



Title: Equipment Purchases to Implement the Real-time Sensor Network

Resolution number: 23-049 and 23-050

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Reviewed by: Name/Title: Brian Beck/R&M Program Manager

Recommended action: Authorize execution of purchase agreement with Hennepin County Emergency Management and approve the purchase of real-time sensor network equipment

Schedule: September 2023: Purchase equipment
October 2023: Submit invoice for FEMA funded sites to HCEM
Fall 2023-Summer 2024: Complete infrastructure installations and deploy equipment

Budget considerations: Fund name and code: Research and Monitoring-Equipment 5-5001-4570
Fund budget: 30,000
Expenditures to date: 2,328
Requested amount of funding: NTE \$23,500

Past Board action: Res # 20-007 Title: Approval to Purchase Real-time Sensor Network Equipment

Background

In an effort to continuously improve how the Minnehaha Creek Watershed District (District or MCWD) delivers on its core mission of managing water quantity and quality, Research and Monitoring (R&M) staff have been refining how and where data are collected to better support project identification, improve public communication, and inform high-water decision-making. Following consecutive years of above average precipitation between 2014 and 2019, R&M determined the existing methods for measuring water level and flow were not providing enough information to District staff, concerned public, and partner agencies.

In parallel, Project Maintenance and Land Management (PMLM) had formed a multi-agency partnership which includes Hennepin County Emergency Management (HCEM), United States Geological Survey (USGS), and the National Weather Service (NWS) to improve water level management using Grays Bay Dam. In 2019, staff continued conversations with this group to understand what information would help partner agencies, municipalities, and the public with high-water issues. During these discussions, it became clear that having access to real-time water level conditions at a high resolution across the watershed would benefit the District while also serving its partner agencies and creek communities. It was also discovered that HCEM was already in the early planning stages of a water-level sensor network, highlighting a clear area for the District and HCEM to partner on the effort. The District worked to identify equipment and a total of 25 locations that would support the following areas:

1. Emergency Planning and Communication

2. Near-term Climate Adaptation Actions
3. Climate Model Calibration
4. Refined Nutrient Loads

These locations and their associated equipment and capabilities became known as the District's Real-time Sensor Network (RESNET). The District and HCEM identified an opportunity to apply for a grant from the Federal Emergency Management Agency (FEMA) to cover a portion of the equipment costs; HCEM was particularly concerned about flooding along Minnehaha Creek, while the District saw value in also pursuing stations/equipment types to support a wider array of needs at other key tributaries and locations. HCEM submitted the grant application in fall of 2019 to FEMA's Hazard Mitigation Grant Program. The water-level related portion of that application came to \$41,394 to equip 15 stations along Minnehaha Creek and required a 25% match by the County. In January 2020, the Board of Managers authorized a \$113,637 purchase to support the stations and equipment needs not included within HCEM's FEMA grant application.

RESNET Implementation

With the grant submitted and awaiting consideration, District staff began working to implement stations financed by the District and set the stage for FEMA funded equipment. This work included:

- Infrastructure Installations: Obtaining property permissions and/or permits to install infrastructure that would house the monitoring equipment.
- Equipment Programming & Deployment: Determining proper settings and installation specifications for each set of equipment to ensure accurate measurement collection and cellular transmissions.
- Data Processing System: An automated processing system needed to be developed to address the large volume of data being generated and allow for real-time access to the data.
- Data Viewing & Sharing Capabilities: A system needed to be developed to share data with partners and view the data in a meaningful way.

FEMA Grant Review

COVID-19, and other national emergency events, caused a delay in FEMA reviewing HCEM's grant application. In fall of 2021, FEMA began reviewing the original application. Through the review process, it was discovered that while the grant request was only to cover the equipment, any physical work the District did to install infrastructure at a location ahead of the grant award made that location ineligible for funding. FEMA must exercise prior approval on where and how the equipment is to be installed to ensure actions are in line with the National Historic Preservation Act. Even though FEMA didn't necessarily disagree with where infrastructure had been placed or how it had been installed, but it was a non-negotiable grant requirement. This ruling made 10 of the 15 stations ineligible for funding. District staff and HCEM staff worked with state and national FEMA representatives to brainstorm possible paths forward. FEMA was willing to let HCEM submit a modified application for the subset of sites that could still meet federal requirements.

District and HCEM staff collaborated to determine which sites could move forward and obtain a modified quote to equip those locations. HCEM submitted a modified grant application that included the five stations that were not ineligible; these stations were allowed to move forward because either (1) historic infrastructure had long been in place from past projects or (2) no infrastructure had been installed. The revised grant for this subset of five RESNET stations was \$20,120, in contrast to the original request of \$41,394. While the revised grant only includes a third of the original locations, it still accounts for half of the equipment costs due to more complex equipment being needed for those sites. FEMA approved a grant for the revised application in January 2023.

Summary of Board Actions

Resolution 23-049: Authorization to Enter into Equipment Purchase Agreement with Hennepin County Emergency Management

HCEM, as the grant applicant, is considered the awardee and the recipient of the FEMA funds, while also tasked with managing grant reporting and submittals for reimbursement from the awarded funds. From the onset, HCEM and District staff agreed that the District would own and maintain the equipment purchased through the grant, since the

District already deploys and maintains similar stations. To ensure the equipment warranty remains valid, the District will buy the equipment described in the grant and request reimbursement from HCEM. MCWD and County staff have worked to define contract language to outline the reimbursement process and roles. The scope of this contract only includes the purchase by MCWD and the reimbursement by the County, and it does not encompass the District's data collection work or the broader ongoing working relationship between the parties.

