

**Pelican River Watershed District
Standard Terms & Conditions
Project Contracts for Consultant Services**

These Standard Terms and Conditions are the terms and conditions that are incorporated into all Contracts and Agreements between Pelican River Watershed District, Minnesota (hereinafter “District”) and Project Managers and Engineers, hereinafter referred to as “Consultant”.

By contracting, the Project Manager and Engineer agree to be bound by these terms, conditions and requirements unless otherwise stated in writing.

1. **District’s Rights.** The District reserves the right to cancel any Agreement and Contract without penalty, if circumstances arise which prevent the District from completing the Project.
2. **District Information.** The District agrees to provide the Consultant with the complete information concerning the Scope of the Work and to perform the following services:
 - A. **Access to the Area.** Depending on the nature of the Work, Consultant may from time to time require access to public and private lands or property. As may be necessary, the District shall obtain access to and make all provisions for the Consultant to enter upon public and private lands or property as required for the Consultant to perform such services necessary to complete the work.
 - B. **Consideration of the Consultant’s Work.** The District shall give thorough consideration to all reports, sketches, estimates, drawings, and other documents presented by the Consultant, and shall inform the Consultant of all decisions required of District within a reasonable time so as not to delay the work of the Consultant.
 - C. **Access to Information.** District agrees to provide Consultant with any and all documents and other technical information which are available to the District and which relate to the Services provided that the District is legally entitled to provide such information to Consultant.
 - D. **Owner’s Representative.** A person shall be appointed to act as the District’s representative with respect to the work to be performed under this Agreement. He or she shall have complete authority to transmit instructions, receive information, interpret, and define the District’s policy and decisions with respect to the services provided or materials, equipment, elements and systems pertinent to the work covered by this Agreement. Unless otherwise specified in writing, the District Administrator or her designee shall be the representative of the Pelican River Watershed District.
3. **Method of Payment.** The Consultant shall submit to the District, on a monthly basis, an itemized invoice for professional services performed under this Agreement. Invoices submitted shall be paid in the same manner as other claims made to the District for:
 - A. **Progress Payment.** For work compensated on a lump sum or flat fee basis Consultant shall itemize in each monthly invoice the percentage of work completed for which payment is requested. For work compensated on an hourly basis the Consultant shall indicate for each employee, his or her name, job title, the number of hours worked, rate of pay for each employee, or computation of amounts due for each employee, and the total amount due for each project task. Consultant shall verify all statements submitted for payment in compliance with Minnesota Statutes Sections 471.38 and 471.391. For reimbursable expenses, if provided for in the Agreement, the Consultant shall provide an itemized listing and such documentation as reasonably required by the District. Each

invoice shall contain the District's project number and progress summary showing the original (or amended) amount of the contract, current, billing, past payments and unexpended balance of the contract.

- B. **Suspended Work.** If any work performed by the Consultant is suspended in whole or in part by the District, the Consultant shall be paid for any services performed prior to receipt of written notice from the District of such suspension.
- C. **Payments for Special Consultants.** The Consultant shall be reimbursed for the work of special consultants and for other items when authorized in writing by the District upon invoice as described in this Section.
- D. **Claims.** To receive any payment on this Agreement, the invoice or bill must include the following signed and dated statement: "I declare under penalty of perjury that this account, claim, or demand is just and correct and that no part of it has been paid".

- 4. **Project Manager and Staffing.** The Consultant shall designate a person to serve as Consultant's Project Manager on the Project. The Project Manager may be assisted by other staff members as necessary to facilitate the completion of the Work in accordance with the terms established herein. Consultant may not remove or replace these designated staff from the Project without the approval of the District.

If the Scope of the Work contemplates that Consultant shall provide resident project representative services in connection with the construction of the Project, the Consultant shall at all times ensure and verify that the construction is consistent with the plans and specifications and all modifications to the plans and specifications for the Project. The Consultant shall approve all shop drawings and verify and ensure that those shop drawings are consistent with the plans and specifications and all modifications to the plans and specifications for the Project.

