

**Agreement Between
Nine Mile Creek Watershed District and
Riley-Purgatory-Bluff Creek Watershed District
Administrative assistance**

This agreement is entered into by the Nine Mile Creek Watershed District, a public body with powers set forth at Minnesota Statutes chapters 103B and 103D (NMCWD), and Riley-Purgatory-Bluff Creek Watershed District, a public body with powers set forth at Minnesota Statutes chapters 103B and 103D (RPBCWD), to efficiently administer watershed-district business through the sharing of administrative services.

WHEREAS NMCWD and RPBCWD are authorized by Minnesota Statutes section 103D.325 to employ professional assistants for the conduct of watershed-district business;

WHEREAS RPBCWD has hired or will hire an administrative assistant to support RPBCWD's day-to-day operations, and NMCWD needs similar such services; and

WHEREAS RPBCWD and NMCWD are authorized by Minnesota Statutes section 471.49 to enter intergovernmental agreements.

Now, therefore, in consideration of the foregoing recitals, which are incorporated into and made a part of this agreement, and other good and valuable consideration, the sufficiency of which each party acknowledges, RPBCWD and NMCWD agree as follows:

1. Scope of Work

RPBCWD will provide the administrative services described in the scope of work in attached Exhibit A (the Services). Exhibit A is incorporated into this agreement and its terms and schedules are binding on the parties as a term hereof. NMCWD, at its discretion, on 30 days' written notice to RPBCWD may at any time suspend work or amend the Services to delete any task or portion thereof. Authorized work by RPBCWD on a task deleted or modified by NMCWD will be compensated in accordance with paragraphs 5 and 6. Time is of the essence in the performance of the Services.

2. Relationship of the Parties

The parties agree that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting RPBCWD as the agent, representative, or employee of NMCWD for any purpose or in any manner whatsoever. RPBCWD is an independent contractor under this agreement.

RPBCWD represents that it has or will secure at its expense the personnel required to perform the Services. Any and all personnel of RPBCWD, while engaged in the performance of the Services will have no contractual relationship with NMCWD and will not be considered an employee of NMCWD, and will not be entitled to any compensation, rights or benefits of any kind from NMCWD.

This agreement does not create a joint powers board or organization within the meaning of Minnesota Statutes section 471.59. Each party agrees that it will be responsible only for its own acts and the results thereof to the extent authorized by the law and will not be responsible for the acts or omissions of the other party and the results thereof. This agreement creates no right in and

waives no immunity, defense or liability limitation with respect to any third party. As between the parties, only contract remedies are available for a breach of this agreement.

3. Subcontract and Assignment

RPBCWD will not assign, subcontract or transfer any obligation or interest in this agreement or any of the Services without the written consent of NMCWD and pursuant to any conditions included in that consent. NMCWD consent to any subcontracting does not relieve RPBCWD of its responsibility to perform the Services or any part thereof, nor in any respect its duty of care, insurance obligations, or duty to hold harmless, defend and indemnify under this agreement.

4. Duty of Care; Indemnification

RPBCWD will perform the Services with due care and in accordance with national standards of professional care.

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

5. Compensation

NMCWD will compensate RPBCWD for the Services on hourly basis and reimburse direct costs in accordance with Exhibit A. Invoices will be submitted monthly for work performed during the preceding month. Payment for undisputed work will be due within 35 days of receipt of invoice. Direct costs not specified in Exhibit A will not be reimbursed except with prior written approval of the NMCWD administrator. Subcontractor fees and subcontractor direct costs, as incurred by RPBCWD, will be reimbursed by NMCWD at the rate specified in NMCWD's written approval of the subcontract.

The total payment for the Services will not exceed \$26,000. Total payment in each respect means all sums to be paid whatsoever, including but not limited to fees and reimbursement of direct costs and subcontract costs, whether specified in this agreement or subsequently authorized by the administrator.

RPBCWD will maintain all records pertaining to fees or costs incurred in connection with the Services for six years from the date of completion of the Services. RPBCWD agrees that any authorized NMCWD representative or the state auditor may have access to and the right to examine, audit and copy any such records during normal business hours.

