

**TERM CONTRACT FOR PROFESSIONAL SERVICES
BUSINESS PLAN WRITING SERVICES
FOR VSW COMMUNITIES**

CONTRACT # FY-VSW-VAR-XXX-XX

This Contract for Professional Services is between:

Village Safe Water (VSW) hereafter referred to as “Contracting Agency” and “Community Designated Representative” and

Company X, hereafter “Consultant”

Witness That:

This Contract is entered into by written proposal and that the parties agree to the following terms and conditions:

Article 1. Community’s Designated Representative

For the purposes of this Contract, Work Orders will be signed by a community designated representative’s supervisor (VSW Program Manager) and the Consultant. The designated representative for each community shall be the Alaska Department of Environmental Conservation, Village Safe Water Project Engineer assigned to the community project. The Consultant is identified in the opening paragraph of this Contract, or as modified by written agreement of the community and Village Safe Water. The Consultant shall be furnished a copy of such written agreement.

Article 2: Administration

The VSW authorizing signatory for this Contract shall be:

Greg Magee, P.E.
Village Safe Water Program Manager
555 Cordova St.
Anchorage, AK. 99501
Phone: (907) 269-7613
Fax: (907) 269-7509
Email: Greg.Magee@alaska.gov

The Consultant’s authorizing signatory for this Contract shall be:

Article 3: Period of Performance

The period of performance of this Contract begins on the date the Contract is signed by both parties and shall extend for one (1) year with three (3) one (1) year optional renewal options. VSW reserves the right to renew based on satisfactory performance of the Consultant as well as other factors. Each Work Order will have its own delivery and completion schedule. Any Work Order that extends beyond the Contract expiration date shall be deemed to have extended the Contract for purposes of completing that Work Order only. The Consultant shall perform the services of this Contract in accordance with the Scope of Services and dates required therein.

Article 4: Consideration

The total payment for the services under this Contract shall be determined by each Work Order and shall be in accordance with the attached agreed upon fee schedule. No payment will be made for services performed prior to the Contract being signed by both parties. Regardless of payment terms, at least five (5) percent of the amount of each Work Order will be retained until the work stated on the Work Order is satisfactorily completed and approved by VSW

Payment will be made when services covered by this Contract are received and approved by the Community and the State of Alaska's Village Safe Water Program (hereafter "VSW"). All services are subject to inspection and approval by the VSW Project Engineer. Final payment will not be made until all services have been satisfactorily completed, received by the Community and approved by VSW.

If a service is found to not meet the Standard of Care, the Consultant will be required to make necessary modifications to correct the deficiencies at no additional cost to the Community. If such modifications are due to causes outside the Consultant's reasonable control such modifications shall be performed as an additional service. The Consultant will not unreasonably withhold such corrections. Substantial failure of the Consultant to perform required corrections may cause the Community to terminate the Work Order. If the Community suffers damages associated with the unacceptable service, the Community may seek reimbursement for these damages.

Article 5. Indemnification

The Consultant shall indemnify and hold harmless, the Community and Community's representative from and against any claim of, or liability for the negligent act, error, or omission of the Consultant under this agreement. The Consultant shall not be required to indemnify the Community and Community's representative for a claim of, or liability for, the independent negligence of the Community or Community's representative. If there is a claim of, or liability for, the joint negligent error or omission of the Consultant and the independent negligence of the Community and Community's Representative, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Consultant", "Community" and "Community Representative", as used within this and the following Insurance Articles of this Contract, include the employees, agents and other Consultants who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Community and Community Representative's selection, administration, monitoring, or controlling of the Consultant and in approving or accepting the Consultant's work.

Article 6. Insurance

Without limiting Consultant's indemnification, it is agreed that Consultant shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the Consultant's policy contains higher limits, the Community's Representative shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the VSW project engineer prior to beginning work and must provide for a 30-day prior notice of cancellation,

non-renewal or material change of conditions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this Contract and shall be grounds for termination of the Consultant's services. All insurance policies shall comply with, and be issued by insurers licensed to transact the business of insurance under AS.21.

- 6.1 Workers' Compensation Insurance:** The Consultant shall provide and maintain, for all employees engaged in work under this Contract, coverage as required by AS.23.30.045, and; where applicable, any other statutory obligations including but not limited to Federal U.S.L. & H. and Jones Act requirements. The policy must specifically waive subrogation against the Community's designated representative (DEC, Village Safe Water Program) as a State of Alaska agency.
- 6.2 Commercial General Liability Insurance:** covering all business premises and operations used by the Consultant in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.
- 6.3 Commercial Automobile Liability Insurance:** covering all vehicles used by the Contractor in the performance of services under this agreement with minimum coverage limits of \$300,000 combined single limit per claim.

