

ADAMS COUNTY, COLORADO  
PURCHASE OF SERVICE AGREEMENT

2012.040

THIS AGREEMENT ("Agreement") is made this March 29th 2012, by and between the Adams County Board of County Commissioners, located at 4430 South Adams County Parkway, Brighton, Colorado 80601, hereinafter referred to as the "County," and Urban Watersheds Research Institute, LLC, located at 845 South Cove Way, Denver, Colorado 80209, hereinafter referred to as the "Contractor." The County and the Contractor may be collectively referred to herein as the "Parties".

The County and the Contractor, for the consideration herein set forth, agree as follows:

**1. SERVICES OF THE CONTRACTOR:**

- 1.1. Review the Request for Proposal that has been drafted by the County to select a consultant (Auditor) to perform the MS4 Program audit.
- 1.2. Review the submitted Request for Proposals, select and interview consultant
- 1.3. Make a recommendation to the County to select the successful consultant (Auditor) that will conduct the Adams County MS4 Permit Program Comprehensive Compliance Assurance Audit.
- 1.4. Act as an independent advisor and a liaison between the County and the Auditor.
- 1.5. Provide status updates to the County of the progress the Auditor of the County's MS4 Program has made.
- 1.6. Advise the County on technical issues and findings. Advise the County regarding recommended changes to the County MS4 Program based upon these technical issues and findings.
- 1.7. Provide interpretation of the findings made by and issues discovered by the Managed Consultant as necessary to finalize the MS4 Permit Program Comprehensive Compliance Assurance Audit.
- 1.8. Coordinate with the County Attorney's Office, Finance Department, Human Resources and Public Works as necessary to ensure that the Managed Consultant has adequate direction to complete the MS4 Permit Program Comprehensive Compliance Assurance Audit.
- 1.9. Emergency Services In the event the Adams County Board of County Commissioners declares an emergency, the County may request additional services (of the type described in this Agreement or otherwise within the expertise of Contractor) to be performed by Contractor. If County requests

such additional services, Contractor shall provide such services in a timely fashion given the nature of the emergency, pursuant to the terms of this Agreement. Unless otherwise agreed to in writing by the parties, Contractor shall bill for such services at the rates provided for in this Agreement.

2. **RESPONSIBILITIES OF THE COUNTY:** The County shall provide information as necessary or requested by the Contractor to enable the Contractor's performance under this Agreement.

3. **TERM:**

3.1. **Term of Agreement:** The term of this Agreement shall be for one year from the date of this Agreement.

3.2. **Extension Option:** The County, at its sole option, may offer to extend this Agreement as necessary for up to two, one year extensions providing satisfactory service is given and all terms and conditions of this Agreement have been fulfilled. Such extensions must be mutually agreed upon in writing by the County and the Contractor, and approved by the Adams County Board of County Commissioners.

4. **PAYMENT AND FEE SCHEDULE:** The County shall pay the Contractor for services furnished under this Agreement, and the Contractor shall accept as full payment for those services, the sum of Sixteen Thousand Seven Hundred Dollars (\$16,700) to be invoiced monthly by the Contractor and paid monthly by the County within 25 days of receipt of each invoice.

5. **INDEPENDENT CONTRACTOR:** In providing services under this Agreement, the Contractor acts as an independent contractor and not as an employee of the County. The Contractor shall be solely and entirely responsible for his/her acts, and the acts of his/her employees, agents, servants, and subcontractors during the term and performance of this Agreement. No employee, agent, servant, or subcontractor of the Contractor shall be deemed to be an employee, agent, or servant of the County because of the performance of any services or work under this Agreement. The Contractor, at its expense, shall procure and maintain workers' compensation insurance as required by law. **Pursuant to the Workers' Compensation Act § 8-40-202(2)(b)(IV), C.R.S., as amended, the Contractor understands that it and its employees and servants are not entitled to workers' compensation benefits from the County. The Contractor further understands that it is solely obligated for the payment of federal and state income tax on any moneys earned pursuant to this Agreement.**

6. **NONDISCRIMINATION:** The Contractor shall not discriminate against any employee or qualified applicant for employment because of age, race, color, religion, marital status, disability, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices

provided by the local public agency setting forth the provisions of this nondiscrimination clause.