Staff are requesting approval of resolution 23-049, to authorize entry into a "Personal/Professional Service Agreement" with Hennepin County Emergency Management. (The agreement solely encompasses the District's equipment purchase, but HCEM requires use of the "service agreement" form title.) District counsel has reviewed the agreement form, and advises that many terms are unnecessary, but that it is satisfactory.

Resolution 23-050: Authorization to Purchase Equipment for the Real-time Sensor Network

Once the revised application for the 5 of the original 15 locations was authorized, District staff began assessing how to move the remaining 10 locations forward and determine the associated costs. With the loss of grant dollars toward the remaining 10, Hennepin County is not able to provide financial assistance. Due to the relatively small amount of funding it would take to equip the remaining 10 stations and the importance of implementing RESNET as originally forecasted to the Board and our partners, staff chose to pursue equipping all 10 remaining sites versus a smaller subset.

Revised quotes to equip the remaining 10 locations is estimated not to exceed \$23,500. The Research and Monitoring Department has funds within its equipment budget to cover this expenditure. Making this purchase with District funds gives the District flexibility to move and adjust sensors as-needed through the coming years and allow adaptation to climate and/or project needs. The equipment listed within Attachment B is consistent with equipment District staff already use at active RESNET stations.

Staff are requesting approval of resolution 23-050, authorizing the purchase of equipment from In-situ Inc, in an amount not to exceed \$23,500.

Supporting documents (list attachments):

Attachment A: Contract and scope of work with Hennepin County Emergency Management

Attachment B: Quote from In-situ, Inc.



RESOLUTION

Resolution number: 23-049

Title: Authorization to Enter into Equipment Purchase Agreement with Hennepin County Emergency Management

- WHEREAS, The Minnehaha Creek Watershed District (District) has recently experienced the seven wettest years on record, which has led staff to develop improved methods and systems to manage water levels across the watershed;
- WHEREAS, during high water periods, the District has assumed a role to collect data and communicate information for and among its partner agencies and the public;
- WHEREAS, through 2019 partnership coordination, the District and its partners realized that access to real-time water level conditions at a high resolution across the watershed would benefit the District while also serving its partner agencies and creek communities;
- WHEREAS, the District, with input from its partners, identified 25 locations at which to obtain water-level data, and selected the suite of necessary equipment to provide real-time data;
- WHEREAS, Hennepin County Emergency Management (HCEM), in coordination with the District, identified an opportunity to apply for a grant from the Federal Emergency Management Agency (FEMA) to cover the cost for a subset of equipment and sites along Minnehaha Creek (15 sites);
- WHEREAS, in January 2020, the Board of Managers authorized the District Administrator to spend up to \$113,637 to purchase equipment for the 10 locations and equipment types not included within the FEMA grant application;
- WHEREAS, in fall 2021, FEMA reviewed the grant application and determined 10 of the 15 stations were ineligible for funding since work to install monitoring enclosures had taken place;
- WHEREAS, FEMA determined that HCEM could submit a revised application for an eligible subset of locations and associated equipment;
- WHEREAS, in January 2023, the revised grant application was approved and authorized by FEMA, to fund five of the originally requested 15 stations in a total amount of \$20,120;
- WHEREAS, HCEM and the District have determined that the District will own and maintain the equipment purchased with FEMA grant funds;
- WHEREAS, the District must purchase the equipment from the vendor directly, to protect equipment warranty;
- WHEREAS, the District and HCEM have coordinated to establish clear roles and expectations through a formal agreement by which the District will be reimbursed in full by Hennepin County;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the District Administrator, with any non-substantive changes and on advice of legal counsel, to execute an agreement with Hennepin County Emergency Management for District purchase of water-level monitoring equipment and HCEM reimbursement of the purchase cost.

Resolution Number 23-049 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 8/24/2023

Secretary Date: _____

DRAFT



RESOLUTION

Resolution number: 23-050

Title: Authorization to Purchase Equipment for the Real-time Sensor Network

WHEREAS, The Minnehaha Creek Watershed District (District) has recently experienced the seven wettest years on record, which has led staff to develop improved methods and systems to manage water levels across the watershed;

WHEREAS, for the benefit of its partner agencies and the public, the District has assumed a role to collect data and communicate information during high-water periods;

WHEREAS, through 2019 partnership coordination, the District and its partners realized that having access to real-time water level conditions at a high resolution across the watershed would benefit the District while also serving its partner agencies and creek communities;

WHEREAS, the District, with input from its partners, identified 25 locations at which to secure real-time water-level data, and selected the suite of necessary equipment to provide the data;

WHEREAS, Hennepin County Emergency Management (HCEM), in coordination with the District, identified an opportunity to apply for a grant from the Federal Emergency Management Agency (FEMA) to cover a subset of equipment and sites along Minnehaha Creek (15 sites);

WHEREAS, In January 2020, the Board of Managers authorized the District Administrator to spend up to \$113,637 to purchase equipment for the 10 locations and equipment types not included within the FEMA grant application;

WHEREAS, FEMA determined 10 of the 15 proposed sites to be ineligible for funding due to prior site work performed, but in January 2023, approved a revised grant application that funds five of the originally requested 15 stations;

WHEREAS, staff have obtained an updated quote for the cost of equipment for the remaining 10 stations, which would allow the District to deliver on the previously forecasted network of 25 total stations across the watershed;

NOW, THEREFORE, BE IT RESOLVED that the Minnehaha Creek Watershed District Board of Managers authorizes the District Administrator to purchase real-time sensor network equipment from In-situ, Inc. in a total amount not to exceed \$23,500.

