



## PROFESSIONAL SERVICES AGREEMENT

<b>PROJECT:</b>	_____	<b>MINN WATER JOB #:</b>	_____
<b>CLIENT:</b>	_____		
<b>ADDRESS:</b>	_____		
<b>CONTACT:</b>	_____	<b>EMAIL:</b>	_____
<b>TEL:</b>	_____	<b>FAX:</b>	_____
<b>CONSULTANT:</b>	_____		
<b>FEDERAL TAX ID (EIN):</b>	_____		
<b>ADDRESS:</b>	_____		
<b>CONTACT:</b>	_____	<b>EMAIL:</b>	_____
<b>TEL:</b>	_____	<b>FAX:</b>	_____
<b>PROJECT DESCRIPTION:</b>	_____		

☐ **SCOPE OF SERVICES (See Attachment)**      ☐ **SCHEDULE (See Attachment)**

### COMPENSATION:

☐ **LUMP SUM.** Compensation for these services shall be a Lump Sum of \$ \_\_\_\_\_

☐ **TIME AND MATERIALS.** Compensation for these services will not exceed \$ \_\_\_\_\_ without written authorization and will be based on the following options (per the Estimate of Professional Services or current List of Billing Rates), Plus Reimbursable Expenses times a factor of \_\_\_\_\_ plus Subconsultant Expenses times a factor of \_\_\_\_\_ and per Minn Water's Definition.

☐ Minn Water's Direct Job Wages times a factor of \_\_\_\_\_.      ☐ List of Minn Water's Billing Rates.

☐ **COST PLUS FIXED FEE.** Compensation for these services shall be Minn Water Cost plus a fixed professional fee, including Reimbursable Expenses times a factor of \_\_\_\_\_. Plus Subconsultant Expenses times a factor of \_\_\_\_\_ and per Minn Water's Definitions. The estimated compensation for services is \$ \_\_\_\_\_ plus a fixed fee of \$ \_\_\_\_\_ and for a total of \$ \_\_\_\_\_.

*Direct Job Wages or Billing Rates for Time and Materials or Cost plus Fixed Fee contracts are subject to change to reflect adjustments in Minn Water salary levels.*

In the event services beyond those specified in the Scope of Services and not included in the compensation above are required, Minn Water shall submit a fee estimate for such services and a contract modification shall be negotiated and approved in writing by the Client prior to any effort being expended on such services.

**SCHEDULE OF PAYMENTS:** It is understood that the undersigned Client is responsible for payment of all fees to Minn Water. Minn Water shall be paid monthly on the basis of invoices submitted. These invoices will be for the portion of the agreed upon compensation earned by Minn Water during that month. (Cost plus Fixed Fee will be for costs incurred during the invoice period plus the portion of the agreed upon fixed fee earned by Minn Water during that month. Lump Sum will be based on percent of effort completed as estimated by Minn Water). Minn Water shall be paid for all invoices within 30 days of submittal. In the event the Client disputes the invoice or any portion thereof, the undisputed portion shall be paid to Minn Water based on contractual terms. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Invoice payment(s) delayed beyond 60 days shall give Minn Water the right to stop work without liability until payments are current. Non-payment beyond 70 days shall be just cause for termination by Minn Water. See Standard Provisions for payment address and collection of invoices unpaid after 60 days.

**EXECUTION:** Execution of this document by duly authorized representatives of Minn Water and Client, including Minn Water's Standard Provisions and any enumerated attachments, represents the entire Agreement between the parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended or modified by written instrument, but such instrument is valid only upon signature by both parties. Neither Minn Water nor Client shall assign, transfer, or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the other.

**CLIENT:** \_\_\_\_\_  
**BY:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_  
**SIGNATURE:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_

**CONSULTANT:** \_\_\_\_\_  
**BY:** \_\_\_\_\_  
**TITLE:** \_\_\_\_\_  
**SIGNATURE:** \_\_\_\_\_  
**DATE:** \_\_\_\_\_

Attached:    (    ) *Scope of Services*                      (    ) *Services*                      (    ) *Additional Provisions*  
                  (    ) *Estimate of Professional Services or List of Billing Rates*                      (    ) *Definition*                      (    ) *Other*

# MINN WATER STANDARD PROVISIONS

1. **SERVICES.** Minn Water shall provide professional services in accordance with the agreed upon scope of work.
2. **EXECUTION.** This agreement becomes effective upon signatures by authorized representatives of the Client and Minn Water upon receipt by Minn Water of a signed original or facsimile transmittal. If facsimile transmittal is initially sent to Minn Water, Client will provide Minn Water with a signed original for record as soon as practicable.
3. **INITIATION.** Minn Water is authorized to proceed with services upon receipt of an executed Agreement or written Notice to Proceed.
4. **COMPLETION/TERMINATION.** This Agreement shall remain in force until completion and acceptance of the services or until terminated by mutual agreement. This Agreement may be terminated by either party upon a ten (10) day written notice should the other party fail substantially to perform in accordance with its terms. In the event of termination, Minn Water shall be paid in accordance with the compensation terms of this Agreement for services provided in accordance with the scope of services, together with all costs arising out of such termination.

