



# Request for Proposals for the Mississippi River Direct Drainage Project Prioritization Study

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**Issued by:** The Lower Mississippi River WMO

***Dated:*** December 5<sup>th</sup>, 2023

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## GENERAL INFORMATION

- A qualified respondent should review the following request and submit one electronic copy in PDF format via email by 5:00 pm on or before **Friday, January 26<sup>th</sup>, 2024** to the following:

Lower Mississippi River WMO  
c/o: Joe Barten, Administrator via Dakota County SWCD  
Dakota County Soil & Water Conservation District  
4100 220<sup>th</sup> St. West, Suite 102  
Farmington, MN 55024

Telephone: (651) 480-7784  
EMAIL: [joe.barten@co.dakota.mn.us](mailto:joe.barten@co.dakota.mn.us)

- Hard copies will be accepted as well, if received by the deadline.
- Clarifying questions regarding this request for proposal shall be via email and must be received by the LMRWMO Administrator no later than 5:00 pm on Wednesday, January 12<sup>th</sup>, 2024 to:

EMAIL: [joe.barten@co.dakota.mn.us](mailto:joe.barten@co.dakota.mn.us)

A response to all clarifying questions received from the WMO will be communicated via e-mail to all recipients of this RFP by 5:00 pm on January 17<sup>th</sup>, 2024.

## **I. INTRODUCTION**

### **A. Description of Issuing Agency**

Lower Mississippi River WMO  
c/o: Joe Barten, Administrator  
Dakota County Soil and Water Conservation District  
4100 220<sup>th</sup> St. West Suite 102  
Farmington, MN 55024

### **B. RFP Contents**

This RFP contains the following sections:

- I. Introduction
- II. Project Purpose and Background
- III. Scope of Services
- IV. Timeline
- V. Instructions to Proposers
- VI. Evaluation of Proposals
- VII. Contract Terms and Conditions

## **II. PROJECT PURPOSE AND BACKGROUND**

The Lower Mississippi River Watershed Management Organization (LMRWMO or WMO) has identified direct drainage tributaries to the Mississippi River as high priority due to the presence of erosion in ravines near the river and their ability to directly impact the water quality of the Mississippi River. Additionally, the high volumes of urban stormwater entering the river contribute floatable trash, nutrients, and sediment to the river. This reach of river is impaired for excess nutrients and TSS.

The LMRWMO seeks to assess the watershed hydrology through updated watershed analysis and/or modeling to allow for the identification, classification, and ranking of erosion areas through a thorough investigation and analysis of direct drainage areas, (Mississippi River subwatersheds) as shown in Exhibit A. The LMRWMO also seeks to identify the location of large scale BMPs for stormwater volume reduction and pollutant reduction. Pollutants of concern relevant to this study include floatable trash from stormwater runoff, phosphorus, and sediment. The modeling data that does exist differs by the Cities in the study area and is a mix of XPSWMMM, HydroCAD, and P8. This modeling is not considered comprehensive but will be shared with the selected consultant.

Stabilization measures for identified erosion areas and stormwater BMPs shall be analyzed to feasibility level design (determined by consultant proposal), mapped, and as proposed by the consultant, evaluated for estimated costs, constructability, and assigned pollutant reductions, priority practice ranking, and some form of cost benefit analysis.

Both desktop analysis and field reconnaissance shall be included in the study. The consultant shall clearly describe in their proposal the level of field reconnaissance they recommend to achieve the project objectives within the project budget. Consideration of regulatory hurdles, available public property to implement BMPs, or other requirements for various proposed strategies or BMPs should be included in the analysis and report. Gaps in data or recommendations for future study shall be included in report.

The project will deliver a final report that presents both a prioritized erosion stabilization and stormwater BMP project list, including specific details such as project locations, extent, constructability, estimated costs, long term maintenance, and pollutant reduction benefits.

The final report will serve as a valuable tool for decision-making and future prioritization of projects, promoting improved water quality and erosion control within the targeted watersheds. The goal is to have sufficient information from and within the final report to prioritize projects to seek grant funding for implementation.

### **III. SCOPE OF SERVICES**

The consultant will be required to furnish all labor, materials, transportation, tools, supplies, equipment, insurance, and any other items necessary for completing the work. All sub-consultant needs and costs expected for the tasks below shall be included with the overall costs proposed by a consultant. The LMRWMO currently has a budget of \$80,500 to complete all tasks. The scope of the proposed project includes the following tasks:

#### **Project Kickoff**

- Perform desktop analysis of project area and identify information needs;
- Review existing data provided by the Cities and LMRWMO and identify data gaps to be addressed to fully deliver the final report;
- Provide a kickoff meeting with LMRWMO, City Staff, and any other stakeholders identified by the LMRWMO;

#### **Watershed Analysis**

- Conduct watershed analysis to assess hydrologic characteristics and identify areas of concern within the subwatersheds;
- Perform analysis to identify erosion hotspots and stormwater management opportunities, prioritizing public property first, but also considering private property opportunities as feasible;
- Perform analysis to identify the most suitable potential locations of large-scale stormwater management BMPs for the reduction of floatable trash, stormwater volume, phosphorus, and sediment on both public and private property and factoring in existing stormwater treatment infrastructure;

#### **Field Reconnaissance**

- Conduct field surveys and assessments to validate findings from desktop mapping, gather additional data, and assess current conditions of the subwatersheds.
- Review the feasibility of implementing stabilization measures to reduce erosion and improve water quality;
- Assess and note the potential impact to wetlands, park areas, private property, infrastructure, and permitting implications for identified projects;
- Lead a project partner meeting with City and LMRWMO Staff to discuss potential projects and receive feedback after field review has been completed and before finalizing the report;

#### **Analysis & Prioritization**

- Develop concept to feasibility level designs (as proposed by Consultant) and example visual details for stabilizing individually identified erosion areas and for identified stormwater BMPs;
- Provide an opinion of costs for individually located conceptual designs to stabilize areas of erosion and for identified stormwater BMPs, as well as complete pollutant calculations, priority ranking, and cost benefit analysis using MN Board of Water and Soil Resources (BWSR) accepted pollutant reduction/water quality benefit estimation tools;

- Develop a ranking system in coordination with LMRWMO and City staff to prioritize identified projects based on pollutant reductions, cost-effectiveness, and alignment with project goals;
- Complete a comprehensive cost-benefit analysis for both erosion repair and stormwater BMPs that includes future conditions modeling, an opinion of costs for conceptual design options for identified projects as well as pollutant calculations and priority ranking using appropriate pollutant reduction/water quality benefit estimation tools;
- Allow project partners (LMRWMO Staff and City Staff) to review the draft report prior to finalization to provide feedback on content with sufficient time for modifications.