Resolution Number 23-050 was moved by Manager _____, seconded by Manager _____. Motion to adopt the resolution ___ ayes, ___ nays, ___ abstentions. Date: 8/24/2023

 Secretary Date: _____

Attachment B

PERSONAL/PROFESSIONAL SERVICE AGREEMENT

This Agreement is between the COUNTY OF HENNEPIN, STATE OF MINNESOTA, A-2300 Government Center, Minneapolis, Minnesota 55487, on behalf of the Hennepin County Emergency Management, 1600 Prairie Drive, Medina, Minnesota 55340. ("COUNTY"), and Minnehaha Creek Watershed District, 15320 Minnetonka Boulevard, Minnetonka, Minnesota 55345, a Minnesota government entity ("CONTRACTOR" or "DISTRICT").

The parties agree as follows:

1. TERM AND COST OF THE AGREEMENT

This Agreement shall commence on July 01, 2023, and expire on December 31, 2023, unless cancelled or terminated earlier in accordance with the provisions herein.

The total cost of this Agreement, including all reimbursable expenses, shall not exceed Seventeen Thousand Five Hundred Dollars (\$17,500.00).

2. SERVICES TO BE PROVIDED

- A. CONTRACTOR shall provide the following services: purchase water-level sensors. These services are more fully described in Attachment A.
- B. CONTRACTOR confirms, transfers, assigns, and conveys to COUNTY all right, title, and interest in all intellectual property which CONTRACTOR may create, conceive, develop, or originate, either individually or jointly with others, in the performance of this Agreement, including but not limited to copyrights, patents, trade secrets, trademarks, service marks, and rights in data or other technology ("Intellectual Property Rights"). As applicable, all works of authorship created by CONTRACTOR for COUNTY in performance of this Agreement shall be considered "works made for hire" as defined in the U.S. Copyright Act. CONTRACTOR shall, upon request of COUNTY, execute all papers and perform all other acts necessary to assist COUNTY to establish, protect, and preserve COUNTY's Intellectual Property Rights.

For clarification, each party shall retain ownership of intellectual property developed prior to or outside of this Agreement ("Pre-existing IP"). However, and as applicable, CONTRACTOR grants COUNTY a perpetual, irrevocable, royalty-free license to use Pre-existing IP for COUNTY's business purposes.

CONTRACTOR warrants that, when legally required, CONTRACTOR shall obtain the written consent of both the owner and licensor to reproduce, publish, and/or use any material supplied to COUNTY including, but not limited to, software, hardware, documentation, and/or any other item. CONTRACTOR further warrants that any material or item delivered by CONTRACTOR will not violate the United States copyright law or any property right of another.

- C. CONTRACTOR shall comply with COUNTY's rules, policy, and direction regarding use of COUNTY facilities. COUNTY may deny CONTRACTOR access to any COUNTY facility at any time and may remove any CONTRACTOR personnel from COUNTY facilities at any time and in COUNTY's sole discretion. CONTRACTOR shall not allow unauthorized personnel to use COUNTY facilities.

In addition to any applicable state or federal requirements, CONTRACTOR shall comply with all COUNTY COVID-19 rules, policies, and directions, which may include requiring that CONTRACTOR's employees and subcontractors be fully vaccinated against COVID-19 along with other related obligations. As between the parties, CONTRACTOR shall be solely responsible for the cost of complying with the foregoing, including but not limited to the cost of any vaccination, testing, validation/certification, and any additional obligations.

3. PAYMENT FOR SERVICES

CONTRACTOR shall be paid according to the provisions in Attachment A.

CONTRACTOR shall perform all services hereunder to the satisfaction of COUNTY, in accordance with the provisions herein, and in compliance with applicable law. If COUNTY determines that CONTRACTOR has not complied with the foregoing, COUNTY shall not have any obligation to pay CONTRACTOR for the non-complying services.

Payment for services shall be made directly to CONTRACTOR after completion of the services and upon the presentation of a claim as provided by law governing COUNTY's payment of claims and/or invoices. CONTRACTOR shall submit invoices monthly for services rendered on forms which may be furnished by COUNTY. Payment shall be made within thirty-five (35) days from receipt of the invoice.

Reimbursable expenses are limited to the actual cost for water-level sensors. Any reimbursable expense which exceeds Seventeen Thousand Five Hundred Dollars (\$17,500) shall receive prior written approval from the Contract Administrator.

Payments shall be made pursuant to the provisions herein and COUNTY's then applicable payment policies, procedures, rules and directions. COUNTY is not responsible for remedying fraudulent or unauthorized payments requested in CONTRACTOR's name.

Unless expressly approved in writing by COUNTY, CONTRACTOR shall not provide services under this Agreement without receiving a purchase order or purchase order number supplied by COUNTY. All invoices shall display a Hennepin County purchase order number and be emailed to OBF.Internet@hennepin.us or sent to the following central invoice receiving address: PO Box 1388, Minneapolis, MN 55440.

COUNTY may withhold from any payment due to CONTRACTOR any amount which is due and owing COUNTY under this or any other agreement between the parties due to overpayment or as a result of an audit.

4. PROFESSIONAL CREDENTIALS

INTENTIONALLY OMITTED

5. INDEPENDENT CONTRACTOR

CONTRACTOR shall select the means, method, and manner of performing the services. Nothing is intended nor should be construed as creating or establishing the relationship of a partnership or a joint venture between the parties or as constituting CONTRACTOR as the agent, representative, or employee of COUNTY for any purpose. CONTRACTOR is and shall remain an independent contractor for all services performed under this Agreement. CONTRACTOR shall secure at its own expense all personnel required in performing services under this Agreement. CONTRACTOR's personnel and/or subcontractors engaged to perform any work or services required by this Agreement will have no contractual relationship with COUNTY and will not be considered employees of COUNTY. COUNTY shall not be responsible for any claims related to or on behalf of any of CONTRACTOR's personnel, including without limitation, claims that arise out of employment or alleged employment under the Minnesota Unemployment Insurance Law (Minnesota Statutes Chapter 268) or the Minnesota Workers' Compensation Act (Minnesota Statutes Chapter 176) or claims of discrimination arising out of applicable law, against CONTRACTOR, its officers, agents, contractors, or employees. Such personnel or other persons shall neither accrue nor be entitled to any compensation, rights, or benefits of any kind from COUNTY, including, without limitation, tenure rights, medical and hospital care, sick and vacation leave, workers' compensation, unemployment compensation, disability, severance pay, and retirement benefits.