- 5. **Standard of Care.** Consultant shall exercise the same degree of care, skill and diligence in the performance of its services as is ordinarily exercised by members of the profession under similar circumstances in Minnesota. Consultant shall be liable to the fullest extent permitted under applicable law, without limitations, for any injuries, loss, or damages proximately caused by Consultant's breach of this standard of care. Consultant shall be liable to the fullest extent permitted under applicable law, without limitation, for any and all injuries, loss, damages or expenses, including reasonable attorney's fees proximately caused by any negligent or otherwise wrongful act or omission (including without limitation professional errors or omissions) of the Consultant, its agents, employees, or subcontractors in the performance of the services provided by this Agreement. Consultant shall use reasonable care and shall utilize Consultants good faith best efforts to ensure that any final estimate of Project costs given to the District Council prior to the Council's authorization to call for Project bids shall be complete and accurate to the best of Consultant's ability. Consultant shall put forth reasonable efforts to complete its duties in a timely manner. Consultant shall not be responsible for delays caused by factors beyond its control or that could not be reasonably foreseen at the time of execution of this Agreement. Consultant shall be responsible for costs, delays or damages arising from unreasonable delays in the performance of its duties.
- 6. **Audit Disclosure.** Any reports, information, data, etc. given to, or prepared or assembled by the Consultant under this Agreement which the District requests to be kept confidential, shall not be made available to any individual or organization without the District's prior written approval. The books, records, documents and accounting procedures and practices of the Consultant or other parties relevant to this Agreement are subject to examination by the District, its designated Auditor and either the

Legislative Auditor or the State Auditor for a period of six (6) years after the effective date of this contract. The Consultant shall at all times abide by Minn. Stat. 13.01 et seq., the Minnesota Government Data Practices Act, to the extent the Act is applicable to data and documents in the possession of the Consultant.

7. **Minnesota Government Data Practices Act.** Consultant must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the District pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by the Consultant pursuant to this Agreement. The Consultant is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of the Minnesota Statutes Section 13.08, as if it were a government entity. In the event the Consultant receives a request to release data, the Consultant must immediately notify the District. The District will give the Consultant instructions concerning the release of the data to the requesting party before the data is released. Consultant agrees to defend, indemnify, and hold the District, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from Consultant's officers, agents, partners, employees, volunteers, assignees or subcontractors unlawful disclosure and /or use of protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.
8. **Termination.** This Agreement may be terminated by either party by thirty (30) days written notice delivered to the other party at the address written on page 9 of Agreement. Upon termination under this provision, if there is no fault of the Consultant, the Consultant shall be paid for services rendered and reimbursable expenses until the effective date of termination. If however, the District terminates the Agreement because the Consultant has failed to perform in accordance with this Agreement, the Consultant shall not be relieved of liability to the District for damages sustained by the District as result of any breach of this Agreement by the Consultant. The District may, in such event, withhold payments due to the Consultant for the purpose of set-off until such time as the exact amount of damages due to the District is determined and the District may retain another Consultant to undertake or complete the Project and Work. The rights or remedies provided for herein shall not limit the District, in case of any default by the Consultant, from asserting any other right or remedy allowed by law, equity, or by statute.
9. **Subcontractor.** The Consultant shall not enter into subcontracts for services provided under this Agreement except as noted in the Scope of Work, without the express written consent of the District. All terms and conditions of the Agreement also apply to all Special Consultants, including but not limited to the terms and conditions of **paragraph numbers 19** relating to the ownership of documents. The Consultant shall pay any subcontractor involved in the performance of this Agreement within the ten (10) days of the Consultant's receipt of payment by the District for undisputed services provided by the subcontractor. If the Consultant fails within that time to pay the subcontractor any undisputed amount for which the Consultant has received payment by the District, the Consultant shall pay interest to the subcontractor on the unpaid amount at the rate of 1.5 percent per month or any part of a month. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the Consultant shall pay the actual interest penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Consultant shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action. This paragraph is inserted in the Agreement pursuant to Minn. Stat. 471.425, Subd. 4a