**Final Deliverables**

- Provide a comprehensive and complete final report which accomplishes the project objectives by December 4<sup>th</sup>, 2024;
- The main final deliverable will be a high-quality electronic format copy of the report, along with associated graphics, photos, maps, tables, and supporting information;
- Additional final deliverables include all electronic drawings, reports, maps, modeling data, GIS data and layer shapefiles; detailed cost tables (Microsoft Excel sheets), high resolution photos, and other original format work products prepared or produced in performance of this Contract which shall be transmitted to the WMO in their original electronic format prior to completion of the project and final payment. These shall be provided to the LMRWMO by December 13<sup>th</sup>, 2024. No work may be billed to the project by the Consultant after December 13<sup>th</sup>, 2024.
- Final billing invoices shall be provided to the LMRWMO no later than January 3<sup>rd</sup>, 2025.

**IV. TIMELINE**

**Project Timeline**

This RFP will be conducted according to the following tentative schedule. This tentative schedule may be altered at the discretion of the WMO.

<b>Task</b>	<b>Timeline</b>
Release of RFP	December 5 <sup>th</sup> , 2023
Deadline for Questions Regarding RFP	January 12 <sup>th</sup> , 2024
Deadline for Response to Consultant Questions	January 17 <sup>th</sup> , 2024
Deadline for Submittal of Proposals	January 26 <sup>th</sup> , 2024 - 5:00 pm
Proposal Review	Jan. 27 <sup>th</sup> - Feb. 13 <sup>th</sup> 2024
Selection of Contractor	February 14 <sup>th</sup> , 2024
Execute Contract	As soon after selection as possible
Commence Work/Services	As per proposal
Complete Work/Services	As per proposal
Final Report Provided to the LMRWMO Board	<b>Prior to December 4th, 2024</b>

## V. INSTRUCTIONS TO PROPOSERS

### A. General Information

#### 1. Submittal of Proposals

Proposers shall submit one electronic copy of their proposal to Joe Barten via email at: [joe.barten@co.dakota.mn.us](mailto:joe.barten@co.dakota.mn.us).

**All proposals shall be received no later than 5:00 pm on, Friday, January 26<sup>th</sup>, 2024.** Proposals received after this time may be rejected. The WMO reserves the right to accept or reject any proposals.

#### 2. Proposal Format

Proposals shall be prepared on 8-1/2" x 11" format. **We request that proposals consist of a maximum of 20 pages, inclusive of cover page, non-inclusive of resumés.** Index the proposal and sequentially number all pages throughout or by section. All text and exhibits should be succinct and relevant to the RFP requirements.

#### 3. Examination of RFP

By submitting a proposal, the Proposer represents that they have thoroughly examined and become familiar with the work required under this RFP and that the Proposer is capable of performing quality work to achieve the objectives of the WMO.

#### 4. Addenda/Clarifications

Any changes to this RFP will be made by the WMO through a written addendum transmitted via e-mail as noted in the project timeline. No verbal modification will be binding.

#### 5. Pre-Contractual Expenses

Pre-contractual expenses are defined as expenses incurred by the Proposer in: 1) preparing its proposal in response to this RFP; 2) submitting the proposal to the WMO; or 3) any other expenses incurred by the Proposer prior to the date of execution of the proposed agreement.

The WMO shall not, in any event, be liable for any pre-contractual expenses incurred by the Proposers in the preparation of their proposals. Proposers shall not include any such expenses as part of their proposals.

#### 6. Exceptions and Deviations

Any exceptions to the requirements in this RFP must be included in the proposal submitted by the Proposer. Segregate such exceptions as a separate element of the proposal under the heading "Exceptions and Deviations."

#### 7. Contract Award

Issuance of this RFP and receipt of proposals do not commit the WMO to award a contract. The WMO reserves the right to postpone opening for its own convenience, to accept or reject any or all proposals received in response to this RFP.

## **8. Joint Offers**

Where two or more Proposers desire to submit a single proposal in response to this RFP, they should do so on a prime-subcontractor basis rather than as a joint venture. The WMO intends to contract with a single firm and not with multiple firms doing business as a joint venture.

## **9. Contact Person**

The Proposer's sole point of contact with the WMO for this proposal is Joe Barten, LMRWMO Administrator.

## **10. WMO Rights**

The WMO may investigate the qualifications of any Proposer under consideration, require confirmation of information furnished by the Proposer, and require additional evidence of qualifications to perform the work described in this RFP. The WMO reserves the right to:

- a. Reject any or all proposals.
- b. Cancel the Request for Proposals;
- c. Issue a subsequent Request for Proposals;
- d. Remedy technical errors in the Request for Proposal;
- e. Appoint evaluation committees to review proposals;
- f. Establish a short list of 3 Proposers eligible for interview after evaluation of written proposals;
- g. Negotiate with any, all, or none of the RFP respondents; and
- h. Reject and replace one or more subcontractors.

## **11. Ownership of Proposals**

All submitted proposals become the property of the WMO. By submitting a proposal, the Proposer agrees that the WMO may copy the proposal for purposes of facilitating the evaluation or to respond to requests for public data. The proposer consents to such copying by submitting a proposal and warrants that such copying will not violate the rights of any third party, including copyrights.