6. Termination; Continuation of Obligations

This agreement is effective when fully executed by the parties and will remain in force until February 29, 2024, unless earlier terminated as set forth herein.

Either party may terminate this agreement at its convenience, by 30 days' written termination notice. Any termination notice from NMCWD will state specifically what prior authorized or additional tasks or services it requires RPBCWD to complete. RPBCWD will receive full compensation for all authorized work performed, except that RPBCWD will not be compensated

for any part performance of a specified task or service if termination is due to RPBCWD's breach of this agreement.

Insurance obligations; duty of care; obligations to defend, indemnify and hold harmless; and document-retention requirements will survive the completion of the Services and the term of this agreement.

7. No Waiver

The failure of either party to insist on the strict performance by the other party of any provision or obligation under this agreement, or to exercise any option, remedy or right herein, will not waive or relinquish such party's rights in the future to insist on strict performance of any provision, condition or obligation, all of which will remain in full force and affect. The waiver of either party on one or more occasion of any provision or obligation of this agreement will not be construed as a waiver of any subsequent breach of the same provision or obligation, and the consent or approval by either party to or of any act by the other requiring consent or approval will not render unnecessary such party's consent or approval to any subsequent similar act by the other.

Notwithstanding any other term of this agreement, NMCWD waives no immunity in tort. This agreement creates no right in and waives no immunity, defense or liability limit with respect to any third party.

8. Insurance

At all times during the term of this agreement, each party will have and keep in force the following insurance coverages:

- A. General: \$1.5 million, each occurrence and aggregate, covering both work and completed operations on an occurrence basis and including contractual liability.
- B. Automobile liability: \$1.5 million combined single limit each occurrence coverage for bodily injury and property damage covering all vehicles on an occurrence basis.
- C. Workers' compensation: in accordance with applicable legal requirements.

9. Compliance With Laws

RPBCWD will comply with the laws and requirements of all federal, state, local and other governmental units in connection with performing the Services and will procure all licenses, permits and other rights necessary to perform the Services.

In performing the Services, RPBCWD will ensure that no person is excluded from full employment rights or participation in or the benefits of any program, service or activity on the ground of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status or national origin; and no person who is protected by applicable federal or state laws, rules or regulations against discrimination otherwise will be subjected to discrimination.

10. Data and Information

All property of NMCWD used, acquired or created in the performance of the Services, including documents and records of any kind, remain the property of NMCWD. NMCWD will have the sole right to use, sell, license, publish, or otherwise disseminate any product developed in whole or in part during the performance of the Services.

11. Data Practices; Confidentiality

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

If RPBCWD receives a request for data pursuant to the DPA that may encompass data possesses or has created as a result of this agreement, it will inform the NMCWD immediately and transmit a copy of the request. If the request is addressed to NMCWD, RPBCWD will not provide any information or documents, but will direct the inquiry to NMCWD. If the request is addressed to RPBCWD, RPBCWD will be responsible to determine whether it is legally required to respond to the request and otherwise what its legal obligations are, but will notify and consult with NMCWD before replying. Nothing in the preceding sentence supersedes RPBCWD's obligations under this agreement with respect to protection of NMCWD data, property rights in data or confidentiality.

RPBCWD agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by NMCWD and so denominated by NMCWD. RPBCWD will not use any such materials for any purpose other than performance of the Services without NMCWD written consent. This restriction does not apply to materials already possessed by RPBCWD or that RPBCWD received on a non-confidential basis from NMCWD or another party. Consistent with the terms of this section 11 regarding use and protection of confidential and proprietary information, RPBCWD retains a nonexclusive license to use the materials and may publish or use the materials in its professional activities. Any RPBCWD duty of care under this agreement does not extend to any party other than NMCWD or to any use of the materials by NMCWD other than for the purpose(s) for which RPBCWD is compensated under this agreement.

