650	\$234,675
Exhibit B	Best Management Practices Program	\$17,692	\$18,418
Exhibit C	Water Monitoring Program-(labor and travel)	\$121,600	\$120,444
	Water Monitoring Program-expenses (supplies, equipment, and lab fees)	\$21,615	\$20,976
Exhibit D	Volunteer Stream Monitoring Program (labor)	\$2,030	\$2,117
	Volunteer Stream Monitoring Program (expenses)	\$1,926.50	\$1,926.50
TOTALS		\$390,513.50	\$398,556.50

F. BILLING RATE AND PAYMENTS

- 1. For 2023 & 2024, services provided by the WCD in accordance with Exhibit B will be billed on an hourly basis at the following hourly rates.

	<u>2023</u>	<u>2024</u>
Seasonal	\$42.00	\$44.00
Technician I & II	\$62.00	\$64.00
Technician III	\$66.00	\$68.00
Specialist I	\$70.00	\$73.00
Specialist II	\$76.00	\$79.00
Specialist III	\$82.00	\$85.00
Engineer/WCD Manager	\$92.00	\$95.00

Invoices for Exhibit B services performed will be sent on a monthly basis and will list specifically the work performed. For services performed and work products provided in accordance with Exhibits A, C, and D, the WCD will bill the Watershed District monthly on a lump sum basis, plus actual direct project and lab expenses. All invoices will list specifically the work performed. Invoices are payable by the Watershed District within 35 days.

- 2. Office supplies, reproduction expenses, and transportation are included in the hourly rate. Other expenses are to be reimbursed at actual cost.

G. EQUAL EMPLOYMENT OPPORTUNITY- CIVIL RIGHTS

During the performance of this agreement, the WCD agrees to the following:

No person shall, on the grounds of race, color, religion, age, sex, disability, marital status, public assistance, criminal record, creed or national origin, be excluded from full employment rights in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of and all applicable federal and state laws against discrimination including the Civil Rights Act of 1964.

H. DUTY OF CARE; LEGAL COMPLIANCE

The WCD will perform the Services under this agreement with due care and in accordance with national standards of professional care. The WCD shall comply with all applicable Federal and State statutes and regulations as well as local ordinances now in effect or hereafter adopted. Failure to meet the requirements of the above may be cause for termination of this agreement.

I. DATA PRACTICES; CONFIDENTIALITY

All data collected, created, received, maintained or disseminated for any purpose by the WCD and the Watershed District pursuant to this Agreement are governed by Minnesota Statutes Chapter 13 (DPA), the Minnesota Rules implementing the DPA and any other applicable state statutes and state rules adopted to implement the DPA, as well as state statutes and federal regulations on data privacy. The WCD agrees to abide by these statutes, rules and regulations and as they may be amended. The WCD further agrees that it will not disclose and will hold in confidence any and all proprietary data and materials owned or possessed by Watershed District and so denominated by Watershed District, subject to the DPA. All records kept by the WCD and Watershed District with respect to the work performed under the agreement will be subject to examination by the representative of each party hereto, except as protected or prohibited by law.

If WCD receives a request for data pursuant to the DPA that may encompass data possesses or has created as a result of this agreement, it will inform the Watershed District immediately and transmit a copy of the request. If the request is addressed to the Watershed District, the WCD will not provide any information or documents, but will direct the inquiry to the Watershed District. If the request is addressed to the WCD, the WCD 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 the Watershed

District and its legal counsel before replying. Nothing in the preceding sentence supersedes the WCD's obligations under this agreement with respect to protection of Watershed District data, property rights in data or confidentiality.

J. AUDITS, REPORTS, AND MONITORING PROCEDURES

The WCD will:

1. Maintain records for six years that reflect all revenues, cost incurred and services provided in the performance of the agreement.
2. Agree that the State Auditor, or legislative authority, or any of their duly authorized representatives at any time during normal business hours, and as often as they may deem reasonably necessary, shall have access to the rights to examine audit, excerpt, and transcribe any books, documents, papers, records, etc., and accounting procedures and practices of the WCD which are relevant to the agreement.