## **B. Components for the Proposal**

### **1. Letter of Transmittal**

Address the letter of transmittal to the address set forth on the cover page of this RFP and include, at a minimum, the following:

- a. Identification of the offering firm(s), including name, address, and telephone number of each firm;
- b. Acknowledgment of receipt of RFP addenda, if any;
- c. Name, title, address, telephone and email address of contact person during period of proposal evaluation;
- d. A statement to the effect that the proposal shall remain valid for a period of not less than 90 days from the date of submittal; and
- e. Signature of a person authorized to bind the offering firm to the terms of the proposal.

### **2. Proposer's Team**

Identify the interrelationship of the Proposer's team members and key personnel. Identify the team members' areas of responsibility. Provide subcontractors' company name,

address, contact person, and telephone number. Describe your previous experience working with each subcontractor (if applicable).

### **3. Qualifications and Experience**

Identify similar projects undertaken by the Proposer's team within the last five (5) years. Document the team members' actual responsibility on each project. The subcontractors' projects should be similar to the work they will perform on this project. For each project, provide the contact information for the client who is familiar with the firm's key personnel.

### **4. Key Personnel**

For each of the key personnel shown, provide a brief resume. A longer résumé may be used for the project manager. Include in the project manager's résumé a summary of experience with any specialization or expertise at the local, state and national level needed for the project. At least one of key personnel must be a licensed professional Engineer.

### **5. Work Plan and Budget for Scope of Services**

The proposal should demonstrate the Proposer's understanding of the project intent, goals, and deliverables. The proposal must include a clear description of the methods or process to be used to complete each task in the scope of services along with a project schedule that details tasks, timelines, and work products.

The Proposer shall provide a detailed budget and not to exceed cost for the proposed project. The budget should include each of the tasks in the scope of services and provide:

- a. Professional fees, including hourly rates and number of hours to be worked per person
- b. Direct expenses (equipment, supplies, etc.)
- c. Other (contract labor, travel, etc.)

### **6. Conflict of Interest**

The Proposer must identify any potential conflict of interest it may have providing the services contemplated by this RFP.

## **VI. EVALUATION OF PROPOSALS**

Each proposal will be assessed by project partners for its response to the needs outlined in the RFP. Factors to be considered during the review include, but will not be limited to the following:

1. Qualifications and experience of the Firm, Project Manager, and key staff proposed to work on the project and availability.
2. Understanding of project requirements.
3. Completeness and clarity of proposal which demonstrates a thorough approach to study and report, overall understanding of the project objective and individual work tasks, appropriate level of detail, documentation, and back-up material.
4. Responsiveness to the client, clarity of proposed schedule, and ability to complete within required timeline.

5. Fee estimate and value of fee estimate: total project cost, appropriately assigning qualified personnel to complete tasks, and demonstrating value in the allocation of staff hours to project tasks.
6. Any other factors deemed relevant by the LMRWMO and partners.

The LMRWMO reserves the right to consider any additional information gathered by the LMRWMO or submitted by the consultant to evaluate the submitted proposal. The LMRWMO reserves the right to request interviews of consultants prior to selection if necessary.

Lowest cost will not be the sole determining factor in awarding a contract. Rather, the LMRWMO may award the contract to the consultant whose proposal represents the best value proposal, as determined by the evaluation criteria above.

## **VII. CONTRACT TERMS AND CONDITIONS**

The following terms and conditions, together with any necessary State requirements, shall be incorporated into the agreement with the successful proposer.

### **A. Term**

The term of the contract awarded under this RFP shall commence in late February, 2024 and end no later than December 4<sup>th</sup>, 2024. Final billing from Consultant must be received no later than January 3<sup>rd</sup>, 2025.

### **B. Contract**

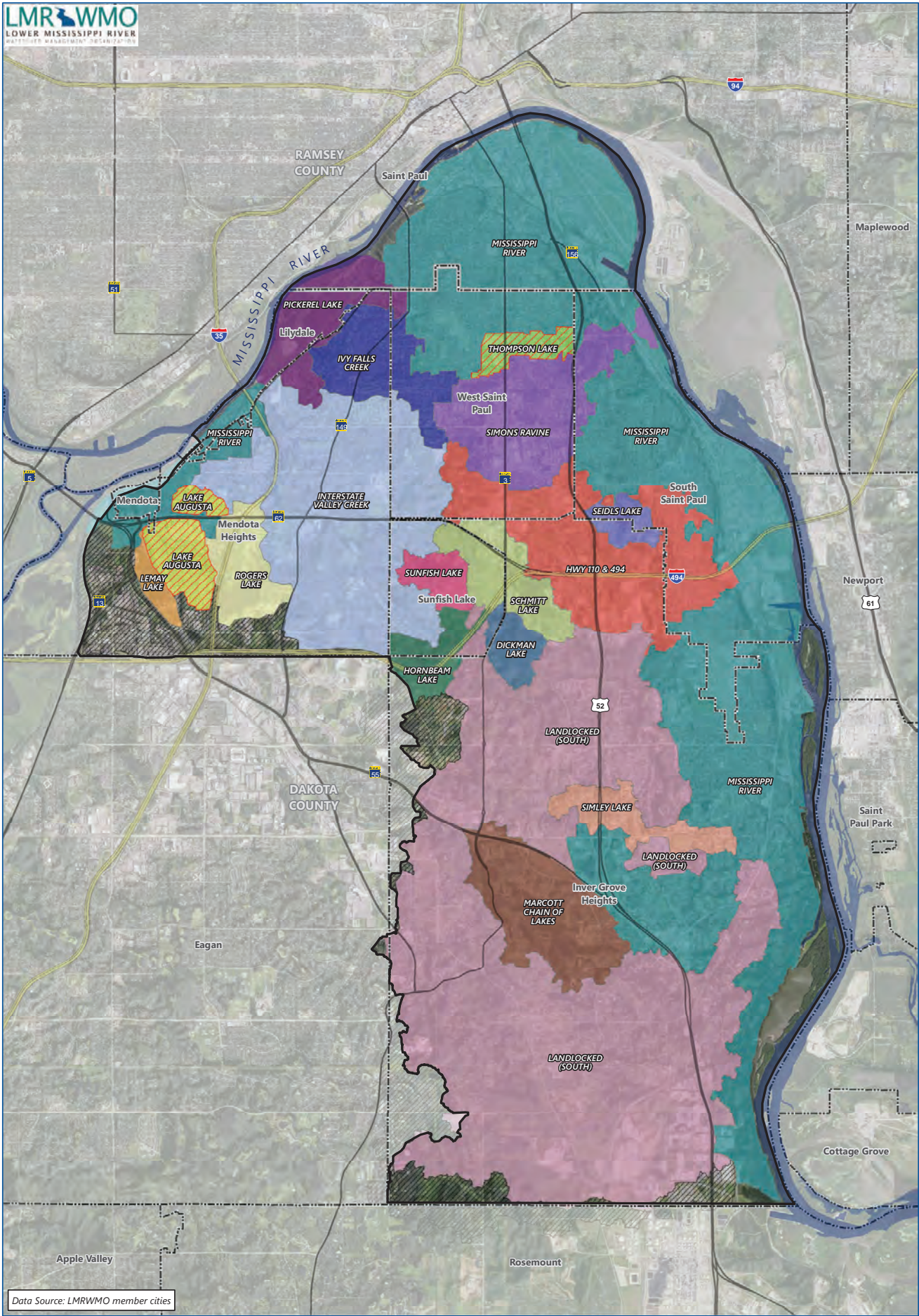
The selected Consultant must be willing to sign a contract that has the terms set forth in the form of the contract attached, including the following attachments to such form contract:

