



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

PROFESSIONAL SERVICE AGREEMENT
[INSERT VENDOR NAME]

This **PROFESSIONAL SERVICE AGREEMENT** (the “**Agreement**”), dated _____, is between **Milwaukee County**, a Wisconsin municipal body corporate, represented by its **Milwaukee County Parks** (the “**County**”) and **[Vendor Name]**, a [type of entity – *corporation, 501(c)(3) organization, LLC, partnership, sole proprietorship, etc – ask Procurement or OCC for assistance if needed*] with a primary place of business at **[Wisconsin address]** (the “**Contractor**”), combined to be considered the Parties to this Agreement (“**Parties**”).

RECITALS

1. Milwaukee County and Contractor wish to enter into a professional services relationship for habitat restoration design and planning services to provide a Habitat Restoration Plan (HRP) for Little Menomonee River Parkway (LMRP)_ Sections 2,3 and 6, in accordance with objectives and recommendations in the Little Menomonee River Parkway Ecological Restoration and Management Plan (LMRP ERMP); said services which are summarized here and outlined in more detail in the Scope of Services (Scope of Work) attached hereto as Attachment B.
 - a. Descriptions of all proposed restoration and maintenance activities, methods, equipment, recommended management schedules/timelines.
 - b. Technical Specifications, including but not exclusive to specifications for management activities, equipment and herbicide use, supporting data, GIS generated for the plan, and other related information.
 - c. Monitoring Plan outlining a qualitative monitoring protocol to assess the site during and after restoration implementation. The findings of the qualitative assessment will be used to guide adaptive restoration strategies as needed.
 - d. Long Term Maintenance Plan that can be used by Park staff and volunteers for restored areas. This should provide a detailed outline of annual activities required to manage the project area and maintain desired conditions to meet AOC, MCP, and Partner goals, including detailed information about prescribed burns and the necessary requirements/conditions.
2. Due to the nature of this contract, it falls under Chapter 56.30 of the Milwaukee Code of Ordinances, “Professional Services.” This Professional Services Agreement is entered into following all requirements stated in Chapter 56.30 as modified by Wisconsin state statutes.
3. Based on the nature of the services and the dollar value of this Agreement, [enter language provided by Procurement following Procurement’s review of the acquisition method you propose to use].



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

ACCORDINGLY, intending to be legally bound, the Parties agree as follows:

1. Definitions.

Terms defined in the preamble and recitals of this Agreement have their assigned meanings, terms defined throughout this Agreement have their assigned meanings, and the following terms have the meanings assigned to them:

“Deliverables” mean any item in Contractor’s Scope of Work that is first developed or created by the Contractor for the County’s use as a result of Services provided under this Agreement. Deliverables include training documents, reports, analysis, and/or other documentation related to the Services provided under this Agreement. Deliverables do not include Contractor’s copyrighted materials and documentation, or other work product in existence prior to the commencement of this Agreement, or first created by the Contractor in any manner not in connection with the Services provided in this Agreement.

“MCCO” means the Milwaukee County Code of Ordinances in its most current and updated form, including legislation which has been enacted, but not yet codified. A codified version of the MCCO is available at: https://library.municode.com/wi/milwaukee_county/codes/code_of_ordinances

“Services” mean the professional consulting services provided under this Agreement by Contractor and/or its identified staff.

2. Order of Precedence.

The Agreement includes the following documents, incorporated by reference, in the following order of precedence, which will be followed in resolving any inconsistencies between the terms of the Agreement and the terms of any Exhibits, Attachments, or Amendments to the Agreement:

- a. This Professional Services Agreement;
- b. **Scope of Services (Exhibit A)**
- c. Milwaukee County’s Request for Proposal #RFP-2022-018 (Exhibit B);
- d. Contractor’s Proposal (Exhibit C);
- e. DBE Participation Plan (Exhibit D)
- f. EEOC Certificate (Exhibit E)

3. Scope of Services.

Contractor shall specifically perform professional consulting services as identified in the attached Scope of Services (Exhibit A) and Contractor Proposal (Exhibit C).



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

4. Staffing.

a. Qualification.

Contractor represents that its employees and subcontractors possess the necessary skill, expertise, and capability, including the availability of sufficient personnel with the necessary qualifications, to perform the services required by this Agreement, as outlined in Exhibit B. Contractor shall provide, at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be the employees of, or have any other contractual relationship with, the County.

b. Subcontracting and Contractor's Agents.

Contractor shall have a written and enforceable agreement in place with each of its subcontractors that will enable Contractor to perform its obligations under this Agreement. Agents used or supplied by Contractor in the performance of any Services are employees or agents of Contractor, and under no circumstances are such individuals to be considered employees of County. Contractor shall have the sole responsibility for the conduct of its personnel and agents, and for payment of its personnel's and/or agent's entire compensation, including salary, withholding of income and social security taxes, workers' compensation, employee and disability benefits and the like. Contractor shall be responsible for all employer obligations toward all of its personnel and/or agents under all applicable laws and all of County's policies.

c. Provision of Workspace and Materials. County agrees to provide mutually agreed upon data needed to complete the HRP. Contractor shall provide all other materials needed by Contractor's personnel in connection with the performance of Services under this Agreement at no additional expense to County.