Continuing Service/On-call Agreements shall be reviewed annually for rates and shall remain in force until terminated in writing by either party, or otherwise stipulated contractually.
5. **DELAYS.** Established completion time shall not be extended because of unwarranted delays attributed to Minn Water but shall be extended by Client in the event of delays attributed to Client or because of unavoidable delays that may result from acts of God, acts of government authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party. The Client will adjust the schedule and compensation for any additional direct or indirect costs resulting from such delays under this Agreement.
6. **STANDARD OF CARE.** Services provided by Minn Water to Client under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. This representation is in lieu of any warranties or other representations, either expressed or implied.
7. **INDEPENDENT CONSULTANT.** Minn Water is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client.
8. **COMPLIANCE WITH LAWS.** Minn Water will endeavor to comply with Federal, State, and local laws and ordinances applicable to the services to be provided under this Agreement.
9. **PAYMENT ADDRESS.** Remit payment to: Minn Water LLC, PO Box 41101, Minneapolis, MN 55441. To ensure accurate posting, please note the invoice number on your check.
10. **COLLECTION COSTS.** In the event legal action is necessary to enforce the payment provisions of this Agreement if Client fails to make payment within sixty (60) days of the invoice date, Minn Water shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs and expenses incurred by Minn Water in connection therewith.
11. **FURNISHED DATA.** Client will provide technical data in its possession, including, but not limited to, previous reports, maps, surveys, borings, and other information relating to Minn Water's Scope of Services. Minn Water may reasonably rely upon the accuracy of any information provided by Client.
12. **OWNERSHIP OF DOCUMENTS.** Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and are, and shall remain, the property of Minn Water. Minn Water will retain all common law, statutory, and other reserved rights, including the copyright thereto. Minn Water shall not be held liable for reuse of documents or modifications thereof by the Client or its representatives for any purpose other than the original intent of this Agreement, without the written authorization of and appropriate compensation to Minn Water.
13. **SITE VISITS/OBSERVATIONS.** If included in the Scope of Work, Minn Water shall visit the project and/or construction site at appropriate intervals to become generally familiar with the progress, quality of the contractor's work, and to determine if the work is proceeding in general accordance with the Contract Documents. Visits to the project site and observations made by Minn Water as part of services during construction under this Agreement shall not make Minn Water responsible for, nor relieve the construction contractor(s) of the obligation to conduct comprehensive monitoring of the work sufficient to ensure conformance with the intent of the Contract Documents, and shall not make Minn Water responsible for, nor relieve the construction contractor(s) of the full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing all

portions of the work under the construction contract(s) and for all safety precautions incidental thereto.

14. **EQUAL OPPORTUNITY EMPLOYMENT.** Minn Water will comply with federal regulations pertaining to Equal Opportunity Employment. Minn Water is in compliance with applicable local, state, and federal regulations concerning minority hiring. It is Minn Water's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, age, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Minn Water expressly assures all employees, applicants for employment, and the community of its continuous commitment to equal opportunity and fair employment practices. Minn Water's equal opportunity employment policy applies to all phases of employment, including recruiting, hiring, job assignment, supervision, training, upgrading, transfer, compensation, benefits, promotion, education, recreation, layoff and termination.
15. **INDEMNIFICATION/HOLD HARMLESS.** Minn Water shall indemnify and hold harmless the Client and its employees from liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused by Minn Water's negligent acts, errors, or omissions in services provided pursuant to this Agreement. Provided, however, that if any such liability, settlements, loss, or costs result from the concurrent negligence of Minn Water and the Client, it is expressly agreed that Minn Water's obligations and indemnity under this paragraph shall be effective only to the extent of Minn Water's negligence. Minn Water's liability is limited to the proceeds recovered from the insurance carried by Minn Water and within the monetary limits of insurance.

In no event shall either Client or Minn Water be liable for any incidental, indirect, or consequential damages.
16. **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the project to both the Client and Minn Water, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Minn Water and its subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of Minn Water and its subconsultants to all those named shall not exceed \$100,000 or the amount of Minn Water's total fee paid by the Client for services under this Agreement and any amendments, whichever is the greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract, or warranty.
17. **WAIVER OF CONSEQUENTIAL DAMAGES.** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Minn Water, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Minn Water shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
18. **DISPUTES.** Any action for claims arising out of or relating to this Agreement and/or respective services shall be governed by the laws of the State of \_\_\_\_\_. Venue shall be in \_\_\_\_\_ County Superior Court. Mediation is an express condition precedent to the filing of any legal action. Causes of action between the parties to this Agreement shall be deemed to have accrued and the applicable statutes of repose and/or limitation shall commence to run not later than the date when Minn Water substantially completes the project or each respective Work Order/Work Assignment.
19. **ATTORNEY FEES.** Should there be any suit or action instituted to enforce any right granted in this contract, the substantially prevailing party shall be entitled to recover its costs, disbursements and reasonable attorney fees from the other party. The party who is awarded a net recovery against the other shall be deemed the substantially prevailing party unless such other party has previously made a bona fide offer of payment in settlement and the amount of recovery is the same or less than the amount offered in settlement. Reasonable attorney fees may be recovered regardless of the forum in which the dispute is heard, including an appeal.
20. **SEVERABILITY AND SURVIVAL.** Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Client and Minn Water shall survive the completion of the services hereunder and the termination of this Agreement.