6. NON-DISCRIMINATION

In accordance with COUNTY's policies against discrimination, CONTRACTOR shall not exclude any person from full employment rights nor prohibit participation in or the benefits of any program, service or activity on the grounds of any protected status or class, including but not limited to race, color, creed, religion, national origin, sex, gender expression, gender identity, age, disability, marital status, sexual orientation, or public assistance status. No person who is protected by applicable law against discrimination shall be subjected to discrimination.

A. COUNTY encourages CONTRACTOR to develop and implement a policy promoting diversity, equity, and inclusion in CONTRACTOR's workplace.

7. INDEMNIFICATION

CONTRACTOR shall defend, indemnify, and hold harmless COUNTY, its present and former officials, officers, agents, volunteers and employees from any liability, claims, causes of action, judgments, damages, losses, costs, or expenses, including attorney's

fees, resulting directly or indirectly from any act or omission of CONTRACTOR, a subcontractor, anyone directly or indirectly employed by them, and/or anyone for whose acts and/or omissions they may be liable in the performance of the services required by this Agreement, and against all loss by reason of the failure of CONTRACTOR to perform any obligation under this Agreement. For clarification and not limitation, this obligation to defend, indemnify and hold harmless includes but is not limited to any liability, claims or actions resulting directly or indirectly from alleged infringement of any copyright or any property right of another, the employment or alleged employment of CONTRACTOR personnel, the unlawful disclosure and/or use of protected data, or other noncompliance with the requirements of these provisions.

8. INSURANCE

Each party warrants that it has a purchased insurance or a self-insurance program sufficient to meet its liability obligations and, at a minimum, to meet the maximum liability limits of Minnesota Statutes Chapter 466. This provision shall not be construed as a waiver of any immunity from liability under Chapter 466 or any other applicable law.

9. DUTY TO NOTIFY

CONTRACTOR shall promptly notify COUNTY of any demand, claim, action, cause of action or litigation brought against CONTRACTOR, its employees, officers, agents or subcontractors, which arises out of the services described in this Agreement. CONTRACTOR shall also notify COUNTY whenever CONTRACTOR has a reasonable basis for believing that CONTRACTOR and/or its employees, officers, agents or subcontractors, and/or COUNTY, might become the subject of a demand, claim, action, cause of action, administrative action, criminal arrest, criminal charge or litigation arising out of and/or related to the services described in this Agreement.

10. DATA PRIVACY AND SECURITY

A. CONTRACTOR, its officers, agents, owners, partners, employees, volunteers and subcontractors shall, to the extent applicable, abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (MGDPA) and all other applicable law, rules, regulations and orders relating to data or the privacy, confidentiality or security of data. For clarification and not limitation, COUNTY hereby notifies CONTRACTOR that the requirements of Minnesota Statutes section 13.05, subd. 11, apply to this Agreement. CONTRACTOR shall promptly notify COUNTY if CONTRACTOR becomes aware of any potential claims, or facts giving rise to such claims, under the MGDPA or other data, data security, privacy or confidentiality laws, and shall also comply with the other requirements of this Section.

Classification of data, including trade secret data, will be determined pursuant to applicable law and, accordingly, merely labeling data as "trade secret" by

CONTRACTOR does not necessarily make the data protected as such under any applicable law.

- B. In addition to the foregoing MGDPA and other applicable law obligations, CONTRACTOR shall comply with the following duties and obligations regarding County Data and County Systems (as each term is defined herein). As used herein, "County Data" means any data or information, and any copies thereof, created by CONTRACTOR or acquired by CONTRACTOR from or through COUNTY pursuant to this Agreement, including but not limited to handwriting, typewriting, printing, photocopying, photographing, facsimile transmitting, and every other means of recording any form of communication or representation, including electronic media, email, letters, works, pictures, drawings, sounds, videos, or symbols, or combinations thereof.

If CONTRACTOR has access to or possession/control of County Data, CONTRACTOR shall safeguard and protect the County Data in accordance with generally accepted industry standards, all laws, and all then applicable COUNTY policies, procedures, rules and directions. To the extent of any inconsistency between accepted industry standards and such COUNTY policies, procedures, rules and directions, CONTRACTOR shall notify COUNTY of the inconsistency and follow COUNTY direction. CONTRACTOR shall immediately notify COUNTY of any known or suspected security breach or unauthorized access to County Data, then comply with all responsive directions provided by COUNTY. The foregoing shall not be construed as eliminating, limiting or otherwise modifying CONTRACTOR's indemnification obligations herein.

- C. COUNTY may, in its sole discretion, grant CONTRACTOR limited access to COUNTY computer/data systems, including but not limited to COUNTY computers, networks, databases, applications and/or environments, ("County Systems") exclusively for the purposes of performing services hereunder. County Systems may be owned by COUNTY or may be licensed by COUNTY from a third party. If COUNTY grants access to County Systems, CONTRACTOR and all CONTRACTOR personnel with access to County Systems: (i) shall secure and safeguard all access and authentication information related to County Systems, including but not limited to usernames, passwords, and other applicable authentication information related to County Systems access, ("Authentication Credentials"); (ii) shall not share or distribute Authentication Credentials with any individual; and (iii) shall comply with then applicable COUNTY data practices and security policies, procedures, rules and directions when accessing and using County Systems. Compliance with such requirements is supplemental to CONTRACTOR's duty to comply with applicable law and regulations and CONTRACTOR's ordinary duty of care in such situations.