5. Term and Termination.

a. Term.

The Term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until **December 30, 2023**, unless terminated in accordance with this Section.

b. Termination.

The Parties may terminate this Agreement as detailed in this Section. Upon termination of this Agreement for any reason, the County shall retain any and all fully vested rights that exist on the effective date of that termination.

i. Termination by Contractor.

Contractor may, at its option, terminate this Agreement upon the failure of the County to pay any amount that may become due hereunder for a period of



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

sixty (60) days following submission of appropriate, undisputed billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination, including any retainage.

ii. Termination by County for Violations by Contractor.

If the Contractor fails to fulfill its obligations under this Agreement in a timely or proper manner, or violates any of its provisions, the County shall there upon have the right to terminate it by giving thirty (30) days written notice of termination of Agreement, specifying the alleged violations, and effective date of termination. It shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation prior to the end of the thirty (30) day period. In the event of termination, the County will only be liable for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services purchased or paid for by Contractor for use in completing the Agreement.

iii. Unrestricted Right of Termination by County.

The County further reserves the right to terminate the Agreement at any time for any reason by giving Contractor thirty (30) days written notice of such termination. In the event of said termination and upon receipt of notice of termination, the Contractor shall reduce its activities hereunder as mutually agreed to by the Parties. Upon said termination, Contractor shall be paid for all services rendered through the date of termination. This section also applies should the Milwaukee County Board of Supervisors fail to appropriate additional monies required for the completion of any services under the Agreement.

iv. County's Retention of Rights.

County shall retain any and all fully vested rights that exist on the effective date of termination. In the event that County terminates this Agreement, County's liability and Contractor's exclusive remedy will be limited to County paying Contractor for Services and Deliverables completed in accordance with the terms of this Agreement, provided, however, that such payment will not exceed the unpaid amounts due under the Scope of Work.

6. Compensation.

a. Fees & Payments.

County shall compensate Contractor for work performed as a fixed fee. The total compensation to Contractor for Services performed under the Agreement shall not exceed **[Insert Contract Value]**, unless agreed to by the County in writing. The County shall pay the fixed fee in monthly installments.

b. Invoicing.



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

Contractor shall submit electronic invoices to the County which include the following information:

1. A reference to this Agreement, including the Effective Date;
2. The name and address of the Contractor;
3. An invoice number and invoice date;
4. Remittance name and address;
5. Name, title, and phone number of Contractor's contact for notification in the event of a defective or inaccurate invoice;
6. Deliverables billed for, in a monthly report format provided by the County in alignment with Great Lakes Restoration Initiative reporting requirements, referencing the Scope of Work and Cost Proposal Form
7. The date due; and
8. The amount billed.

Invoices must be submitted to:

Milwaukee County Parks
ATTN: Natalie Dutack, AOC Program Supervisor
9480 W Watertown Plank Rd
Wauwatosa, WI 53226
natalie.dutack@milwaukeecountywi.gov

The County reserves the right to use a purchasing card to pay invoices.

c. Cost of Performance of Obligations.

Contractor is responsible for all charges, costs, and fees incurred as a result of performing its obligations and rendering its services under this Agreement, unless otherwise indicated.

d. State Prompt Pay Law Exemption.

State Prompt Pay Law, Section 66.285, does not apply to this Agreement.

e. Late Payment.

As a matter of practice, the County attempts to pay all invoices within 30 days of receipt of an accurate invoice from Contractor and County's acceptance of the corresponding services that comply with the terms of this Agreement. If no disputes arise, and an invoice has not been paid 60 days after it was received by the County, the Contractor may file a claim for 12% (annual rate) on amounts not paid after the 60th day. **Invoices must be sent by mail or e-mail as indicated in provision 6(c) above to be considered received by the County.**

f. Fees, Permits, Taxes, and Licenses.

Milwaukee County is exempt from Federal Excise Taxes and Wisconsin State Sales Taxes. Any billing submitted by Contractor must be without such taxes; billings including such taxes will be rejected.



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

Contractor shall be responsible for all federal, state, and local permits, licenses, and fees, together with all governmental filing related to such permits, licenses, and fees, which arise out of Contractor's performance of services under this Agreement, or which arise as a result of any compensation paid to Contractor under this Agreement.

7. Ownership of Data.

Upon completion of the work or upon termination of the Agreement, it is understood that all completed or partially completed data, drawings, records, computations, survey information, and all other material that Contractor has collected or prepared in carrying out this Agreement shall be provided to and become the exclusive property of the County. Therefore, any reports, information and data, given to or prepared or assembled by Contractor under this Agreement shall not be made available to any individual or organization by Contractor without the prior written approval of County.

No reports or documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.