K. INDEMNITY

Neither party to this agreement agrees to be responsible for the acts or omissions of the other, its agents, officials, contractors or employees within the meaning of Minnesota Statutes section 471.59, subdivision 1a. The WCD and Watershed District each will hold harmless, defend and indemnify the other, its officers, board members, employees and agents for any and all damage, liability, cost or claim (including reasonable attorneys' fees) to the extent it is the result of its negligent act or of another action or inaction that is the basis for its liability in law or equity. Each party agrees to provide proof of contractual liability insurance upon request. This paragraph does not constitute a waiver or otherwise diminish any statutory or common law defense, immunity or limit on liability the parties may enjoy as against any third party.

L. INDEPENDENT CONTRACTOR

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting the WCD as the agent, representative, or employee of Watershed District for any purpose or in any manner whatsoever. The WCD is to be and shall remain an independent contractor with respect to the Services.

The WCD represents that it has, or will secure at its own expense, all personnel required in performing services under this agreement. Any and all personnel of the WCD or other person, while engaged in the performance of any work or services required by the WCD under this agreement, shall have no contractual relationship with the Watershed District and shall not be considered employees of the Watershed District.

M. MODIFICATIONS

Any material alteration or variation shall be reduced to writing as an amendment and signed by the parties. Any alteration, modification, or variation deemed not to be material by written agreement of the WCD and the Watershed District shall not require written approval.

N. MERGER

It is understood and agreed that the entire agreement of the parties is contained here, except as modified during the term of the agreement by a writing under Paragraph M above concerning a non-material change, and that this agreement supersedes oral agreements and negotiations between the parties relating to this subject matter. All items referred to in this agreement are incorporated or attached and deemed to be part of the agreement.

O. TERMINATION

Either the WCD or the Watershed District may terminate this agreement with or without cause by giving the other party

thirty (30) days written notice prior to the effective date of such termination. If the Watershed District terminates this agreement, it may specify work to be performed by the WCD before termination is effective and shall pay the WCD for services performed by the WCD up to the time specified for termination. If the WCD terminates the agreement, it will not be compensated for partial completion of a task.

P. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

All property of the Watershed District used, acquired or created in the performance of work under this agreement, including documents and records of any kind, shall remain the property of the Watershed District. The Watershed District shall have the sole right to use, sell, license, publish, or otherwise disseminate any product developed in whole or in part during the performance of work under this agreement.

Q. APPROVAL AND NON-ASSIGNMENT OF SERVICES; SUBCONTRACTING

The Watershed District shall have the authority to approve or disapprove of the WCD’s selection of any individual WCD employee to perform services or provide work product under this agreement. WCD will subcontract certain of the services as specified in Exhibit B to RESPEC, a private Minnesota corporation (Subcontractor). Otherwise, WCD will not further assign, subcontract or transfer any other obligation or interest in this agreement or any of the Services without the written consent of Watershed District and pursuant to any conditions included in that consent. Watershed District consent to the subcontracting specified in Exhibit B or any other subcontracting does not relieve WCD of its responsibility to perform the Services or any part thereof, nor in any respect its warranty, insurance, indemnification, duty to defend or agreement to hold harmless with respect to the services, except that WCD agrees that it will indemnify, defend and hold harmless Watershed District, its board members and agents from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of Subcontractor’s negligence or other action or inaction by Subcontractor that is the basis for Subcontractor’s liability.

IN TESTIMONY WHEREOF the parties execute this agreement by their duly authorized officers, intending to be legally bound.

Brown’s Creek Watershed District

Washington Conservation District

BY: _____
President Date

BY: _____
Manager Date

Approved as to form and execution

WATERSHED DISTRICT counsel

EXHIBIT A
2023-24 SCOPE OF SERVICES
ADMINISTRATIVE SERVICES

The WCD will provide the following full-time Administrator (as defined herein) and part-time Communications/Project Assistant (as defined herein) services to the Watershed District.