10. **Independent Consultant.** At all times and for all purposes herein, the Consultant is an independent contractor and not an employee of the District. No statement herein shall be construed so as to find the Consultant an employee of the District. Any and all employees of Consultant or other persons engaged in the performance of any work or services required by Consultant under this Contract shall be considered employees or sub-contractors of the Consultant only and not of the District; and any and all claims that might arise, including Worker's Compensation claims under the Worker's Compensation Act of the State of Minnesota or any other state, on behalf of said employees or other persons while so engaged in any of the work or services to be rendered or provided herein, shall be the sole obligations and responsibility of Consultant.
11. **Non-Discrimination.** During the performance of this Agreement, the Consultant shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age. The Consultant shall post in places available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The Consultant shall incorporate the foregoing requirements of this paragraph in all of its subcontracts for program work, and will require all of its subcontractors for such work to incorporate such requirements in all subcontracts for program work. The Consultant further agrees to comply with all aspects of the Minnesota Human Rights Act, Minnesota Statutes 363.01, et. Seq., Title VI of the Civil Rights Act of 1964, and the Americans with Disabilities Act of 1990.
12. **Assignment.** Neither party shall assign this Agreement, nor any interest arising herein, without the written consent of the other party. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
13. **Services Not Provided For.** No claim for services furnished by the Consultant not specifically provided for herein shall be honored by the District.
14. **Severability.** The provisions of this Agreement are severable. If any portion hereof is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision shall not affect the remaining provisions of this Agreement.
15. **Compliance with Laws and Regulations.** In providing services hereunder, the Consultant shall abide by statutes, ordinances, rules and regulations pertaining to the provisions of services to be provided. The Consultant and District, together with their respective agents and employees, agree to abide by the provisions of the Minnesota Data Practices Act, Minnesota Statutes Section 13, as amended, and Minnesota Rules promulgated pursuant to Chapter 13. Any violation of statutes, ordinances, rules and regulations pertaining to the services to be provided shall constitute a material breach of this Agreement and entitle the District to immediately terminate this Agreement.
16. **Waiver.** Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.
17. **Indemnification.** Consultant agrees to defend, indemnify and hold the District, its officers, and employees harmless from any liability, claims, damages, costs, judgments, or expenses, including

reasonable attorney's fees, to the extent attributable to a negligent or otherwise wrongful act or omission (including without limitation professional errors or omissions) of the Consultant, its agents, employees, or subcontractors in the performance of the services provided by this Agreement and against all losses by reason of the failure of said Consultant fully to perform, in any respect, all obligations under this Agreement. Consultant further agrees to indemnify by the District for defense costs incurred in defending any claims, unless the District is determined to be at fault.

18. Insurance.

- A. General Liability. Prior to starting the Work, Consultant shall procure, maintain and pay for such insurance as will protect against claims for bodily injury or death, or for damage to property, including loss of use, which may arise out of operations by Consultant or by any subcontractor or by anyone employed by any of them or by anyone for whose acts any of them may be liable. Such insurance shall include, but not be limited to, minimum coverages and limits of liability specified in this Section, or required by law. The Policy(ies) shall name the District as an additional insured for the services provided under this Agreement and shall provide that the Consultant's coverage shall be primary and noncontributory in the event of a loss.
- B. Consultant shall procure and maintain the following minimum insurance coverages and limits of liability on this Project:

Worker's Compensation:

Statutory Limits

Employer's Liability:

\$500,000 each accident

\$500,000 disease policy limit

\$500,000 disease each employee

Comprehensive General Liability

\$1,500,000 property damage and bodily injury per occurrence

\$2,000,000 general aggregate

\$2,000,000 Products-Completed Operations Aggregate

\$100,000 fire legal liability each occurrence

\$5,000 medical expense

Comprehensive Automobile Liability

\$1,000,000 combined single limit each accident (shall include coverage for all owned, hired and non-owned vehicles.

Umbrella or Excess Liability

\$1,000,000

- C. The Comprehensive General/Commercial General Liability policy(ies) shall be equivalent in coverage to ISO form CG 0001, and shall include the following:

Premises and Operations coverage with no explosions, collapse, or underground damage exclusion (XCU).

Products and Completed Operations coverage. Consultant agrees to maintain this coverage for a minimum of two (2) years following completion of its work. Said coverage shall apply to bodily injury and property damage arising out of the products-completed operations hazard.

Personal injury with Employment Exclusion (if any) deleted.

Broad Form CG001 0196 Contractual Liability coverage, or its equivalent.

Broad Form Property Damage coverage, including completed operations, or its equivalent.

Additional Insured Endorsement(s), naming the "Pelican River Watershed District" as an Additional Insured, on ISO form CG 20 10 07 04 or such other endorsements form as is approved by the District.

If the Work to be performed is on an attached community, there shall be no exclusions for attached or condominium projects.

"Stop gap" coverage for work in those states where Workers' Compensation insurance is provided through a state fund if Employer's liability coverage is not available.

Severability of Insureds provision.