8. County Rights of Access and Audit.

The Contractor, Lessee, or other party to the Agreement, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as "**Designated Personnel**") and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the Agreement, related to the terms and performance of the Agreement for a period of up to three years following the date of last payment, the end date of this Agreement, or activity under this Agreement, whichever is later. Any subcontractors or other parties performing work on this Agreement will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Agreement will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the Agreement, and any subcontractors understand and will abide by the requirements of Section 34.09 (Audit) and Section 34.095 (Investigations Concerning Fraud, Waste, and Abuse) of the Milwaukee County Code of Ordinances ("**MCCO**").

9. Affirmative Action.

The Contractor assures that it will undertake an affirmative action program as required by MCCO 56.17(1d), to ensure that no person shall, on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in MCCO 56.17(1d). The Contractor assures that no person shall be excluded, on these grounds, from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Contractor assures that it will require that its covered organizations provide assurances to the Contractor that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by MCCO 56.17(1d), to the same effect.



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

10. Disadvantaged Business Enterprise Goals.

- a. Contractor shall comply with all provisions imposed by or pursuant to MCCO Chapter [42](#) as regards Disadvantaged Business Enterprise (“**DBE**”) participation on County projects, when and where applicable, and as said Ordinance may be amended. The County shall notify Contractor in the event that new ordinances are issued.
- b. Contractor shall adhere to the approved DBE participation plan contained in this Agreement as Attachment J in Exhibit B, which assures that a required minimum participation percentage of the Agreement be attributed to a firm certified by the County or an entity whose certification is recognized by the County throughout the term of this Agreement. Approval must be obtained from the County prior to making any change(s) to the approved DBE participation plan.
- c. If Contractor fails to achieve and maintain the level of DBE participation stated in this Agreement, Contractor shall provide documentation to the County demonstrating that it made good faith efforts in its attempt to meet the stated level of participation. If Contractor fails to reflect a good faith effort to achieve and maintain the level of DBE participation stated herein throughout the term of this Agreement, County may consider this as a material breach of the Agreement and may terminate the Agreement in accordance with Section 3 of this Agreement.
- d. Contractor shall submit monthly reports online as required by the County for the purpose of demonstrating compliance with this Section.

11. Non-Discrimination, Equal Employment Opportunity, and Affirmative Action.

In the performance of work or execution of this Agreement, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking, which 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 apprenticeships. The Contractor will post in conspicuous places, available for employment, notices to be provided by the County setting forth the provisions of the nondiscriminatory clause. A violation of this provision shall be sufficient cause for the County to terminate the Agreement without liability for the uncompleted portion or for any materials or services purchased or paid for by the Contractor for use in completing the Agreement.

The Contractor agrees that it will strive to implement the principles of equal employment opportunities through an effective affirmative action program, and will so certify prior to the award of the Agreement, which program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups, at all levels of employment in all divisions of the contractor's workforce, where these groups



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

may have been previously under-utilized and under-represented. The Contractor also agrees that in the event of any dispute as to compliance with the aforesaid requirements, it shall be his/her responsibility to show that he/she has met all such requirements.

The Contractor agrees that it will strive to implement the principles of active and aggressive efforts to assist Milwaukee County in meeting or exceeding its overall annual goal of participation of target enterprise firms.

When a violation of the non-discrimination, equal opportunity or Affirmative Action provisions of this section has been determined by County, Contractor shall immediately be informed of the violation and directed to take all action necessary to halt the violation, as well as such action as may be necessary to correct, if possible, any injustice to any person adversely affected by the violation, and immediately take steps to prevent further violations.

If, after notice of a violation to Contractor, further violations of the section are committed during the term of the Agreement, County may terminate the Agreement without liability for the uncompleted portion or any materials or services purchased or paid for by the Contractor for use in completing the Agreement, or it may permit Contractor to complete the Agreement, but, in either event, Contractor shall be ineligible to bid on any future contracts let by County.

12. Indemnity.

Contractor agrees to the fullest extent permitted by law, to indemnify, defend and hold harmless, County, and its agents, officers and employees, from and against all loss or expense including costs and attorney's fees by reason of statutory benefits under Workers' Compensation Laws, or liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of Contractor, or its (their) agents which may arise out of or are connected with the activities covered by this Agreement.

Contractor shall indemnify and save the County harmless from any award of damages and costs against County for any action based on U.S. patent or copyright infringement regarding computers programs involved in the performance of the tasks and services covered by this Agreement.