The Watershed District Administrator acts exclusively at the discretion and direction of the Watershed District board of managers in performing and directing the Services and the Watershed District's projects and programs.

Specific duties include:

- With the Board of Managers, develop and adjust goals, programs, policies, projects and priorities to ensure prudent use and management of water and related land resources in the Watershed District. Tasks include: developing and annually revising the Watershed District work plan; managing goal setting, Watershed District projects, and revisions to the watershed management plan adopted in accordance with Minnesota Statutes section 103B.231; drafting the annual report and annual communication report.
- Maintain communications with other watershed districts, governmental organizations, and community leaders to obtain information and learn techniques pertinent to Watershed District operations.
- Manage finances and budget preparation and presentation. Assure continued financial stability and available resources to accomplish operating and long range objectives. Prepare and present monthly financial reports.
- Keep current with pertinent legislation and the availability of grants.
- Coordinate permit applications and project reviews with the Watershed District consulting engineer, district inspector, legal counsel, regulatory agencies, cities, and applicants. Provide Watershed District residents public notice of permit reviews.
- Maintain records and provide information to the public, developers and other governmental agencies.
- Provide leadership to Watershed District committees and advisory committees.
- Serve as spokesperson and clearly communicate Watershed District mission, policies and activities. Represent the Watershed District at meetings, seminars and committees.
- Prepare board agendas and propose annual schedule of goal setting, budget, annual report, contract renewals, Watershed District projects, and revisions of the watershed management plan. Participate in monthly board meetings

The Communications/Project Assistant works under the direction of the Administrator.

Specific duties include:

- Overall Watershed District program support; daily clerical tasks; permit tracking, data management, coordination, and communications; project administration and communications;
- Education and outreach support; educational materials preparation; public assistance;
- Citizen Advisory Committee support; technical report editing and writing;
- Attendance at and preparation of draft minutes of Watershed District meetings;
- GIS mapping support; and
- other duties as assigned by the Administrator.

EXHIBIT B
2023-24 SCOPE OF SERVICES
BEST MANAGEMENT PRACTICES PROGRAM

At the request of the BCWD the WCD shall furnish the following services under the terms of the AGREEMENT.

TECHNICAL SERVICES:

TASK 1. Site Reviews

Review of potential best-management practice (BMP) implementation sites. Determine site-specific BMP Program eligibility and priority in accordance with criteria established by the Watershed District board of managers. Discuss BMP alternatives with landowners, and promote implementation of BMPs. Site reviews will result in providing cost-share information and recommendations to the Administrator with respect to eligibility, and priority ranking. Up to two hours of the initial landowner contact will be paid by the Washington County Land and Water Resources technical assistance funding per unique request.

TASK 2. BMP Design and Installation Monitoring (Site Inspections)

Provide BMP design assistance, using WCD technical resources. Provide landowner and the Administrator a concept drawing, initial cost-estimate, final design and final cost estimate after approval of the concept drawings. The WCD will monitor construction activities to verify proper implementation of BMPs.

2023 – 186 Hours @ \$70/hour = \$13,020/year

2024 – 186 Hours @ \$73/hour = \$13,578/year

Task 2 Total = \$26,598

TASK 3. Long Term Monitoring

The WCD will provide long term monitoring of installed BMPs. The amount and frequency of monitoring will be as directed by the Administrator, based on the individual BMP installed.

2023- 40 hours @ \$42/hour = \$1,680

2023- 40 hours @ \$44/hour = \$1,760

Task 3 Total = \$3,440

TASK 4. BMP Maintenance

- Monthly Pretreatment Cleaning of Countryside Auto (April-Oct)= 14 hours/year @ seasonal rate
- Iron Enhanced Sand Filter: Monthly Surficial Raking (June-Sept) = 16 hours/year @ seasonal rate
- Purple Loosestrife Treatment along Mendel Wetland = 8 hours/year @ seasonal rate
- Crew oversight and coordination = 6 hours/year @ Tech III rate