- Attachment A Request for Proposals  
Exhibit A - Direct Drainage Subwatersheds
- Attachment B Response to Request for Proposal
- Attachment C Certificate(s) of Insurance

The below is a template contract and the WMO has the right to make any additions, deletions, changes and modifications to the form contract as it deems necessary, prior to the award of the contract.

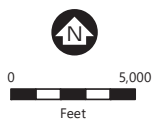


(EXHIBIT A)



Data Source: LMRWMO member cities

Lower Mississippi River WMO Boundary	LMRWMO Regulatory Watershed	Lake Augusta	Schmitt Lake
County Boundary	Planning Subwatersheds	Lemay Lake	Seidls Lake
Municipal Boundary	Dickman Lake	Landlocked (South)	Simley Lake
River	HWY 110 & 494	Marcott Chain of Lakes	Simons Ravine
	Hornbeam Lake	Mississippi River	Sunfish Lake
	Interstate Valley Creek	Pickerel Lake	Thompson Lake
	Ivy Falls Creek	Rogers Lake	Drains to other WMO



(TEMPLATE CONTRACT INFORMATION)

**EXAMPLE CONTRACT BETWEEN THE LOWER MISSISSIPPI RIVER  
WATERSHED MANAGEMENT ORGANIZATION  
AND \_\_\_\_\_ FOR  
PROFESSIONAL CONSULTING & ENGINEERING SERVICES  
FOR SERVICES**

This Contract is made and entered into between the Lower Mississippi River Watershed Management Organization, a joint powers organization, hereinafter "WMO" and \_\_\_\_\_, hereinafter "Contractor".

**WHEREAS**, the WMO requires services for Professional Consulting & Engineering Services for the development of a 4<sup>th</sup> Generation Watershed Management Plan, as identified in the WMO's request for Proposal dated (Insert Date), attached hereto and incorporated herein as Attachment A.

**WHEREAS**, Contractor desires to and is capable of providing the necessary services according to the terms and conditions stated herein and as expressed in Contractor's Response to Request, dated \_\_\_\_\_, attached hereto and incorporated herein as Attachment B.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein the parties agree as follows:

1. CONTRACTOR'S OBLIGATIONS

- 1.1 General Description. Contractor shall provide the services described in Attachments A and B.
- 1.2 Conformance to Specifications. Services provided shall be in accordance with the criteria set out in Attachments A and B.
- 1.3 Conflict of Terms. In the event there is a conflict between the terms of Attachment A and Attachment B, the terms of Attachment A shall govern. In the event of a conflict between the terms of this Contract and Attachments A or B, the terms of this Contract shall govern.

2. PAYMENT

- 2.1 Total Cost. The total amount to be paid by the WMO pursuant to this Contract shall not exceed \$\_\_\_\_\_.
- 2.2 Compensation. The WMO shall pay for services at the rates set out in the rate schedule set forth in Attachment B. Before final payment of the contract balance will be made, Contractor shall comply with the provisions of Minn. Stat. § 270C by providing satisfactory proof of payment of payroll taxes.
- 2.3 Time of Payment. The WMO shall make payment to Contractor within sixty (60) days of the date on which each invoice is received. If an invoice is incorrect, defective, or otherwise improper, the WMO will notify Contractor within 21 days of receiving the incorrect invoice. Upon receiving the corrected invoice from Contractor, the WMO will make payment within sixty (60) days.
- 2.4 Late Request for Payments. The WMO has the right to refuse payment on invoices received or postmarked more than ninety (90) days after the date that invoiced services were performed.
- 2.5 Payment for Unauthorized Claims. The WMO may refuse to pay a claim which is not specifically authorized by this Contract or Amendment. Payment of a claim shall not preclude the WMO from questioning the propriety of the claim. The WMO reserves the right to offset any overpayment or disallowance of claim by reducing future payments.

2.6 Payment Upon Early Termination. In the event this Contract is terminated before the completion of services, the WMO shall pay to Contractor for services provided in accordance with accepted industry standards, a sum based upon the actual time spent at the rates stated in paragraph 3.2. In no case shall such payment exceed the total value of services for the phase of work in which termination occurs.

### 3. COMPLIANCE WITH LAWS/STANDARDS

3.1 General. Contractor shall comply with all applicable Federal, State or local laws, statutes, ordinances, rules and regulations now in effect as of the date of this Contract or hereafter adopted pertaining to this Contract or to the facilities, programs and staff for which Contractor is responsible. This includes, but is not limited to all Standard Assurances, which are included as Exhibit 1 to Attachment A and incorporated herein by reference.