13. Insurance.

Every contractor and all parties furnishing services or product to the County or any of its subsidiary companies must provide the County with evidence of the following minimum insurance requirements. In no way do these minimum requirements limit the liability assumed elsewhere in the Agreement. All parties shall, at their sole expense, maintain the following insurance:

a. Commercial General Liability Insurance including contractual coverage:

The limits of this insurance for bodily injury and property damage combined shall be at least:

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products-Completed Operations Limit	\$2,000,000



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

Personal and Advertising injury Limit \$1,000,000

b. Business Automobile Liability Insurance:

Should the performance of this Agreement involve the use of automobiles, Contractor shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. Contractor shall maintain limits of at least \$1,000,000 per accident for bodily injury and property damage combined.

c. Workers' Compensation Insurance:

Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.

d. Employers Liability Insurance:

Such insurance shall provide limits of not less than \$500,000 policy limit.

e. Professional Liability/Errors and Omissions:

This insurance shall insure the professional services of the Contractor for the scope of services to be provided under this Agreement. Such insurance shall provide limits of not less than \$1,000,000 per occurrence.

f. Additional Requirements:

- i. Contractor shall require the same minimum insurance requirements, as listed above, of all its contractors, and subcontractors, and these contractors, subcontractors shall also comply with the additional requirements listed below.
- ii. The insurance specified in (a), (b) and (e) above shall: (a) name Milwaukee County, including its directors, officers, employees and agents as additional insureds by endorsement to the policies, and (b) provide that such insurance is primary coverage with respect to all insureds and additional insureds.
- iii. The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. The County may require higher limits or other types of insurance coverage(s) as necessary and appropriate under the applicable purchase order.
- iv. Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to the insurance policies, against Milwaukee County, its subsidiaries, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, contractors, subcontractors, and their insurers.
- v. Contractor shall provide certificates evidencing the coverages, limits and provisions specified above on or before the execution of the Agreement and thereafter upon the renewal of any of the policies. Contractor shall require all insurers to provide Milwaukee County with a thirty (30) day advanced written notice of any cancellation,



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

nonrenewal or material change in any of the policies maintained in accordance with this Agreement. Coverage must be placed with carriers with an A. M. Best rating of A- or better.

Mail to:

Milwaukee County Risk Management
633 W. Wisconsin Ave. Ste. 750
Milwaukee, WI 53203

14. Confidentiality.

Contractor agrees that all work product and oral reporting shall be provided only to or as directed by the individual who is signing this Agreement on behalf of the County department, below, and not any other person or entity, including any other County employee or official. Contractor further agrees that, aside from obligations under the public records law as more fully described in Section 19 of this Agreement and as determined in cooperation with the County, Contractor shall maintain all materials and communications developed under or relating to this Agreement as confidential and shall disclose them only to or as directed by the individual who is signing this Agreement on behalf of the County department, below. Contractor understands that breach of confidentiality, especially regarding information that is not subject to public records law disclosure, may harm or create liability for the County and may require Contractor to indemnify County as provided in Section 12 of this Agreement.

15. Prohibited Practices.

a. Conflict of Interest.

During the period of this Agreement, the Contractor shall not hire, retain or utilize for compensation any member, officer, or employee of County or any person who, to the knowledge of the Contractor, has a conflict of interest.

b. Code of Ethics.

Contractor hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part,

"No person shall offer or give to any public official or employee, directly or indirectly, and no public official or employee shall solicit or accept from any person, directly or indirectly, anything of value if it could reasonably be expected to influence the public official's or employee's vote, official actions or judgment, or could reasonably be considered as a reward for any official action or inaction or omission by of the public official or employee."

Additionally, the Contractor shall ensure all subcontractors and employees are familiarized with the statement above.

c. Non-Conviction for Bribery.

The Contractor hereby declares and affirms that, to the best of its knowledge, none of its officers, directors, partners, or employees directly involved in obtaining



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

contracts have been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state or of the federal government.

16. Compliance with County's Policies.

- a. Safety and Security Policies.** Contractor agrees to use all commercially reasonable efforts to cause any of its employees who provide services under this Agreement on County's premises to comply with County's safety and security policies that County communicates to the extent that such policies are applicable to the site where Contractor's employees are providing services. Notwithstanding the above, such standard safety and security policies shall not include policies related to drug testing.
- b. Drug Use Policies.** Unless conflicting to any laws where the services are being provided, in which case this section is not enforceable, Contractor will advise any Contractor employee who provides services under this Agreement on County's premises of County's right to require an initial drug screen prior to the commencement of the assignment and, further, to require a drug screen at any time during the assignment either:
 - i.** If County believes, in good faith, that the Contractor's employee is under the influence of an illegal substance, or
 - ii.** As a consequence of an accident caused by or involving the Contractor's employee on County's premises during the performance of this Agreement and likely to have been related to Contractor's employee's use of an illegal substance.

Drug screening (unless provided by the County) shall be performed by Contractor at Contractor's expense, and Contractor will address any positive results and handle accordingly. Contractor's employee will not be permitted to perform the services if a positive result of the drug screen is determined.



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

17. Notices.

All notices with respect to this Agreement shall be in writing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand, or three days after posting via US Mail, to the party addressed as follows:

To Contractor:

Name: _____

ATTN: _____

Address: _____

Email: _____

To County:

Milwaukee County Parks

ATTN: Executive Director

9480 Watertown Plank Road
Wauwatosa, WI 53226

Guy.smith@milwaukeecountywi.gov

With a Copy to:

Milwaukee County Corporation Counsel
901 N. 9th Street, Room 303
Milwaukee, WI 53233

Margaret.Daun@milwaukeecountywi.gov

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

18. Public Records.

Both parties understand that the County is bound by the public records law, and as such, all of the terms of this agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, *et seq.* Contractor hereby agrees that it shall be obligated to assist the County in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so shall constitute a material breach of this agreement, whereupon the contractor shall then and in such event be obligated to indemnify, defend and hold the County harmless from liability under the Wisconsin Public Records Law occasioned by such breach. Except as otherwise authorized by the County in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three years after receipt of final payment under this agreement.