2023- 38 hours @ \$42/hour + 6 hours @ \$66/hour= \$1,992

2024- 38 hours @ \$44/hour + 6 hours @ \$68/hour= \$2,080

Task 4 Total = \$4,072

TASK 5. Inspection Database

The WCD will maintain an online database utilizing a proprietary ESRI ArcGIS Online platform. The database will be for performing and storing data from on erosion and sediment control inspections, BMP maintenance inspections, and BMP maintenance activities. WCD has purchased and will continue to administer all necessary licenses for use and maintenance of the database on behalf of Watershed District. Watershed District retains ownership of all necessary licenses for use and maintenance of the database. Watershed District data will be entered into and maintained in the database created and maintained pursuant to this paragraph at the sole and exclusive discretion and direction of the Administrator. Any data designated not-public by the Administrator will be immediately removed from the database created and maintained pursuant to this paragraph,

except as necessary for WCD to fulfill any obligation under the Data Practices Act. Any data removed by or at the direction of the Administrator will be restored only at the direction of the Administrator. For the maintenance of the database, Watershed District will reimburse WCD as follows:

2023= \$1,000

2024 = \$1,000

Task 5 Total = \$2,000

Totals:

2023 TASKS 1-5: \$17,692

2024 TASKS 1-5: \$18,418

2023-2024 TOTAL NOT TO EXCEED – TASKS 1-4: \$36,110

EXHIBIT C
2023-24 SCOPE OF SERVICES
WATER MONITORING PROGRAM

Monitoring Summary	Labor Cost	Travel/Time/ Mileage Surcharge	Equipment Rental + Capital Equipment	La
Total Lake WQ Monitoring 2023-includes chlorides	\$25,297	\$0	\$0	
Total Lake WQ Monitoring 2024	\$24,141	\$0	\$0	
Total Lake Gage Monitoring/Year	\$4,663	\$0	\$0	
Total Stream WQ and/or Discharge Monitoring/Year	\$56,984	\$10,404	\$1,275	
Total Special Stream/Drainage Monitoring/Year	\$8,976	\$476	\$200	
Monitoring Report	\$14,800	\$0	\$0	
Total 2023 Monitoring Costs	\$110,720	\$10,880	\$1,475	
Total 2024 Monitoring Costs	\$109,564	\$10,880	\$1,475	
Total 2023-2024 Monitoring Costs	\$220,284	\$21,760	\$2,950	

EXHIBIT D
2023-24 SCOPE OF SERVICES
VOLUNTEER STREAM MONITORING PROGRAM

Under the terms of the AGREEMENT, the WCD shall:

TECHNICAL SERVICES:

Task 1. Training and training workshops

Coordinate and provide training and training workshops to the volunteer school groups to assure that the sampling is done correctly. Provide up-to-date program standards, manuals, identification resources, and educational materials. (9 hours per year @ Specialist I rate)

Task 2. Equipment coordination

Determine equipment needs of volunteer school groups and acquire the needed equipment and bring it to the volunteer school groups as needed. (5 hours/year @ Specialist I rate)

Task 3. Data collection and identification assistance

Coordinate volunteer school groups and assist in data collection during one spring and one fall sampling event per year. Assure that volunteer school groups are following program standards. Assist in identification of macroinvertebrates where needed. (10 hours/year @ Specialist I rate)

Task 4. Data management

Manage collected data and add to previously collected data. (5 hours/year @ Specialist I rate)

Task 5. Establishing and Maintaining Volunteer Groups

Assist the BCWD in future identification of interested volunteer groups to perform and implement the BCWD volunteer stream-monitoring program.

Task 6. Site Identification

Coordinate with the BCWD to identify any prospective monitoring sites that may be necessary to fully implement the goals of the BCWD volunteer stream monitoring program.

Task 7. Miscellaneous Services

Other services requested by the BCWD necessary to implement and carry out the program.

2023 Amount for WCD time: \$2,030 (29 hours @ \$70/hour)

2024 Amount for WCD time: \$2,117 (29 hours @ \$73/hour)

Estimated amount for equipment, transportation, substitutes 2023-24: \$3,853.

Total amount 2023-24: \$8,000