For clarification and not limitation of the foregoing, CONTRACTOR's access to County Systems shall be subject to the following: (i) CONTRACTOR shall notify all personnel with access to County Systems of the obligations imposed by this

Agreement; (ii) personnel performing on behalf of CONTRACTOR shall complete COUNTY approved data practices and security training as required by COUNTY; (iii) if CONTRACTOR utilizes its own systems, software or equipment in the performance of this Agreement, the same shall meet COUNTY's technical operating and security system requirements, including but not limited to installing and/or maintaining COUNTY approved firewalls, proxies, filters and other monitors and controls; (iv) CONTRACTOR shall immediately notify COUNTY of any known or suspected County System incidents or breaches, then comply with all responsive directions provided by COUNTY; and (v) if any CONTRACTOR personnel with access to County Systems no longer requires said access and/or is no longer performing services hereunder, CONTRACTOR shall immediately notify COUNTY and ensure that said individual no longer has access to County Systems, including but not limited to deleting, eliminating and destroying all Authentication Credentials. COUNTY may terminate, deny or revoke access to County Systems at any time and without notice. Any notice required by the foregoing shall be provided to the COUNTY Contract Administrator (as identified in the CONTRACT ADMINISTRATION provisions below).

- D. Upon expiration, cancellation or termination of this Agreement the following will apply, consistent with CONTRACTOR's record preservation requirements under Minnesota law:
- (1) At the discretion of COUNTY and as specified in writing by the Contract Administrator, CONTRACTOR shall deliver to the Contract Administrator all County Data so specified by COUNTY.
 - (2) COUNTY shall have full ownership and control of all such County Data. If COUNTY permits CONTRACTOR to retain copies of the County Data, CONTRACTOR shall not, without the prior written consent of COUNTY or unless required by law, use any of the County Data for any purpose or in any manner whatsoever; shall not assign, license, loan, sell, copyright, patent and/or transfer any or all of such County Data; and shall not do anything which in the opinion of COUNTY would affect COUNTY's ownership and/or control of such County Data.
 - (3) Except to the extent required by law or as agreed to by COUNTY, CONTRACTOR shall not retain any County Data that are confidential, protected, privileged, not public, nonpublic, or private, as those classifications are determined pursuant to applicable law. In addition, CONTRACTOR shall, upon COUNTY's request, certify destruction of any County Data so specified by COUNTY.

11. RECORDS - AVAILABILITY/ACCESS

Subject to the requirements of Minnesota Statutes section 16C.05, subd. 5, COUNTY, the State Auditor, or any of their authorized representatives, at any time during normal business hours, and as often as they may reasonably deem necessary, shall have access to and the right to examine, audit, excerpt, and transcribe any books, documents, papers, records, etc., which are pertinent to the accounting practices and procedures of CONTRACTOR and involve transactions relating to this Agreement. CONTRACTOR shall maintain these materials and allow access during the period of this Agreement and for six (6) years after its expiration, cancellation or termination.

12. SUCCESSORS, SUBCONTRACTING AND ASSIGNMENTS

CONTRACTOR binds itself, its partners, successors, assigns and legal representatives to COUNTY for all covenants, agreements and obligations herein.

- A. CONTRACTOR shall not assign, transfer or pledge this Agreement and/or the services to be performed, whether in whole or in part, nor assign any monies due or to become due to it without the prior written consent of COUNTY. A consent to assign shall be subject to such conditions and provisions as COUNTY may deem necessary, accomplished by execution of a form prepared by COUNTY and signed by CONTRACTOR, the assignee and COUNTY. Permission to assign, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement.
- B. CONTRACTOR shall not subcontract this Agreement and/or the services to be performed, whether in whole or in part, without the prior written consent of COUNTY. Permission to subcontract, however, shall under no circumstances relieve CONTRACTOR of its liabilities and obligations under the Agreement. Further, CONTRACTOR shall be fully responsible for the acts, omissions, and failure of its subcontractors in the performance of the specified contractual services, and of person(s) directly or indirectly employed by subcontractors. Contracts between CONTRACTOR and each subcontractor shall require that the subcontractor's services be performed in accordance with this Agreement. CONTRACTOR shall make contracts between CONTRACTOR and subcontractors available upon request. For clarification and not limitation of the provisions herein, none of the following constitutes assent by COUNTY to a contract between CONTRACTOR and a subcontractor, or a waiver or release by COUNTY of CONTRACTOR's full compliance with the requirements of this Section: (1) COUNTY's request or lack of request for contracts between CONTRACTOR and subcontractors; (2) COUNTY's review, extent of review or lack of review of any such contracts; or (3) COUNTY's statements or actions or omissions regarding such contracts.
- C. As required by Minnesota Statutes section 471.425, subd. 4a, CONTRACTOR shall pay any subcontractor within ten (10) days of CONTRACTOR's receipt of

payment from COUNTY for undisputed services provided by the subcontractor, and CONTRACTOR shall comply with all other provisions of that statute.

- D. CONTRACTOR shall notify COUNTY in writing if another person/entity acquires, directly or indirectly, more than fifty percent (50%) of the voting power of the shares entitled to vote for directors of CONTRACTOR. Notice shall be given within ten (10) days of such acquisition and shall specify the name and business address of the acquiring person/entity. COUNTY reserves the right to require the acquiring person/entity to promptly become a signatory to this Agreement by amendment or other document so as to help assure the full performance of this Agreement.

13. MERGER, MODIFICATION AND SEVERABILITY

- A. The entire Agreement between the parties is contained herein and supersedes all oral agreements and negotiations between the parties relating to the subject matter. All items that are referenced or that are attached are incorporated and made a part of this Agreement. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.