3.2 Licenses. Contractor shall procure, at its own expense, all licenses, permits or other rights required for the provision of services contemplated by this Contract.

3.3 Minnesota Law to Govern. This Contract shall be governed by and construed in accordance with the substantive and procedural laws of the State of Minnesota, without giving effect to the principles of conflict of laws. In the event of litigation, the exclusive venue shall be in the District Court of the State of Minnesota for Dakota County.

### 4. INDEPENDENT CONTRACTOR STATUS

Contractor is an independent contractor and nothing herein contained shall be construed to create the relationship of employer and employee between WMO and Contractor. Contractor shall at all times be free to exercise initiative, judgment and discretion as to how to best perform or provide services. Contractor shall have discretion as to working methods, hours and means of operation. Contractor acknowledges and agrees that Contractor and Contractor's employees are not entitled to receive any of the benefits received by the WMO members and are not eligible for workers' or unemployment compensation benefits. Contractor also acknowledges and agrees that no withholding or deduction for state or federal income taxes, FICA, FUTA, or otherwise, will be made from the payments due Contractor and that it is Contractor's sole obligation to comply with the applicable provisions of all federal and state tax laws.

### 5. INDEMNIFICATION

Claims that arise or may arise against the Contractor, its agents, servants or employees as a consequence of any negligent act or omission on the part of Contractor or its agents, servants, employees while engaged in the performance of the Contract shall in no way be the obligation or responsibility of the WMO. Contractor shall indemnify and hold harmless the WMO, its officers and employees against liability, loss, costs, damages, expenses, claims or actions, including attorney's fees which the WMO, its officers or employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any negligent act, error or omission of Contractor, its agents, servants or employees, in the execution, performance, or failure to adequately perform Contractor's obligations pursuant to this Contract.

## 6. INSURANCE

- 6.1 General Terms. In order to protect itself and to protect the WMO under the indemnity provisions set forth above Contractor shall, at Contractor's expense, procure and maintain policies of insurance covering the term of this Contract, as set forth in Exhibit 2 to Attachment A, which is attached and incorporated herein. All retentions and deductibles under such policies of insurance shall be paid by Contractor. Each such policy of insurance shall contain a clause providing that such policy shall not be cancelled by the issuing insurance company without at least 10 days' written notice to the WMO of intent to cancel.
- 6.2 Certificates. Prior to or concurrent with execution of this Contract, Contractor shall file certificates or certified copies of such policies of insurance with the WMO and such proof of insurance shall be attached and incorporated herein as Attachment C.
- 6.3 Failure to Provide Proof of Insurance. The WMO may withhold payments or immediately terminate this Contract for failure of Contractor to furnish proof of insurance coverage or to comply with the insurance requirements as stated above.

## 7. SUBCONTRACTING

Neither the Contractor nor the WMO shall enter into any subcontract for the performance of the services contemplated under this Contract nor assign any interest in the Contract without prior written consent of the other party and subject to such conditions and provisions as are deemed necessary. The subcontracting or assigning party shall be responsible for the performance of its subcontractors or assignees unless otherwise agreed.

Any subcontractor approved by the WMO will be required to provide proof of insurance to the WMO in coverage and amounts the same as set forth in Paragraph 7.1, above. All fees for services and all job supervision will remain the obligation of the Contractor.

Pursuant to Minnesota Statute 471.25, Subdivision 4a, the Contractor must pay any subcontractor within ten (10) days of the Contractor's receipt of payment from the WMO for undisputed services provided by the subcontractor. The Contractor must pay interest of one and one-half percent (1½ %) per month or any part of a month to subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor shall be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

## 8. TIMELINESS

Failure by a party to perform its obligations in accordance with mutually agreed upon schedule may be considered by the other party as a material breach, subject to termination as provided in Section 10.

## 9. DEFAULT: FORCE MAJEURE

Neither party shall be held responsible for delay or failure to perform when such delay or failure is due to any of the following unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure: fire, flood, epidemic, strikes, wars, acts of God, unusually severe weather, acts of public authorities, or delays or defaults caused by public carriers; provided the defaulting party gives notice as soon as possible to the other party of the inability to perform.

## 10. TERMINATION

The WMO may terminate this Agreement or any part thereof at any time, upon written notice to Contractor, effective upon delivery including delivery by facsimile or email. In such event, Contractor will be entitled to compensation for work performed up to the date of termination based upon a pro rata basis.

10.1 Duties of Contractor Upon Termination. Upon Termination, and except as otherwise provided, Contractor shall:

- A. Discontinue provision of services under this Contract on the date and to the extent specified in the Notice of Termination.
- B. Cancel all orders and subcontracts to the extent that they relate to the performance of services canceled by the Notice of Termination.
- C. Complete performance of such services as shall not have been canceled by the Notice of Termination.
- D. Return all WMO property in the Contractor's possession within seven days to the extent that it relates to the performance of services under this Contract.
- E. Submit an invoice for the performance of services prior to the effective date of termination within thirty (30) days of said date.
- F. Maintain all records relating to the performance of the Contract as may be required by the WMO or State law.

10.2 Duties of WMO Upon Termination. Upon Termination, and except as otherwise provided, the WMO:

- A. Shall, within 60 days after receipt of final invoice from Contractor, make final payment for any services satisfactorily provided through the date of termination in accordance with the terms of this Contract.
- B. Shall not be liable for any services provided after Termination, except as stated above or as authorized by the WMO in writing.

10.3 Effect of Termination. Termination of this Contract shall not discharge any liability, responsibility or right of any party which accrued prior to the effective date of termination.

## 11. CONTRACT RIGHTS/REMEDIES

11.1 Rights Cumulative. All remedies available to either party under the terms of this Contract or by law are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

11.2 Waiver. Waiver for any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Contract shall not be construed to be modification for the terms of this Contract unless stated to be such in writing and signed by authorized representatives of the WMO and Contractor.