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

19. Independent Contractor.

Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Contractor or its successors or assigns. In entering into this Agreement, and in acting in compliance herewith, Contractor is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder. Nothing contained in this Agreement shall give Contractor any authority to supervise, manage, and/or direct County employees.

20. Electronic Documents Considered Writing.

Any document properly transmitted by computer access will be considered a "writing" delivered in connection with this Agreement. Electronic documents will be considered signed by a Party if they contain an agreed-upon electronic identification symbol or code as required by law. Electronic documents will be deemed received by a Party when accessible by the recipient on the computer system.

21. Compliance with Laws.

The Contractor agrees to comply with all applicable federal, state, and local statutes, laws, rules, regulations, ordinances, and all policies, procedures, standards, and regulations of any accreditation agencies or bodies. The Contractor agrees to hold the County harmless from any loss, damage, or liability resulting from a violation on the part of the Contractor of any such laws, rules, regulations, policies, procedures, standards, or ordinances.

22. Choice of Law.

This Agreement shall be governed, interpreted, construed, and enforced in accordance with the internal laws of the State of Wisconsin, without regard to its conflict of laws principles. Any litigation over the enforceability of the provisions herein or to enforce any rights hereunder shall be in state court with venue in Milwaukee County.

23. Assignment Limitation, Subcontracts.

This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided, however, that neither party shall assign its obligations hereunder without the prior written consent of the other. Assignment of any portion of the work by subcontract must have the prior written approval of County.

24. Severability.

If any part of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, it shall not affect the validity or enforceability of the remainder of this Agreement, unless the Agreement so construed fails to meet the essential business purposes of the Parties as manifested herein.

25. Modification and Waiver.

This Agreement may not be modified and none of its terms may be waived, except in writing and signed by authorized representatives of both Parties. To the extent that any term in any document, other than a writing signed by both Parties that expressly purports to amend



PROFESSIONAL SERVICE AGREEMENT
[ENTER VENDOR NAME]

this Agreement, is contrary to, or conflicts with this Agreement, the terms of this Agreement shall control. A waiver by a Party of any default shall not be deemed a waiver of a prior or subsequent default of the same or other provisions of this Agreement. The failure of a Party to enforce, or the delay by a Party in enforcing, any of its rights shall not be deemed a continuing waiver or a modification of this Agreement.

26. Entire Agreement.

This Agreement and all properly executed Statements of Work constitute the entire agreement between the Parties relating to the subject matter hereof, and supersede any and all prior agreements and negotiations, whether oral, written, or implied. No change, addition, or amendment shall be made except by written agreement signed by a duly authorized representative of each Party.

27. Authorization.

If the contract required the authorization of the Milwaukee County Board of Supervisors, provide the following information. If no authorization was required, delete this section.

The County has executed this Agreement pursuant to action taken by its Board of Supervisors on [Insert Date Action was Taken], Resolution File No. [Insert Resolution File #].

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Scope of Work
Little Menomonee River Corridor Habitat Restoration

Project Title: Final Design and Development of Habitat Restoration Plan Sets For Little Menomonee River Parkway Sections 2, 3, & 6

AOC(s): Milwaukee Estuary Area of Concern

Project Manager: Natalie Dutack
Area of Concern Program Supervisor
Milwaukee County Parks
9480 W Watertown Plank Road, Wauwatosa, WI 53226
Natalie.Dutack@milwaukeecountywi.gov
414-257-5064

Project Background/Rationale

The selected consultant will provide professional consulting services to complete planning and design addressing habitat restoration within the Little Menomonee River Parkway (LMRP). Milwaukee County Parks (MCP) has management oversight for the LMRP, which is located along the Little Menomonee River corridor between Brown Deer Road/Hwy 100 on the north and Hampton Avenue to the south. The natural areas managed by MCP within the LMR corridor total 651.7 acres in size and are divided between five smaller MCP management units (LMR Section 2 through LMR Section 6). Habitat restoration planning will encompass LMR Sections 2 and 3, located between Brown Deer and Good Hope Roads, and Section 6, located between Appleton and Hampton Avenues.