CONTRACTOR and/or COUNTY are each bound by its own electronic signature(s) on this Agreement, and each agrees and accepts the electronic signature of the other party.

- B. Any alterations, variations or modifications of the provisions of this Agreement shall only be valid when they have been reduced to writing as an amendment to this Agreement signed by the parties. Except as expressly provided, the substantive legal terms contained in this Agreement, including but not limited to Indemnification, Insurance, Merger, Modification and Severability, Default and Cancellation/Termination or Minnesota Law Governs may not be altered, varied, modified or waived by any change order, implementation plan, scope of work, development specification or other development process or document.
- C. If any provision of this Agreement is held invalid, illegal or unenforceable, the remaining provisions will not be affected.

14. DEFAULT AND CANCELLATION/TERMINATION

If CONTRACTOR fails to perform any of the provisions of this Agreement, fails to administer the work so as to endanger the performance of the Agreement or otherwise breaches or fails to comply with any of the terms of this Agreement, it shall be in default. Unless CONTRACTOR's default is excused in writing by COUNTY, COUNTY may upon written notice immediately cancel or terminate this Agreement in its entirety. Additionally, failure to comply with the terms of this Agreement shall be just cause for COUNTY to delay payment until CONTRACTOR's compliance. In the event of a

decision to withhold payment, COUNTY shall furnish prior written notice to CONTRACTOR.

- A. Notwithstanding any provision of this Agreement to the contrary, CONTRACTOR shall remain liable to COUNTY for damages sustained by COUNTY by virtue of any breach of this Agreement by CONTRACTOR. Upon notice to CONTRACTOR of the claimed breach and the amount of the claimed damage, COUNTY may withhold any payments to CONTRACTOR for the purpose of set-off until such time as the exact amount of damages due COUNTY from CONTRACTOR is determined. Following notice from COUNTY of the claimed breach and damage, CONTRACTOR and COUNTY shall attempt to resolve the dispute in good faith.
- B. The above remedies shall be in addition to any other right or remedy available to COUNTY under this Agreement, law, statute, rule, and/or equity.
- C. COUNTY's failure to insist upon strict performance of any provision or to exercise any right under this Agreement shall not be deemed a relinquishment or waiver of the same, unless consented to in writing. Such consent shall not constitute a general waiver or relinquishment throughout the entire term of the Agreement.
- D. This Agreement may be canceled/terminated with or without cause by COUNTY upon thirty (30) days' written notice.
- E. Upon written notice, COUNTY may immediately suspend or cancel/terminate this Agreement in the event any of the following occur: (i) COUNTY does not obtain anticipated funding from an outside source for this project; (ii) funding for this project from an outside source is withdrawn, frozen, shut down, is otherwise made unavailable or COUNTY loses the outside funding for any other reason; or (iii) COUNTY determines, in its sole discretion, that funding is, or has become, insufficient. COUNTY is not obligated to pay for any services that are provided or costs or expenses or obligations incurred or encumbered after the notice and effective date of the suspension or cancellation/termination. In the event COUNTY suspends, cancels or terminates this Agreement pursuant to this paragraph, COUNTY shall pay any amount due and payable prior to the notice of suspension or cancellation/termination except that COUNTY shall not be obligated to pay any amount as or for penalties, early termination fees, charges, time and materials for services not then performed, costs, expenses or profits on work done.
- F. CONTRACTOR has an affirmative obligation, upon written notice by COUNTY that this Agreement may be suspended or cancelled/terminated, to follow reasonable directions by COUNTY, or absent directions by COUNTY, to exercise a fiduciary obligation to COUNTY, before incurring or making further costs, expenses, obligations or encumbrances arising out of or related to this Agreement.

15. SURVIVAL OF PROVISIONS

Provisions that by their nature are intended to survive the term, cancellation or termination of this Agreement do survive such term, cancellation or termination. Such provisions include but are not limited to: SERVICES TO BE PROVIDED (as to ownership of property); INDEPENDENT CONTRACTOR; INDEMNIFICATION; INSURANCE; DUTY TO NOTIFY; DATA PRIVACY AND SECURITY; RECORDS-AVAILABILITY/ACCESS; DEFAULT AND CANCELLATION/TERMINATION; MEDIA OUTREACH; and MINNESOTA LAW GOVERNS.

16. CONTRACT ADMINISTRATION

In order to coordinate the services of CONTRACTOR with the activities of the Emergency Management so as to accomplish the purposes of this Agreement, Susan Stryk, Senior Contract Management, or successor ("Contract Administrator"), shall manage this Agreement on behalf of COUNTY and serve as liaison between COUNTY and CONTRACTOR.

Kailey Cermak shall manage the Agreement on behalf of CONTRACTOR. CONTRACTOR may replace such person but shall immediately give written notice to COUNTY of the name, phone number and email (if available) of such substitute person and of any other subsequent substitute person.

Name: Kailey Cermak, Hydrologist
Phone: 952-641-4501
Email: kcermak@minnehahacreek.org

17. COMPLIANCE AND NON-DEBARMENT CERTIFICATION

CONTRACTOR shall comply with all applicable law, conditions of any funding sources, regulations, rules and ordinances currently in force or later enacted.

- A. CONTRACTOR certifies that it is not prohibited from doing business with either the federal government or the state of Minnesota as a result of debarment or suspension proceedings. CONTRACTOR shall immediately notify COUNTY if CONTRACTOR is debarred or suspended during the term of this Agreement.
- B. CONTRACTOR shall comply with the requirements set forth in the attached Subrecipient Compliance Addendum.
- C. If the source or partial source of funds for payment of services under this Agreement is from federal or state monies or from a federal, state or other grant source, CONTRACTOR is bound by and shall comply with applicable law, rules, regulations, applicable documentation, other COUNTY directives relating to the source and utilization of such funds, and, as applicable, the Federal Award Contract Provisions Addendum.