7. **INDEMNIFICATION:** The Contractor agrees to indemnify and hold harmless the County, its officers, agents, and employees for, from, and against any and all claims, suits, expenses, damages, or other liabilities, including reasonable attorney fees and court costs, arising out of damage or injury to persons, entities, or property, caused or sustained by any person(s) as a result of the Contractor's performance or failure to perform pursuant to the terms of this Agreement or as a result of any subcontractors' performance or failure to perform pursuant to the terms of this Agreement.
  
8. **INSURANCE:** The Contractor agrees to maintain insurance of the following types and amounts:
  - 8.1. General Liability Insurance: \$1,000,000
  - 8.2. Automobile insurance As per Colorado Statutes
  
  - 8.3. Adams County as "Additional Insured": The Contractor's general liability and comprehensive automobile liability policies and/or certificates of insurance shall be issued to include Adams County as an "additional insured," and shall include the following provisions:
    - 8.3.1. Underwriters shall have no right of recovery or subrogation against the County, it being the intent of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses resulting from the actions or negligence of the Contractor.
    - 8.3.2. The insurance companies issuing the policy or policies shall have no recourse against the County for payment of any premiums due or for any assessments under any form of any policy.
    - 8.3.3. Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of the Contractor.
  
  - 8.4. Licensed Insurers: All insurers of the Contractor must be licensed or approved to do business in the State of Colorado. Upon failure of the Contractor to furnish, deliver and/or maintain such insurance as provided herein, this Agreement, at the election of the County, may be immediately declared suspended, discontinued, or terminated. Failure of the Contractor in obtaining and/or maintaining any required insurance shall not relieve the Contractor from any liability under this Agreement, nor shall the insurance requirements be construed to conflict with the obligations of the Contractor concerning indemnification.
  
  - 8.5. Endorsement: Each insurance policy herein required shall be endorsed to state that coverage shall not be suspended, voided, or canceled without thirty (30) days prior written notice by certified mail, return receipt requested, to the County.

- 8.6. Proof of Insurance: At any time during the term of this Agreement, the County may require the Contractor to provide proof of the insurance coverages or policies required under this Agreement.

**9. TERMINATION:**

- 9.1. For Cause: If, through any cause, the Contractor fails to fulfill its obligations under this Agreement in a timely and proper manner, or if the Contractor violates any of the covenants, conditions, or stipulations of this Agreement, the County shall thereupon have the right to immediately terminate this Agreement, upon giving written notice to the Contractor of such termination and specifying the effective date thereof.
- 9.2. For Convenience: The County may terminate this Agreement at any time by giving written notice as specified herein to the other party, which notice shall be given at least thirty (30) days prior to the effective date of the termination. If this Agreement is terminated by the County, the Contractor will be paid an amount that bears the same ratio to the total compensation as the services actually performed bear to the total services the Contractor was to perform under this Agreement, less payments previously made to the Contractor under this Agreement.

**10. MUTUAL UNDERSTANDINGS:**

- 10.1. Jurisdiction and Venue: The laws of the State of Colorado shall govern as to the interpretation, validity, and effect of this Agreement. The parties agree that jurisdiction and venue for any disputes arising under this Agreement shall be with the 17<sup>th</sup> Judicial District, Colorado.

Compliance with Laws: During the performance of this Agreement, the Contractor agrees to strictly adhere to all applicable federal, state, and local laws, rules and regulations, including all licensing and permit requirements. The parties hereto aver that they are familiar with § 18-8-301, et seq., C.R.S. (Bribery and Corrupt Influences), as amended, and § 18-8-401, et seq., C.R.S. (Abuse of Public Office), as amended, and that no violation of such provisions are present. Contractor warrants that it is in compliance with the residency requirements in §§ 8-17-101, et seq., C.R.S. Without limiting the generality of the foregoing, the Contractor expressly agrees to comply with the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), amended by the Health Information Technology for Economic and Clinical Health Act (HITECH), passed as part of the American Recovery and Reinvestment Act of 2009, effective February 17, 2010, when exposed to or provided with any data or records under this Subcontract that are considered to be "Protected Health Information."

- 10.2. OSHA: Contractor shall comply with the requirements of the Occupational

Safety and Health Act (OSHA) and shall review and comply with the County's safety regulations while on any County property. Failure to comply with any applicable federal, state or local law, rule, or regulation shall give the County the right to terminate this agreement for cause.