Article 7. Inspection and Reports

- 7.1** The Community's designated representative shall have the right to inspect, in such a manner and at all reasonable times deemed appropriate, all activities of the Consultant arising in the course of Consultant's performance of services under this Contract.
- 7.2** The Consultant shall report progress in writing on a monthly basis, or other mutually agreeable basis, in such a manner as the Community's designated representative may reasonably require.

Article 8. Equal Employment Opportunity

The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, age or sex. The Consultant will take affirmative action to insure that employees are treated equally during employment without regard to their race, color, religion, national origin, ancestry, age or sex.

Article 9. Disputes

- 9.1** Except as otherwise provided in this Contract, any dispute concerning a question of fact arising under this Contract which is not disposed of by agreement shall be decided by the Commissioner of the Alaska Department of Environmental Conservation, hereafter called the Commissioner, provided the resolution of such dispute be limited to the specified funds appropriated for the services to be performed under this Contract. The Commissioner shall furnish a written decision to the Community's Representative and the Consultant. The decision of the Commissioner or the Commissioner's duly authorized representative shall be final, unless within 30 days from the date of the decision, the Consultant or the Community's Representative delivers a written appeal of the decision to the Commissioner. Upon receipt of an appeal, the parties involved may agree to have the dispute settled by arbitration.
- 9.2** If the parties choose not to have the dispute settled by arbitration, the Commissioner may issue a written decision on the appeal within 30 days from receipt of the appeal. This decision will be the final agency action on all issues of the dispute.

Article 10. Termination

10.1 VSW, by written notice, may terminate this Contract, in whole or in part, when it is in the best interest of VSW or of any Community they represent. In the event of termination of the Contract, a Community with an open Work Order is liable only for payment in accordance with the payment provision of this Contract for services rendered before the effective date of termination and the Community will have no further obligation to the Consultant.

10.2 In the event of substantial failure of either party to perform in accordance with the terms and conditions of this Contract, the Contract may be terminated upon seven (7) days written notice to the failing party and the failure to cure such substantial failure within such seven (7) day period.

Article 11. No Assignment or Delegation

11.1 Neither party may assign or delegate this Contract, in whole or in part, nor any right to any of the money to be paid under it, except with the written consent of the designated representative of the other party.

11.2 The Consultant may not sublet any part of the work done or material furnished under this Contract except with the written consent of the Community designated representative unless set forth in the Consultant's Response to the Request for Proposals.

Article 12. No Additional Services

12.1 No claim for additional services, not specifically provided in this Contract, performed or furnished by the Consultant, will be allowed, nor may the Consultant do any work or furnish any material not covered by the Contract unless the work or material is approved and ordered in writing by the Community and its designated representative.

12.2 Any adjustment in the period of performance of this Contract as well as corresponding changes in compensation resulting from the adjustment shall be agreed upon and approved by the Community designated representative in writing prior to any adjustment being executed.

Article 13. Independent Consultant

The Consultant and any agents and employees of the Consultant act in an independent capacity and are not officers or employees or agents of the Community and the Community's designated representative in the performance of this Contract.

Article 14. Availability of Appropriation

This Contract and amendments hereto are subject to approval by the Department of Environmental Conservation, Village Safe Water Program (VSW) and are contingent upon the availability of funds administered by VSW.

Article 15. Alaska Business License

It is understood and agreed upon that an Alaska Business License (ABL) is required under Alaska Statutes before the award of a State contract and that the Consultant is in possession of an ABL at this time or will have an ABL in effect before contract award.

Article 16. Payment of Taxes

As a condition of performance of this Contract, the Consultant shall pay all federal, State, and local taxes incurred by the Consultant and shall require any party with which the Consultant subcontracts shall also pay the sub Consultant's own federal, State and local taxes in the performance of this

Contract. Satisfactory performance of this paragraph is a condition precedent to payment by the Community's representative under this Contract.

Article 17. Ownership of Documents

Upon payment of all amounts rightfully owed by VSW as the Community's representative to the Consultant herein, all documents, deliverables, designs, plans, drawings, field notes, surveys, calculations, specifications, cost estimates, summaries, electronic files, reproducible documents, project records and any other documents necessary for or associated with the performance of this Contract with the exception of those standard details and specifications regularly used by Consultant in its normal course of business are the property of VSW and the Community and may be used by VSW and the Community for the intended purpose without additional compensation to the Consultant. The Consultant shall have no claim for further employment or additional compensation as a result of exercise of these full rights of ownership of all documents and materials produced under this contract.

Any discovery or invention of copyrightable materials developed in the course of or resulting from work carried on under this contract shall be the property of VSW and the Community. The Consultant agrees not to assert any rights and not to establish any claim under the design patent or copyright laws. If the source of funding for this contract is federal, any applicable federal patent and copyright rules also apply, take precedence and supersede this provision. Rights of use for public purposes of documents and/or intellectual property and/or intangible property under federally assisted projects shall be governed by the provisions of applicable federal OMB Circulars including A-110 and A-102.