- D. Professional Liability Insurance. The Consultant agrees to provide to the District a certificate evidencing that they have in effect, with an insurance company in good standing and authorized to do business in Minnesota, a professional liability insurance policy. Said policy shall insure payment of damage for legal liability arising out of the performance of professional services for the District. Said policy shall provide an aggregate limit of \$2,000,000. Said policy shall name the District as an insured.
- E. Computer Security and Privacy Liability Insurance. The Consultant agrees to provide to the District a certificate evidence that they have in effect, with an insurance company in good standing and authorized to do business in Minnesota, a Computer Security and Privacy Liability policy for the duration of this agreement providing coverage for, but not limited to, Technology and Internet Errors & Omissions, Security and Privacy Liability, and Electronic Media Liability. Insurance will cover claims that arise from the disclosure of private information from files but not limited to: 1) the errors or omissions of the Contractor, its employees or Sub-contractors and 2) Penetration of the Contractor's electronic data network, "firewall" or other security devices by hackers or others. The insurance policy should provide minimum coverage in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If written on a Claims-Made basis, the policy must provide an extended reporting period and have a retroactive date that on or before the date of this contract or the date Contractor commences work, whichever is earlier.
- F. Consultant shall maintain in effect all insurance coverages required under this Paragraph at Consultant's sole expense and with insurance companies licenses to do business in the state in Minnesota and having a current A.M. Best rating of no less than A-, unless specifically accepted by District in writing. In addition to the requirements stated above, the following applies to the insurance policies required under this Paragraph:

All policies, except the Professional Liability Insurance policy, shall be written on an "occurrence" form ("claims made" and "modified occurrence" forms are not acceptable);

All policies, except Professional Liability Insurance policy, shall apply on a "per project" basis;

All policies, except the Professional Liability Insurance and Worker's Compensation Policies, shall contain a waiver of subrogation naming "the Pelican River Watershed District";

All policies, except the Professional Liability Insurance and Worker's Compensation Policies, shall name "the Pelican River Watershed District" as an additional insured;

All policies, except the Professional Liability Insurance and Worker's Compensation Policies, shall insure the defense and indemnity obligations assumed by Consultant under this Agreement; and

All policies shall contain a provision that coverages afforded there under shall not be canceled or non-renewed, nor shall coverage limits be reduced by endorsement, without thirty (30) days prior written notice to the District.

A copy of the Consultant's Certificate of Insurance which evidences the compliance with this Paragraph 18 must be filed with District prior to the start of Consultant's Work. Upon request a copy of the Consultant's insurance declaration page, Rider and/or Endorsement, as applicable shall be provided. Such documents evidencing Insurance shall be in a form acceptable to District and shall provide satisfactory evidence that Consultant has complied with all insurance requirements. Renewal certificates shall be provided to District prior to the expiration date of any of the required policies. District will not be obligated, however, to review such Certificate of Insurance, declaration page, Rider, Endorsement or certificates or other evidence of insurance, or to advise Consultant of any deficiencies in such documents and receipt thereof shall not relieve Consultant from, nor be deemed a waiver of, District's right to enforce the terms of Consultant's obligation hereunder. District reserves the right to examine any policy provided for under this paragraph.

- G. Effect of Consultant's Failure to Provide Insurance. If Consultant fails to provide the specified insurance, the Consultant will defend, indemnify and hold harmless the District, the District's officials, agents and employees from any loss, claim, liability and expense (including reasonable attorney's fees and expenses of litigation) to the extent necessary to afford the same protection as would have been provided by the specified insurance. Except to the extent prohibited by law, this indemnity applies regardless of any strict liability or negligence attributable to the District (including sole negligence) and regardless of the extent to which the underlying occurrence (i.e., the event giving rise to a claim which would have been covered by the specified insurance) is attributable to the negligent or otherwise wrongful act or mission (including breach of contract) of Consultant, its subcontractors, agents, employees or delegates. Consultant agrees that this indemnity shall be construed and applied in favor of indemnification. Consultant also agrees that if applicable law limits or precludes any aspect of this indemnity, then the indemnity will be considered limited only to the extent necessary to comply with that applicable law. The stated indemnity continues until all applicable statutes of limitation have run.

If a claim arises within the scope of the stated indemnity, the District may require Consultant to:

Furnish and pay for a surety bond, satisfactory to the District, guaranteeing performance of the indemnity obligation; or

Furnish a written acceptance of tender of defense and indemnity from Consultant's insurance company.

Consultant will take the action required by the District within fifteen (15) days of receiving notice from the District.