LMRP is located within and comprises most of the Little Menomonee River Corridor. It is part of “primary environmental corridor,” defined by the Southeastern Wisconsin Regional Planning Commission (SEWRPC) as “elongated areas in the landscape which contain concentrations of the best remaining elements of the natural resource base, including wetlands, woodlands, surface-water areas and associated undeveloped shorelands and floodplains, and wildlife habitat areas.” The unique assemblage of woodlands, wetland and grassland within the project area led to its identification as a necessary fish and wildlife habitat restoration project within the Milwaukee Estuary Area of Concern (AOC) Remedial Action Plan (RAP) 2015 Update. The Milwaukee Estuary AOC is one of 43 sites around the Great Lakes designated for priority restoration under the 1987 Great Lakes Water Quality Agreement. These areas have experienced significant environmental degradation - to the point where people and wildlife are unable to fully use the resource in a safe or beneficial way. Habitat restoration will help with the removal of identified impairments and help lead to the delisting of the site as an AOC. For more information on the Milwaukee Estuary AOC and the habitat restoration projects being managed by MCP and partners please visit Waterway Restoration Partnership and WI DNR Milwaukee Estuary AOC websites.

Sections 2-6 of the LMRP were prioritized as a Loss of Fish & Wildlife Habitat BUI Project and from 2017-2019 MCP Natural Resources staff conducted a thorough baseline assessment of both native and non-native vegetative communities. The Little Menomonee River Parkway Ecological Restoration and Management Plan (LMRP ERMP) was developed utilizing these assessments, identifying management activities and needs that

meet both MCP and AOC goals. The planning and design work for this project will be informed by the LMRP ERMP.

The LMR Corridor also contains the location of the former Moss-American/Kerr-McGee Superfund site. As a result, deed restrictions exist within a portion of the focus area of this project and activities recommended in the LMRP ERMP align with those restrictions. While remedial actions have taken place to protect human health, the impact of these actions and other land use impacts have left portions of the habitat in the corridor ecologically degraded. Since the remaining natural habitat within the area is almost exclusively in public ownership, it provides the opportunity to improve a sizable habitat area for fish and wildlife while providing improved connectivity to the upper portions of the watershed. This makes the LMRP project a priority for MCP and allows the opportunity to address Beneficial Use Impairments (BUIs) associated with the Milwaukee Estuary AOC.

Scope of Work

This project is part of the first phase of the LMRP ERMP developed by MCP in coordination with the Wisconsin Department of Natural Resources (WDNR) and the AOC Fish & Wildlife Technical Advisory Committee (Tech Team). The development of a habitat restoration plan (HRP) for Sections 2, 3, and 6 are specific objective defined in the ERMP and WDNR Scope of Work for LMRP Habitat restoration.

Additional ERMP goals achieved by this project:

- to protect the ecologically significant natural areas within the LMR Parkway.
- maintain and increase native plant and wildlife diversity
- reduce the impact of invasive species
- enhance and maintain the environmental corridor
- implement restoration projects that are a priority for the Parks Dept. while also addressing BUIs associated with the Milwaukee Estuary AOC

Habitat Restoration Plan

Sections 2 (83.8 acres), 3 (108.5 acres), and 6 (159.5 acres) of the LMRP consist of degraded woodland and grassland habitat and considerable areas of invasive species management. There is some potential for specialized habitat projects including sedge meadow, pocket wetland, and prairie restoration, as well wildlife improvements for shrubland species. Further details outlined in Section III: Scope of Consultant Services and Attachment 1: LMRP ERMP Sections, 2,3 and 6.

The consultant will provide plan sets for on the ground land management activities in accordance with objectives and recommendations in the LMRP ERMP. This will contain details on how each restoration objective will be targeted including method, season, and schedule. The plan sets will include a qualitative monitoring protocol (Monitoring Plan) to assess the site during and after restoration implementation.

In addition, MCP Natural Areas staff are currently completing a habitat assessment of approximately 14.8 acres of Section 2 currently owned by the City of Milwaukee (8455 N 91st St) – pending completion in June of 2023. This parcel will also be restored as part of the LMRP Project however, habitat assessments had not

previously been conducted as it was not owned by MCP. Findings and recommendations from the habitat assessment will be used to update the LMRP ERMP and be incorporated into the HRP. The consultant shall coordinate with MCP and incorporate this date into the HRP for entirety of Section 2.

Deliverables and HRP Phasing

The consultant effort will be broken into the following deliverables, described in further detail in the Deliverables section:

- General Requirements
- Phase I Archaeological Survey & Architectural History Reconnaissance
- Habitat Restoration Plan – broken into 3 phases:
 - Phase 1 - Development (60%) HRP for LMRP Sections 2, 3, and 6.
 - Phase 2 - Complete final design development, plan sets and specifications for all elements of the project. Prepare and gain permits and approvals from local and state governments.
 - Phase 3 - Habitat Restoration Oversight and implementation of Monitoring Plan

A consultant will be hired initially to complete the General Requirements, Phase I Archaeological Survey & Architectural History Reconnaissance, and Phase 1 and 2 of the Habitat Restoration Plan. Upon acceptance of the plan sets and final documents, it is the County's intention to retain the same consultant to provide oversight of habitat restoration work and implementation of the monitoring protocol (Phase 3).

Portions of this project are contingent on MCP receiving additional grant funding from WNDR through Great Lakes Restoration Initiative - Focus Area I Toxic Substances and Areas of Concern and/or other sources. MCP has received initial funding which will allow completion of tasks up through Phase 2. All tasks after Phase 2 are contingent on MCP receiving additional grant funding. Proposals should be completed for the entire project through the Phase 3.