The Consultant, for a period of five years after the final payment under this Contract, agrees to furnish and provide access to all retained materials at the request of VSW or the Community. Unless otherwise directed by the Community's designated representative, the Consultant may retain copies of all materials.

Any reuse or modification of such documents for purposes other than those intended by the Consultant under this Agreement shall be at the VSW's sole risk and without liability to the Consultant.

Article 18. Professional Standards

The Consultant shall be responsible, to the level of competency practiced and maintained by other practicing professional consultants in their field for the professional and technical soundness, accuracy and adequacy of all services and materials furnished under this Contract in the same or a similar locale.

Article 19. Legal Expenses

In the event legal action is brought by the Community's Representative against the Consultant to enforce any of the obligations, terms or conditions of this Contract, or arising out of any dispute under this Contract, the losing party shall pay the prevailing party such reasonable amounts for fees, costs and expenses as may be set by the presiding court. To be the prevailing party the other party must be deemed to be at least 75% liable by a proper tribunal or arbitrator.

Article 20. Survival

All express representations, indemnifications or limitations of liability made or given in this Contract will survive the completion of all services of the Consultant under this Contract or the termination of the Contract.

Article 21. Severability

Any provision or any part of this Contract or any written amendment hereto that is held to be void or unenforceable under law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding.

Article 22. Conflicting Provisions

Unless specifically required or approved by VSW and authorized through a written amendment signed by both parties, the General Provisions of this Contract supersede any provisions in other appendices. In the event of a conflict of provisions, the following order of precedence will apply in resolving which provisions control:

1. General Provisions of the Contract
2. Appendix 1: Scope of Services
3. Appendix 2: Request for Proposals
4. Appendix 3: Consultant’s Response to the Request for Proposals
5. Appendix 4: Fee Schedule

Article 23. Governing Law

The Contract is governed by the laws of the State of Alaska. All actions concerning this Contract shall be brought in the Superior Court of the State of Alaska.

Article 24. Covenant against Contingent Fees

The Consultant represents that no person or agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, contingent fee, or brokerage except employees or agencies maintained by the Consultant for the purpose of securing business. For the breach or violation of this warranty, the State may terminate this Contract without liability or in its discretion deduct from the Contract price or consideration the full amount of the commission, percentage, brokerage, or contingent fee.

Article 25: Additional Contract Provisions

The appendices listed below are part of this Contract and are attached:

- Appendix 1 - Scope of Services
- Appendix 2 - Request for Proposal #VSW 15-01, Village Safe Water (VSW) Program Business Plan Writing Services
- Appendix 3 - Consultant’s Response to the Request for Proposal
- Appendix 4 - Fee Schedule

Article 26. Waiver of Sovereign Immunity

In the event the Community issuing a Work Order is a Tribal Council, it agrees that it shall be subject to suit for actions brought by Consultant to enforce the terms and conditions of this contract or recover damages from the Tribal Council based on the alleged breach of this contract by the Tribal Council in the same manner, and to the same extent, as any person and expressly waives the defense of sovereign immunity regarding any suit brought by Consultant against the Tribal Council that arises from or relates to this contract. In any action brought by the Consultant against the Tribal Council, the Tribal Council shall neither be immune nor exempt from any administrative or judicial process, sanction, or judgment. This waiver of sovereign immunity is limited to this contract and shall not apply to actions brought by any person other than Consultant contractor and shall neither expressly nor by implication be considered a general waiver of sovereign immunity.

Article 27. Federal Debarment, Suspension, Ineligibility and Voluntary Exclusion

Expenditures from this contract may involve federal funds. The U.S. Department of Labor requires all state agencies that are expending federal funds to have a certification filed in the bid (by the bidder) that they have not been debarred or suspended from doing business with the federal government. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions (Appendix A) must be completed and submitted. This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participant's responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

Article 28. Records Retention and Access

Representatives of VSW or any of their authorized representatives and the federal awarding agency or any of their authorized representatives have the right of access to any pertinent books, documents, papers, or other records of the Contractor and its subcontractors, which are pertinent to the funding of this Contract, in order to make audits, examinations, excerpts, and transcripts. Retention of all required records for three (3) years after final payments by VSW and all other pending matters are closed. The right of access shall last as long as the records are retained.

In Witness Whereof, the parties hereto have affixed their signatures:

Consultant, Company X: _____ **Date:** _____

Greg Magee, VSW Program Manager _____ **Date** _____

Appendix 1

Scope of Services & Deliverables

Appendix 2

**Request for Proposal #VSW 15-01, Village Safe Water (VSW) Program Business Plan
Writing Services (incorporated by reference)**

Appendix 3

Consultant's Response to the Request for Proposal

Appendix 4
Contract Fee Schedule