## 12. AUTHORIZED REPRESENTATIVE

The following named persons are designated the authorized representatives of parties for purposes of this Contract. These persons have authority to bind the party they represent and to consent to modifications and subcontracts, except that, as to the WMO, the authorized representative shall

have only the authority specifically or generally delegated by the WMO Board of Managers. Notification required to be provided pursuant to this Contract shall be provided to the following named persons at the addresses shown unless otherwise stated in this Contract, or in a modification of this Contract.

To Contractor:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e-mail \_\_\_\_\_  
Telephone: \_\_\_\_\_

To the WMO:

Administrator  
c/o Dakota County SWCD  
4100 220<sup>th</sup> St. West, Suite 102  
Farmington, MN 55024

xxx@co.dakota.mn.us  
Telephone: (651) 480-7787

In addition, notification to the WMO regarding breach or termination shall be provided to the office of the WMO's Attorney:

James Monge  
Campbell, Knutson, Scott and Fuch, P.A.  
1380 Corporate Center Drive  
Eagan, MN 55121

13. LIAISON

To assist the parties in the day-to-day performance of this Contract and to develop service, ensure compliance and provide ongoing consultation, a liaison shall be designated by Contractor and the WMO. The parties shall keep each other continually informed, in writing, of any change in the designated liaison. At the time of execution of this Contract, the following persons are the designated liaisons:

Contractor's Liaison: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
Email: \_\_\_\_\_

WMO Liaison: Joe Barten, Administrator via Dakota SWCD  
Phone Number: (651) 480-7784  
Email: joe.barten@co.dakota.mn.us

14. ANTITRUST

The Contractor hereby assigns to the State of Minnesota, any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

15. OWNERSHIP OF INSTRUMENTS OF SERVICE

A. Contractor acknowledges that performance of this Contract may result in the development of new and valuable proprietary and secret concepts, methods, techniques, processes, adaptations or ideas. Contractor agrees that the same shall belong solely and exclusively to the WMO. Contractor expressly disclaims and waives all rights to new ideas which result from or are incident to any performance of this Contract, including without limitation, rights to patents, copyrights, trade secrets or proprietary information.



- B. The WMO shall own all drawings, specifications, reports, maps and other work products prepared or produced in performance of this Contract which shall be transmitted to the WMO in their original electronic and hard copy (if applicable) form either via electronic transfer or flash drive prior to completion or termination of the project and final payment to Contractor.
- C. Reuse by the Owner of any documents and/or services pertaining to this project or extensions of this project or on any other project shall be at the Owner's sole risk. The WMO shall not reuse or modify the work product for use at any other project without the approval of the Contractor, which shall not be unreasonably withheld.
- D. Where applicable, works of authorship created by Contractor for the WMO in performance of this Contract shall be considered "works made for hire" as defined in the U.S. Copyright Act. Contractor shall, upon the request of the WMO, execute all papers and perform all other acts necessary to assist the WMO to obtain and register copyrights on such material.

16. MODIFICATIONS

Any alterations, variations, modifications, or waivers of the provisions of this Contract shall only be valid when they have been reduced to writing, signed by authorized representatives of the WMO and Contractor.

17. SEVERABILITY

The provisions of this Contract shall be deemed severable. If any part of this Contract is rendered void, invalid, or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Contract unless the part or parts which are void, invalid or otherwise unenforceable shall substantially impair the value of the entire Contract with respect to either party.

18. DISPUTES AND MEDIATION

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the Consultant and the WMO agree that all disputes between them arising out of or relating to this agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.

19. MERGER

19.1 Final Agreement. This Contract is the final expression of the agreement of the parties and the complete and exclusive statement of the terms agreed upon, and shall supersede all prior negotiations, understandings or agreements. There are no representations, warranties, or stipulations, either oral or written, not herein contained.

19.2 Attachments. Attachments A through and including D are attached and incorporated herein by reference.

Attachment A WMO's Request for Proposals

Exhibit 1: Standard Assurances

Exhibit 2: Insurance Terms

Attachment B Contractor's Response to Request for Proposals

Attachment C Contractor's Certificate of Insurance

20. The covenants and agreements herein which by their terms are to have effect or be performed after the expiration or termination of this Contract shall survive the expiration or termination hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the date(s) indicated below.

CONTRACTOR

\_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

LMRWMO

By \_\_\_\_\_

Chair, LMRWMO Board of Managers

\_\_\_\_\_  
Date

By \_\_\_\_\_

Vice Chair, LMRWMO

\_\_\_\_\_  
Date

## **Exhibit 1**

### **STANDARD ASSURANCES**

1. **NON-DISCRIMINATION**. During the performance of this Contract, the Contractor shall not unlawfully discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, national origin, disability, sexual orientation, age, marital status or public assistance status. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without unlawful discrimination because of their race, color, creed, religion, sex, national origin, disability, sexual orientation, age, marital status or public assistance status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices which set forth the provisions of this nondiscrimination clause.

The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, sex, national origin, disability, sexual orientation, age, marital status, or public assistance status.

No funds received under this Contract shall be used to provide religious or sectarian training or services.

The Contractor shall comply with any applicable federal or state law regarding non-discrimination. The following list includes, but is not meant to limit, laws which may be applicable:

A. The Equal Employment Opportunity Act of 1972, as amended, 42 U.S.C. § 2000e et seq. which prohibits discrimination in employment because of race, color, religion, sex or national origin.

B. Executive Order 11246, as amended, which is incorporated herein by reference, and prohibits discrimination by U.S. Government contractors and subcontractors because of race, color, religion, sex or national origin.

C. The Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 et seq. and 45 C.F.R. 84.3 (J) and (K) implementing Sec. 504 of the Act which prohibits discrimination against qualified handicapped persons in the access to or participation in federally-funded services or employment.

D. The Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621 et seq. as amended, and Minn. Stat. § 181.81, which generally prohibit discrimination because of age.

E. The Equal Pay Act of 1963, as amended, § 29 U.S.C. § 206, which provides that an employer may not discriminate on the basis of sex by paying employees of different sexes differently for the same work.