18. RECYCLING

COUNTY encourages CONTRACTOR to have a single-sort recycling program or provide recycling service for at least three types of materials, which may include food waste. COUNTY also encourages CONTRACTOR to educate employees about the recycling program.

19. NOTICES

Unless the parties otherwise agree in writing, any notice or demand which must be given or made by a party under this Agreement or any statute or ordinance shall be in writing and shall be sent registered or certified mail. Notices to COUNTY shall be sent to the County Administrator with a copy to the originating COUNTY department at the address given in the opening paragraph of this Agreement. Notice to CONTRACTOR shall be sent to the address stated in the opening paragraph of this Agreement or to the address stated in CONTRACTOR's Form W-9 provided to COUNTY.

20. CONFLICT OF INTEREST

CONTRACTOR affirms that to the best of CONTRACTOR's knowledge, CONTRACTOR's involvement in this Agreement does not result in a conflict or potential conflict of interest with any party or entity which may be affected by the terms of this Agreement. Should any conflict or potential conflict of interest become known to CONTRACTOR, CONTRACTOR shall immediately notify COUNTY of the conflict or potential conflict, specifying the part of this Agreement giving rise to the conflict or potential conflict, and advise COUNTY whether CONTRACTOR will or will not resign from the other engagement or representation. Unless waived by COUNTY, a conflict or potential conflict may, in COUNTY's discretion, be cause for cancellation or termination of this Agreement.

21. MEDIA OUTREACH

CONTRACTOR shall notify COUNTY, prior to publication, release, or occurrence of any Outreach (as defined below). The parties shall coordinate to produce collaborative and mutually acceptable Outreach. For clarification and not limitation, all Outreach shall be approved by COUNTY, by and through its Public Relations Officer or his/her designee(s), prior to publication or release. As used herein, the term "Outreach" shall mean all media, social media, news releases, external facing communications, advertising, marketing, promotions, client lists, civic/community events or opportunities, and/or other forms of outreach created by, or on behalf of, CONTRACTOR (i) that reference or otherwise use the term "Hennepin County" or any derivative thereof; or (ii) that directly or indirectly relate to, reference, or concern the County of Hennepin, this Agreement, the services performed hereunder, or COUNTY personnel, including but not limited to COUNTY employees and elected officials.

22. MINNESOTA LAWS GOVERN

The laws of the state of Minnesota shall govern all questions and interpretations concerning the validity and construction of this Agreement and the legal relations between the parties and their performance. The appropriate venue and jurisdiction for any litigation will be those courts located within the County of Hennepin, state of Minnesota. Litigation, however, in the federal courts involving the parties will be in the appropriate federal court within the state of Minnesota.

23. COOPERATIVE PURCHASING

At the time of this Agreement: (1) Hennepin County is a signature party to the Joint Powers Purchasing Agreement (Agreement No. A131396) (the "JPA"); (2) the Minnesota Counties of Anoka, Carver, Dakota, Olmsted, Ramsey, Scott and Washington are signatories to the JPA ("Cooperative Members"); (3) if agreed upon pursuant to a separate agreement between CONTRACTOR and any Cooperative Member, the JPA allows a Cooperative Member, subject to the terms of the JPA, to purchase the same or substantially similar services based upon terms that are the same or substantially similar to those set forth in this Agreement, including but not limited to price/cost; and (4) COUNTY shall have no obligation, liability or responsibility for any order or purchase made under the contract between a Cooperative Member and CONTRACTOR.

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COUNTY ADMINISTRATOR APPROVAL

Reviewed for COUNTY by
the County Attorney's Office:

COUNTY OF HENNEPIN
STATE OF MINNESOTA

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By:

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Reviewed for COUNTY by:

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Document Assembled by:

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{ {Exh_es_:signer1:attachment:label("Attachments")} }

CONTRACTOR

CONTRACTOR warrants that the person who executed this Agreement is authorized to do so on behalf of CONTRACTOR as required by applicable articles, bylaws, resolutions or ordinances.*

By:

{ {Sig_es_:signer2:signature} }
{ {userstamp2_es_:signer2:stamp} }
{ { ttl_es_:signer2:title} }

By:

{ {Sig_es_:signer3:signature} }
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By:

{ {Sig_es_:signer4:signature} }
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{ { ttl_es_:signer4:title} }

*CONTRACTOR represents and warrants that it has submitted to COUNTY all applicable documentation (articles, bylaws, resolutions or ordinances) that confirms the signatory's delegation of authority. Documentation is not required for a sole proprietorship.

**Attachment A
Scope of Service**

BACKGROUND

The Minnehaha Creek watershed, located largely within the geographic boundaries of Hennepin County, experienced record-setting water elevations in June 2014. Following the flood, continued above average precipitation contributed to \$1 million in damage to streams in the watershed. This period of events underscored the need for multi-agency coordination and partnerships to improve understanding and decision making to adapt to climate change pressures.

DISTRICT and Hennepin County Emergency Management evaluated methods to better predict, measure, and manage flooding related issues. Through these discussions, it became clear that both parties would benefit from the implementation of continuous water-level sensors along Minnehaha Creek. One of the benefits this network could provide is real-time access to water-level conditions to better inform emergency management decisions. This benefit is consistent with the State of Minnesota’s hazard mitigation plan, approved by the Federal Emergency Management Agency (FEMA), wherein a mitigation goal is installation of early warning and communication systems using the Hazard Mitigation Grant Program.

COUNTY, in coordination with DISTRICT, selected equipment and locations that would benefit from this technology and submitted a grant proposal to FEMA. The awarded modified application identifies five stations along Minnehaha Creek to place the water-level sensors. This scope of services below documents the fund disbursement process.