12. NMCWD Property

All property furnished to or for the use of RPBCWD or a subcontractor by NMCWD and not fully used in the performance of the Services, including but not limited to equipment, supplies, materials and data, both hard copy and electronic, will remain the property of NMCWD and returned to NMCWD at the conclusion of the performance of the Services, or sooner if requested by NMCWD. RPBCWD further agrees that any proprietary materials are the exclusive property of NMCWD and will assert no right, title or interest in the materials. RPBCWD will not disseminate, transfer or dispose of any proprietary materials to any other person or entity unless specifically authorized in writing by NMCWD.

Any property including but not limited to materials supplied to RPBCWD by NMCWD or deriving from NMCWD is supplied to and accepted by RPBCWD as without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness. However, RPBCWD's duty of professional care under paragraph 4, above, does not extend to materials provided to RPBCWD by NMCWD or any portion of the Services that is inaccurate or incomplete as the result of RPBCWD's reasonable reliance on those materials.

13. Notices

Any written communication required under this agreement to be provided in writing will be directed to the other party as follows:

To NMCWD:

Administrator
Nine Mile Creek Watershed District
12800 Gerard Dr.
Eden Prairie MN 55346
952-835-2078
ranhorn@ninemilecreek.org

To RPBCWD:

Administrator
18681 Lake Drive East
Chanhassen MN 55317
952-607-6512
tjeffery@rpbcwd.com

Either of the above individuals may in writing designate another individual to receive communications under this agreement.

14. Choice of Law; Venue

This agreement will be construed under and governed by the laws of the State of Minnesota. Venue for any action will lie in Hennepin County.

15. Whole Agreement

The entire agreement between the two parties is contained herein and this agreement supersedes all oral agreements and negotiations relating to the subject matter hereof. Any modification of this agreement is valid only when reduced to writing as an amendment to the agreement and signed by the parties hereto. NMCWD may amend this agreement only by action of the board of managers acting as a body.

{Signature page follows.}

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto execute and deliver this agreement.

Riley-Purgatory-Bluff Creek Watershed District

_____ Date: _____

By Terry Jeffery
Its Administrator

Approved as to form and execution

RPBCWD attorney

Nine Mile Creek Watershed District

_____ Date: _____

By Randall J. Anhorn
Its Administrator

Approved as to Form and Execution

NMCWD attorney

Exhibit A

Scope of Services – Administrative Assistance

February 14, 2023

RPBCWD will provide to NMCWD the services of an administrative assistant 16 hours per week in the NMCWD offices, 12800 Gerard Dr., Eden Prairie Minnesota 55346. The administrative services will be performed exclusively at and in accordance with the direction of the NMCWD administrator.

Specific duties to be provided as directed by the NMCWD administrator include but are not limited to:

- Administrative support for watershed district staff; organization of files including board resolutions, minutes and meeting recordings; record retention assistance; Minnesota Data Practices Act information request support;
- Public outreach support; greet the public and answer/screen phone calls; provide information and answer questions on a variety of issues related to the district; listen to concerns/complaints; explain procedures, etc.;
- Communications; post public notices, update district website and social media sites; review and edit communications content as necessary;
- Clerical tasks and office support; send and route NMCWD mail; typing and data entry; copying; mass mailings; oversee courier requests and deliveries; inventory and order office supplies; perform routine maintenance, troubleshooting, and staff training on office equipment and arrange for necessary service calls;
- Meeting support; technology setup, preparing and posting meeting materials, preparing refreshments, room set-up and arrangement;
- Permit and grant database maintenance support;
- Monthly accounting support and general audit support;
- Hiring process support; including but not limited to posting job announcements, receiving and organizing resumes, scheduling interviews, and serving as a point of contact;
- Prepare documents and spreadsheets as needed; correspondence, minutes, reports, forms, budget, and technical information;
- Make reservations and travel arrangements;
- Promote a diverse, culturally competent, and respectful workplace;
- Other duties as assigned by the NMCWD administrator.

March 1, 2023, to February 29, 2024 – 800 hours total, average 16 hours per week.