- 10.3. Record Retention: The Contractor shall maintain records and documentation of the services provided under this Agreement, including fiscal records, and shall retain the records for a period of three (3) years from the date this Agreement is terminated. Said records and documents shall be subject at all reasonable times to inspection, review, or audit by authorized federal, state, or County personnel.
- 10.4. Assignability: Neither this Agreement, nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by the Contractor without the prior written consent of the County.
- 10.5. Waiver: Waiver of strict performance or the breach of any provision of this Agreement shall not be deemed a waiver, nor shall it prejudice the waiving party's right to require strict performance of the same provision, or any other provision in the future, unless such waiver has rendered future performance commercially impossible.
- 10.6. Force Majeure: Neither party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other acts of God.
- 10.7. Notice: Any notices given under this Agreement are deemed to have been received and to be effective: (1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that a facsimile was received. For the purposes of this Agreement, any and all notices shall be addressed to the contacts listed below:

Adams County Attorney's Office 4430 South Adams County Parkway, Brighton, Colorado 80601 Phone: 720-523-6116 Fax: 720-523-6114
Adams County Contact: Mr. Loren B. Imhoff, Purchasing Manager Address: 4430 South Adams County Parkway, Brighton, Colorado 80601 Phone: 720-523-6057 E-Mail: <a href="mailto:limhoff@adcogov.org">limhoff@adcogov.org</a>
Urban Watersheds, LLC Address: 845 South Cove Way, Denver, Colorado 80209

Contact: Mr. Ben Urbonas, President  
Phone: 303-765-0155  
E-mail: [ben@uwifc.org](mailto:ben@uwifc.org)

- 10.8. Integration of Understanding: This Agreement contains the entire understanding of the parties hereto and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing that is signed by the parties hereto.
- 10.9. Severability: If any provision of this Agreement is determined to be unenforceable or invalid for any reason, the remainder of this Agreement shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.
- 10.10. Authorization: Each party represents and warrants that it has the power and ability to enter into this Agreement, to grant the rights granted herein, and to perform the duties and obligations herein described.

#### **11. CHANGE ORDERS OR EXTENSIONS:**

- 11.1. Change Orders: The County may, from time to time, require changes in the scope of the services of the Contractor to be performed herein including, but not limited to, additional instructions, additional work, and the omission of work previously ordered. The Contractor shall be compensated for all authorized changes in services, pursuant to the applicable provision in the Invitation to Bid, or, if no provision exists, pursuant to the terms of the Change Order.
- 11.2. Extensions: The County may, upon mutual written agreement by the parties, extend the time of completion of services to be performed by the Contractor.

#### **12. COMPLIANCE WITH C.R.S. § 8-17.5-101, ET. SEQ. AS AMENDED 5/13/08:** Pursuant to Colorado Revised Statute (C.R.S.), § 8-17.5-101, *et. seq.*, as amended 5/13/08, the Contractor shall meet the following requirements prior to signing this Agreement (public contract for service) and for the duration thereof:

- 12.1. The Contractor shall certify participation in the E-Verify Program (the electronic employment verification program that is authorized in 8 U.S.C. § 1324a and jointly administered by the United States Department of Homeland Security and the Social Security Administration, or its successor program) or the Department Program (the employment verification program established by the Colorado Department of Labor and Employment pursuant to C.R.S. § 8-17.5-102(5)) on the attached certification.
- 12.2. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

- 12.3. The Contractor shall not enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.
- 12.4. At the time of signing this public contract for services, the Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this public contract for services through participation in either the E-Verify Program or the Department Program.
- 12.5. The Contractor shall not use either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this public contract for services is being performed.
- 12.6. If Contractor obtains actual knowledge that a subcontractor performing work under this public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall: notify the subcontractor and the County within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to the previous paragraph, the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 12.7. Contractor shall comply with any reasonable requests by the Department of Labor and Employment (the Department) made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. § 8-17.5-102(5).
- 12.8. If Contractor violates this Section, of this Agreement, the County may terminate this Agreement for breach of contract. If the Agreement is so terminated, the Contractor shall be liable for actual and consequential damages to the County.