The County may, but will not be obligated to, extend the consultant agreement to include Phases 3. The County reserves the right to pursue the process of hiring a different consultant for Phases 3 at its discretion. The scopes and fees will be reviewed and re-negotiated, if necessary, at the time consideration is given to adding the next phase(s) of work to the consultant's contract.

Bid documents will be prepared by MCP, in coordination with the selected consultant. Construction and implementation shall be completed by a separate restoration contractor, utilizing the finalized HRP and bid documents.

Deliverables

The following is a list of tasks that must be completed for the project along with the deliverables associated with each task. All work products must be approved by MCP and WDNR and will be retained as property of WDNR. All work deliverables should be submitted to the MCP AOC Program Supervisor, designated MCP staff, and WDNR.

Task 1: Quality Assurance Project Plans (QAPPs)

Prepare and gain approval for a Quality Assurance Project Plan (QAPP) for both design of Sections 2, 3, and 6 from WDNR and the US Environmental Protection Agency.

Deliverables:

- a) Completed QAPP in electronic format

Task 2: Project Meetings and Coordination

Coordinate with the MCP and WDNR via email, phone, and virtual/ in person meetings. The consultant shall be prepared to attend a project kick-off meeting and monthly meetings (at a minimum) to review the project status with the design team and other meetings as necessary.

Deliverables:

- a) Project kick-off and monthly meeting participation
- b) Coordination via email, virtual meetings, and in person as needed throughout the project period to address planning and design issues

Task 3: Community Outreach

The selected consultant will work with MCP, WDNR, and Waterway Restoration Partnership (WRP) to plan and prepare outreach/communications materials related to the project. This may include virtual and/or in-person community outreach meetings or the creation of content for the WRP website.

Deliverables:

- a) Attendance as needed at community outreach meetings hosted by the WRP and MCP.
- b) Preparation, submission, or contribution of presentation slides, photos, updates, and any other content that may utilized for outreach purposes.

Task 4: Invoicing and Reporting

The consultant shall submit monthly invoices to the AOC Program Supervisor, including

- A reference to this Agreement, including the Effective Date;
- The name and address of the Consultant;
- An invoice number and invoice date;
- Remittance name and address;
- Name, title, and phone number of Consultant's contact for notification in the event of a defective or inaccurate invoice;
- Deliverables billed for, referencing the Scope of Work and the Cost Proposal Form;
- The date due;
- The amount billed;
- 5% retainage detailed with a total reflecting this retainage

This invoice shall be accompanied by a report detailing the following:

- Description of work/activities, by deliverable, completed within the project period.
- Description of any problems encountered or delays and how they were resolved.
- Anticipated work for the next month/reporting period
- Acres – GLRI Grants require a number of acres of habitats that have been protected, restored, enhanced or re-opened in their reports. As this is a design project our acres will be those designed for in the HRP.

The MCP AOC Program Supervisor also prepares and submit quarterly reports, quarterly invoices, and a final report for the project. These reports are submitted **January 1, April 1, July 1, and October 1** of every year. The consultant shall, to the best of their ability, submit reports/invoices for the months of December, March, June, and September, ahead of or on the Quarterly Report due date. The consultant may also be asked to provide additional content or verification of data submitted in reports at these time periods.

Deliverables:

- a) Monthly Invoice accompanied by a detailed report, every month through the project end date.
- b) Content or updates as needed for Quarterly Reports

Task 5: Permitting and Regulatory Requirements (found under Phase 2 of the RFP Scope of Consultant Services)

Consultant prepares all applicable federal, state and local permit applications and gain regulatory approvals as required. Prepare materials and ensure compliance with National Historic Preservation Act, National Environmental Policy Act and Endangered Species Act.

Deliverables:

- a) Copies of all permit applications, materials and regulatory correspondence.
- b) Section 106 – See Task 6.

Task 6: Phase I Archaeological Survey & Architectural History Reconnaissance

The Consultant will conduct Phase 1 archaeological field investigations of the project area (Sections 2, 3, 6) of the Parkway according to methods detailed in the *Guide for Public Archeology in Wisconsin* (2012). The evaluated project area shall include all areas that may be temporarily disturbed or permanently modified through implementation of the project. Areas that have been intensively surveyed, massively disturbed, that are steeply sloped or inundated, or in which no ground disturbance will occur will not require shovel testing. Sampling extent for Phase 1 field methods should be based on proposed effects and on professional judgement. Note that parts of the project corridor have been developed and/or subject to remediation in the past to an extent obviating the need for field survey. Prospective contractors are encouraged to reference the below materials for additional information:

- *Cultural Resource Management Plan: Little Menomonee River Parkway*. This document is available upon request and includes an archival and literature review for the broader project corridor, along with a cursory assessment of historic maps and aerial imagery.
- [2019 Five-Year Review Report for the Moss- American Superfund Site](#). This report delimits remediated areas with the project boundary. These areas are previously disturbed and will not require field survey.