- H. Acceptance of the insurance by the District shall not relieve, limit or decrease the liability of the Consultant. Any policy deductibles or retention shall be the responsibility of the Consultant. The Consultant shall control any special or unusual hazards and be responsible for any damages that result from those hazards. The District does not represent that the insurance requirements are sufficient to protect the Consultant's interest or provide adequate coverage.

19. Ownership of Documents.

- A. **Intellectual Property Rights.** District owns all rights, title and interests in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks and service marks in the Works and Documents created and paid for under this Agreement. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes and disks conceived, reduced to practice, created or originated by Consultant, its employees, agents and subcontractors, either individually or jointly with others in performance of this Agreement. Works includes "Documents". Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks or other materials, whether in tangible or electronic forms, prepared by Consultant, its employees, agents or subcontractors, in performance of this Agreement. The Documents will be the exclusive property of District and Consultant must immediately deliver or return all such Documents to District upon completion or cancellation of this Agreement. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire". Consultant assigns all right, title and interest it may have in the Works and the Documents to District. Consultant must, at the request of District, execute all papers and perform all other acts necessary to transfer or record District's ownership interest in the Works and Documents.
- B. **Notification.** Whenever Consultant reasonably believes it, or its employees or subcontractors, has made an invention, improvement or discovery (whether or not patentable) in the performance of this Agreement, and has or will actually or constructively reduce it to practice, Consultant will immediately give District's Authorized Representative written notice thereof and must promptly furnish District's Authorized Representative with complete information and/or disclosure thereon.
- C. **Representation.** Consultant must perform all acts and take all steps necessary to ensure that all intellectual property rights in the Works and Documents created and paid for under this Agreement are the sole property of District and that neither Consultant nor its employees, agents or subcontractors retain any interest in and to the Works and Documents created and paid for under this Agreement, except that Consultant need not obtain patents, copyrights or trademarks. Consultant represents that the Works and Documents created and paid for under this Agreement do not and will not infringe upon any intellectual property rights of other persons or entities. Consultant will indemnify; defend to the extent permitted by the District's Attorney; and hold harmless District, at Consultant's expense, from any action or claim brought against District to the extent that it is based on a claim that all or part of the Works or Documents created and paid for under this Agreement infringe upon the intellectual property rights of others. Consultant will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs and damages including but not limited to reasonable attorney fees. If such a claim or action arises, or in Consultant's or District's opinion is likely to arise, Consultant must, at District's discretion, either procure for District the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents created and paid for under this Agreement as necessary and appropriate to

obviate the infringement claim. This remedy of District will be in addition to and not exclusive of other remedies provided by law.

- D. **District's Reuse of Works and Documents.** If the Works and Documents created and paid for under this Agreement are engineering plans, specifications or recommendations requiring the certification of a licensed professional engineer, District acknowledges that such plans, specifications and recommendations have been created solely for the specific project covered by this Agreement and may not be suitable for reuse on other projects. There shall be no restriction on reuse of the Works and Documents created and paid for under this Agreement, but reuse without the written verification or adaptation by Consultant shall be done at District's sole risk and without liability to Consultant.
- E. **Delivery of Documents.** The originals of electronic and non-electronic deliverables required under this Agreement must be relinquished to District upon written notification or request by District.

20. **Disputes.** In an effort to resolve any conflicts that arise during or following the completion of the services described in this Agreement, the dispute will first be submitted to non-binding mediation unless the parties mutually agree otherwise. The cost of mediation will be shared equally by the parties. If either party does not agree with the outcome of the mediation, the parties can then otherwise exercise their rights under this Agreement and under law. Unless otherwise specifically agreed or provided herein, the prevailing party in any action regarding this Agreement shall be entitled to their costs, disbursements and reasonable attorney fees are provided by law.

21. **Government Law.** This Agreement shall be controlled by the laws of the State of Minnesota. Jurisdiction and Venue for any disputes shall be in the District Courts of the State of Minnesota in Becker County, Minnesota.

22. **Conflicts.** No salaried officer or employee of the District and no member of the Board of the District shall be a financial interest, direct or indirect, in this Agreement. The violation of this provision renders the Agreement void. Any Federal regulations and applicable State Statues shall not be violated.

23. **Successors and Assigns.** This Agreement is binding upon the successors and assigns of the parties.

Pelican River Watershed District (District)
211 Holmes St. West, Suite 201
Detroit Lakes, MN 5601

Consultant Name & Address

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____