F. Minn. Stat. Ch. 363, as amended, which generally prohibits discrimination because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, sexual orientation or age.

G. Minn. Stat. § 181.59 which prohibits discrimination against any person by reason of race, creed, or color in any state or political subdivision contract for materials, supplies or construction. Violation of this section is a misdemeanor and any second or subsequent violation of these terms may be cause for forfeiture of all sums due under the Contract.

H. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 through 12213, 47 U.S.C. §§ 225, 611, with regulations at 29 C.F.R. § 1630, which prohibits discrimination against qualified individuals on the basis of a disability in term, condition or privilege of employment.

2. **DATA PRIVACY**. For purposes of this Contract all data created, collected, received, stored, used, maintained, or disseminated by Contractor in the performance of this Contract is subject to the requirements of the Minnesota Government Data Practices Act, Minn. Stat. Chapter 13 and the Minnesota Rules implementing the Act now in force or hereafter adopted as well as the Federal laws on data privacy, and Contractor must comply with those requirements as if it were a governmental entity. The remedies in section 13.08 apply to the Contractor. Contractor does not have a duty to provide access to public data to the public if the public data are available from the governmental agency (WMO), except as required by the terms of this Contract. All subcontracts shall contain the same or similar data practices compliance requirements.

3. **RECORDS DISCLOSURE/RETENTION**. Contractor's bonds, records, documents, papers, accounting procedures and practices, and other evidences relevant to this Contract are subject to the examination, duplication, transcription and audit by the WMO and either the Legislative or State Auditor, pursuant to Minn. Stat. § 16C.05, subd. 5. Such evidences are also subject to review by the Comptroller General of the United States, or a duly authorized representative, if federal funds are used for any work under this Contract. The Contractor agrees to maintain such evidences for a period of six (6) years from the date services or payment were last provided or made or longer if any audit in progress requires a longer retention period.

4. **WORKER HEALTH, SAFETY AND TRAINING**. Contractor shall be solely responsible for the health and safety of its employees in connection with the work performed under this Contract. Contractor shall make arrangements to ensure the health and safety of all subcontractors and other persons who may perform work in connection with this Contract. Contractor shall ensure all personnel of Contractor and subcontractors are properly trained and supervised and, when applicable, duly licensed or certified appropriate to the tasks engaged in under this Contract. Each Contractor shall comply with federal, state and local occupational safety and health standards, regulations and rules promulgated pursuant to the Occupational Health and Safety Act which are applicable to the work to be performed by Contractor.

**EXHIBIT 2**  
**INSURANCE TERMS**

Contractor agrees to provide and maintain at all times during the term of this Contract such insurance coverages as are indicated herein and to otherwise comply with the provisions that follow. Such policy(ies) of insurance shall apply to the extent of, but not as a limitation upon or in satisfaction of, the Contract indemnity provisions. The provisions of this section shall also apply to all Subcontractors, Sub-subcontractors, and Independent Contractors engaged by Contractor with respect to this Contract, and Contractor shall be entirely responsible for securing the compliance of all such persons or parties with these provisions.

**APPLICABLE SECTIONS ARE CHECKED**

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 1. Workers Compensation. Workers' Compensation insurance in compliance with all applicable statutes including an All States or Universal Endorsement where applicable. Such policy shall include Employer's Liability coverage in an amount no less than \$500,000. If Contractor is not required by Statute to carry Workers' Compensation Insurance, Contractor agrees: (1) to provide WMO with evidence documenting the specific provision under Minn. Stat. § 176.041 which excludes Contractor from the requirement of obtaining Workers' Compensation Insurance; (2) to provide prior notice to WMO of any change in Contractor's exemption status under Minn. Stat. § 176.041; and (3) to hold harmless and indemnify WMO from and against any and all claims and losses brought by Contractor or any subcontractor or other person claiming through Contractor for Workers' Compensation or Employers' Liability benefits for damages arising out of any injury or illness resulting from performance of work under this Contract. If any such change requires Contractor to obtain Workers' Compensation Insurance, Contractor agrees to promptly provide WMO with evidence of such insurance coverage.

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 2. General Liability.

"Commercial General Liability Insurance" coverage (Insurance Services Office form title), providing coverage on an "occurrence" rather than on a "claims made" basis, which policy shall include, but not be limited to, coverage for Bodily Injury, Property Damage, Personal Injury, Contractual Liability (applying to this Contract), Independent Contractors, "XC&U" and Products-Completed Operations liability (if applicable). Such coverage may be provided under an equivalent policy form (or forms), so long as such equivalent form (or forms) affords coverage which is at least as broad. An Insurance Services Office "Comprehensive General Liability" policy which includes a Broad Form Endorsement GL 0404 (Insurance Services Office designation) shall be considered to be an acceptable equivalent policy form. Contractor agrees to maintain completed operations coverage as required hereunder, whether on an annual liability policy basis or otherwise, for a minimum of three (3) years after Contract termination.

Contractor agrees to maintain at all times during the period of this Contract a total combined general liability policy limit of at least \$1,500,000 per occurrence and aggregate, applying to liability for Bodily Injury, Personal Injury, and Property Damage, which total limit may be satisfied by the limit afforded under its Commercial General Liability policy, or equivalent policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy (or policies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy is at least as broad as that afforded by the underlying Commercial General Liability policy (or equivalent underlying policy).

Such Commercial General Liability policy and Umbrella or Excess Liability policy (or policies) may provide aggregate limits for some or all of the coverages afforded thereunder, so long as such aggregate limits have not, as of the beginning of the term or at any time during the term, been reduced to less than the total required limits stated above, and further, that the Umbrella or Excess Liability policy provides coverage from the point that such aggregate limits in the underlying Commercial General Liability policy become reduced or exhausted. An Umbrella or Excess Liability policy which "drops down" to respond immediately over reduced underlying limits, or in place of exhausted underlying limits, but subject to a deductible or "retention" amount, shall be acceptable in this regard so long as such deductible or retention for each occurrence does not exceed the amount shown in the provision below.