The Consultant shall document findings in a draft and final report per Wisconsin Archaeological Survey (WAS) guidelines. Prior to the field survey, the Consultant will secure all necessary permits to conducting the work.

The Consultant shall conduct an architectural history reconnaissance investigation of the project. Part of this evaluation should include assessment of the LMR Parkway itself. Information gathered from these findings shall be documented in a draft and final report.

Deliverables:

- a) Draft and Final Phase I Archaeological Survey Report
- b) Draft and Final Architectural History Reconnaissance Report

Task 7: Habitat Management Design Plan Sets for Upland Restoration (Phase 1 and Phase 2)

The consultant shall provide design or plan sets of the on the ground land management activities for wildlife: invasive species control, grassland restoration, grassland management, forest stand improvement, reforestation, sedge meadow restoration, and prescribed burns, as well as vegetative monitoring plans through the implementation phase. This will include incorporating an ongoing habitat assessment of

approximately 14.8 acres of Section 2 currently owned by the City of Milwaukee (8455 N 91st St) into the HRP. Work will be phased with the contractor providing 60% (Phase 1) and final design (Phase 2) plans.

Phase 1: Habitat Restoration Plan – 60% design

Provide plan and specification sets for the on the ground land management activities for wildlife in LRMP Sections 2, 3 and 6. Work will include but are not exclusive to invasive species control, grassland restoration and management, reforestation, revegetation with native species. See Attachment 1: LRMP ERMP Sections, 2,3 and 6. The design will integrate the ecological aspects of the project outlined further in the ERMP (Attachment 1), with considerations for project goals.

- A. Review and compile existing data, identify gaps or outdated information and reassess as necessary. Detailed vegetative and faunal surveys, soil and wetland maps, and further assessments completed for the LRMP Ecological Restoration & Management Plan will be provided.
- B. Coordinate reviews and any necessary investigations for endangered resources.
- C. Prepare Habitat Restoration Plan Sets - Electronic formats (PDF, CADD, GIS). Set shall include:
 - i. Cover sheet and illustrations/maps
 - ii. Habitat Restoration Plan organized in a manner to align with previous restoration plans utilized by MCP. Such plans will be provided to the consultant. In addition to descriptions of all proposed restoration and maintenance activities, methods, equipment, recommended management schedules/timelines, plan sets shall include Technical Specifications, a Monitoring Plan, and a Long-Term Maintenance Plan, as described above.
- D. Draft cost estimate.

Phase 2: Habitat Restoration Plan – Final Design & Permitting

- A. Complete final Habitat Restoration Plan for LRMP Sections 2, 3, and 6. Provide electronic copy with full size drawings in appropriate formats (PDF, CADD, GIS).
- B. Complete technical specifications for inclusion in the project manual.
- C. Complete final probable cost estimate.
- D. Hold a design review meeting with the County and other invited agencies and AOC stakeholders (public meeting).
- E. Provide MCP with all drawings and specifications to be included into bid documents. MCP will assemble the bidding documents.
- F. Provide copies of all permit applications, materials and regulatory correspondence to MCP.
- G. Coordinate reviews and any necessary investigations for endangered and cultural resources.
- H. File all necessary agency notices, such as WDNR Notice of Intent, wetland concurrence etc., if applicable.
- I. Provide agency coordination for all plan reviews and permits required (MCP, DNR). Investigate, develop and incorporate into the planning and construction documents all mitigation efforts necessary to address all agency concerns.
- J. Coordinate and attend a pre-application or regulatory review meeting with the regulatory agencies.

Deliverables:

- a) Plan sets for Sections 2, 3, and 6
 - Habitat Restoration Plan Sets
 - Technical Specifications
 - Vegetative Monitoring Plans
 - Long-Term Maintenance Plan

Task 8: Habitat Restoration Oversight and Implementation of Monitoring Plan (Phase 3)

A consultant will be hired initially to complete only Phase 1 and 2. The County may, but will not be obligated to, extend the consultant agreement to include Phase 3. The County reserves the right to pursue the process of hiring a different consultant for Phases 3 at its discretion. The scopes and fees will be reviewed and renegotiated, as needed, at the time consideration is given to adding the next phases of work to the consultant's contract.

Deliverables:

- a) Habitat Restoration Oversight and Implementation of Monitoring Plan shall include but are not limited to:
- Conducting regular site visits to review the status of the project implementation
 - Reviewing of ongoing management activities, walkthrough of the site for general observations, verifying project plans are being implemented as designed, review of herbicide logs, and project is following anticipated schedule
 - Implementing monitoring protocol to assess the project site during and after restoration implementation.
 - Providing feedback and progress reports on status back to MCP.
 - Attending monthly project meetings with the implementation contractor or outreach events as needed
 - Coordinating with MCP via phone, in person, or virtual meetings as needed

Implementation of Phase 3 is dependent on the full scope and timeline that will be provided in the final HRP. The full scope of this phase, including the quantity (i.e., meetings, site visits, etc.) and scheduling of related activities will need to be refined upon completion of the HRP.