Contractor's liability insurance coverage may be subject to a deductible, "retention" or "participation" (or other similar provision) requiring the Contractor to remain responsible for a stated amount or percentage of each covered loss; provided, that such deductible, retention or participation amount shall not exceed \$25,000 each occurrence.

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 Such policy(ies) shall name Lower Mississippi River WMO, its officers, employees and agents as Additional Insureds on a primary and non-contributory basis thereunder.

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 3. Professional Liability. Professional Liability (errors and omissions) insurance with respect to its professional activities to be performed under this Contract. This amount of insurance shall be at least \$1,000,000 per occurrence and aggregate (if applicable). Coverage under such policy may be subject to a deductible, not to exceed \$25,000 per occurrence. Contractor agrees to maintain such insurance for at least one (1) year from Contract termination.

It is understood that such Professional Liability insurance may be provided on a claims-made basis, and, in such case, that changes in insurers or insurance policy forms could result in the impairment of the liability insurance protection intended for the WMO hereunder. Contractor further agrees that it will, throughout the one (1) year period of required coverage, provide the WMO a renewed Certificate of Insurance which identifies the carrier and limit for the WMO's review. The Contractor will endeavor to provide the Certificate 10 days prior to renewal to the WMO with all pertinent information.

4. Automobile Liability. Business Automobile Liability insurance covering liability for Bodily Injury and Property Damage arising out of the ownership, use, maintenance, or operation of all owned, non-owned and hired automobiles and other motor vehicles utilized by Contractor in connection with its performance under this Contract. Such policy shall provide total liability limits for combined Bodily Injury and/or Property Damage in the amount of at least \$1,000,000 per accident, which total limits may be satisfied by the limits afforded under such policy, or by such policy in combination with the limits afforded by an Umbrella or Excess Liability policy(ies); provided, that the coverage afforded under any such Umbrella or Excess Liability policy(ies) shall be at least as broad with respect to such Business Automobile Liability insurance as that afforded by the underlying policy. **Unless included within the scope of Contractor's Commercial General Liability policy, such Business Automobile Liability policy shall also include coverage for motor vehicle liability assumed under contract.**

Such policy, and, if applicable, such Umbrella or Excess Liability policy(ies), shall include the Lower Mississippi River WMO, its officers, employees and agents as Additional Insureds on a primary and non-contributory basis thereunder.

5. Additional Insurance. The WMO shall, at any time during the period of the Contract, have the right to require that Contractor secure any additional insurance, or additional feature to existing insurance, as the WMO may reasonably require for the protection of their interests or those of the public. In such event Contractor shall proceed with due diligence to make every good faith effort to promptly comply with such additional requirement(s).

6. Evidence of Insurance. Contractor shall promptly provide the WMO with evidence that the insurance coverage required hereunder is in full force and effect prior to commencement of any work. At least 10 days prior to termination of any such coverage, Contractor shall provide the WMO with evidence that such coverage will be renewed or replaced upon termination with insurance that complies with these provisions. Such evidence of insurance shall be in the form of the Lower Mississippi River WMO Certificate of Insurance, and shall contain sufficient information to allow the WMO to determine whether there is compliance with these provisions. At the request of the WMO, Contractor shall, in addition to providing such evidence of insurance, promptly furnish Contract Manager with a complete (and if so required, insurer-certified) copy of each insurance policy intended to provide coverage required hereunder. All such policies shall be endorsed to require that the insurer provide at least 30 days' notice to the WMO prior to the effective date of policy cancellation, nonrenewal, or material adverse change in coverage terms. On Certificate of Insurance, Contractor's insurance agency shall certify that he/she has Error and Omissions coverage.

7. Insurer: Policies. All policies of insurance required under this paragraph shall be issued by financial responsible insurers licensed to do business in the State of Minnesota, and all such insurers must be acceptable to the WMO. Such acceptance by the WMO shall not be unreasonably withheld or delayed. An insurer with a current A.M. Best Company rating of at least A:VII shall be conclusively deemed to be acceptable. In all other instances, the WMO shall have 15 business days from the date of receipt of Contractor's evidence of insurance to advise Contractor in writing of any insurer that is not acceptable to the WMO. If the WMO does not respond in writing within such 15 day period, Contractor's insurer(s) shall be deemed to be acceptable to the WMO.

8. Noncompliance. In the event of the failure of Contractor to maintain such insurance and/or to furnish satisfactory evidence thereof as required herein, the WMO shall have the right to purchase such insurance on behalf of Contractor, which agrees to provide all necessary and appropriate information therefore and to pay the cost thereof to the WMO immediately upon presentation of invoice.

9. Loss Information. At the request of the WMO, Contractor shall promptly furnish loss information concerning all liability claims brought against Contractor (or any other insured under Contractor's required policies), that may affect the amount of liability insurance available for the benefit and protection of the WMO under this section. Such loss information shall include such specifics and be in such form as the WMO may reasonably require.

10. Release and Waiver. Contractor agrees to rely entirely upon its own property insurance for recovery with respect to any damage, loss or injury to the property interests of Contractor. Contractor hereby releases the WMO, its officers, employees, agents, and others acting on their behalf, from all claims, and all liability or responsibility to Contractor, and to anyone claiming through or under Contractor, by way of subrogation or otherwise, for any loss of or damage to Contractor's business or property caused by fire or other peril or event, even if such fire or other peril or event was caused in whole or in part by the negligence or other act or omission of the WMO or other party who is to be released by the terms hereof, or by anyone for whom such party may be responsible.

Contractor agrees to effect such revision of any property insurance policy as may be necessary in order to permit the release and waiver of subrogation agreed to herein. Contractor shall, upon the request of the WMO, promptly provide a Certificate of Insurance, or other form of evidence as may be reasonably requested by the WMO, evidencing that the full waiver of subrogation privilege contemplated by this provision is present; and/or, if so requested by the WMO, Contractor shall provide a full and complete copy of the pertinent property insurance policy(ies).