SCOPE OF SERVICES

COUNTY will reimburse DISTRICT from federal grant funds for the purchase of five water-level sensors and associated equipment.

| Item | Estimate |
|---|-----------------|
| From Ott HydroMet Corp. 4 XLink500s, cables, shipping and handling | \$13,185 |
| From In-Situ, Inc. Level TROLL 500, cable, cellular, antenna, battery, shipping and handling | \$3,288 |
| Total not-to-exceed amount | \$17,500 |

DISTRICT plans to install the five water-level sensors and associated equipment at the FEMA-approved sites listed below.

| FEMA Grant ID # | Street address | Latitude | Longitude |
|-----------------|---|-------------|--------------|
| 3.1 | Meadowbrook RD & Powell, St. Louis Park | 44.929914 | -93.375749 |
| 4 | Excelsior Blvd & Louisiana Circle, St. Louis Park | 44.92694444 | -93.36222222 |
| 8 | Xerxes Ave & W 54th St, Minneapolis | 44.90527778 | -93.31888889 |
| 12 | W Lake Nokomis Pkwy. Minneapolis | 44.91527778 | -93.24222222 |
| 14 | McGinty Rd & Minnetonka Blvd, Minnetonka | 44.94138889 | -93.45500000 |

DISTRICT will own the water-level sensors. The parties agree that the data produced by the water-level sensors, owned by DISTRICT, is not “County Data” as defined in Clause 10. If a water-level sensor is damaged or stolen, there is no requirement of DISTRICT or COUNTY to replace the sensor.

DISTRICT’s plans for mutually beneficial media outreach are agreeable to COUNTY.

SUBRECIPIENT COMPLIANCE ADDENDUM

SUBRECIPIENT shall comply with the Single Audit Act, OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). SUBRECIPIENT shall maintain a system of internal control over all programs in order to demonstrate compliance with the Single Audit Act, Uniform Guidance and other pertinent laws and regulations. SUBRECIPIENT shall respond to audit findings, questioned costs or other compliance measures issues which may include taking requisite corrective action, executing necessary documents and other requirements;

If SUBRECIPIENT is a nonprofit organization, SUBRECIPIENT's signature on this Agreement assures and certifies it has met federal, state and local requirements regarding SUBRECIPIENT's financial management system.

SUBRECIPIENT is hereby notified of the following Federal Award Identification Information:

1. Subrecipient name (which must match registered name in DUNS): Minnehaha Creek Watershed District
2. Subrecipient's DUNS number (see § 200.32 Data Universal Numbering System (DUNS) number): 150731255
3. Unique Federal Award Identification Number (FAIN): 4442DRMNP00000275
4. Federal Award Date (see § 200.39 Federal award date): 9/13/2022
5. Subaward Period of Performance Start and End Date: 07/01/2023 – 09/13/2025
6. Amount of Federal Funds Obligated by this action: \$17,500
7. Total Amount of Federal Funds Obligated to the subrecipient: \$17,500
8. Total Amount of the Federal Award: \$68,256.75
9. Budget Approved by Hennepin County: \$22,752.25
10. Total Approved Cost Sharing or Matching, when applicable: \$10,948.49
11. Federal award project description, as statutory requirements for example Federal Funding Accountability and Transparency Act (FFATA): Hazard Mitigation DR-4442
12. Name of Federal awarding agency, pass-through entity (Hennepin County), and contact information for Hennepin County representative: FEMA, Hennepin County, Claire Psarouthakis, Grants Coordinator, claire.psarouthakis@hennepin.us
13. CFDA Number (Catalog of Federal Domestic Assistance) and Grant Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement: 97.039
14. Identification of whether the award is R&D: NA
R&D means Research and Development. OMB Uniform Grant Guidance defines "Research" as the systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is defined as the systematic use of knowledge or understanding gained from research.
15. Indirect cost rate for the Federal award (including if the de minimis rate is charged per § 200.414 Indirect (F&A) costs) and: 5% for Management and Administration

16. Identification of whether the award is used as loans or loan guarantees: No

As applicable, SUBRECIPIENT shall confirm in writing that SUBRECIPIENT did not expend \$750,000 or more in total federal funds in a fiscal year. If SUBRECIPIENT expends \$750,000 or more of federal funds in a fiscal year, SUBRECIPIENT shall complete financial and compliance audits in accordance with the Single Audit Act and/or OMB Uniform Grant Guidance, as applicable. SUBRECIPIENT shall cooperate fully in the following:

1. During the term of this Agreement and as necessary after the expiration of this Agreement, to ensure compliance with applicable law, SUBRECIPIENT agrees to provide an annual audit report consistent with the provisions of the Single Audit Act and/or OMB Uniform Grant Guidance in accordance with government auditing standards, as applicable, within nine (9) months after SUBRECIPIENT's fiscal year-end. The cost of an audit is not reimbursable from funds received through this Agreement.
2. SUBRECIPIENT shall provide all information requested by COUNTY and report as directed by COUNTY.

As applicable, SUBRECIPIENT shall maintain property records that include a description of the applicable property, a serial number or other identification number, the source of the property, who holds title, the acquisition date and cost of the property, the percentage of federal participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data, including the date of disposal and sale price of the property. SUBRECIPIENT shall make said records available to COUNTY within five (5) business days of COUNTY's written request.

Failure to comply with the above requirements may result in forfeiture of funds. Without limiting any other remedies available at law, COUNTY reserves the right to recover from SUBRECIPIENT the full amount of any funds found to be improperly expended or otherwise disallowed.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION INELIGIBILITY AND VOLUNTARY EXCLUSION -- LOWER TIER COVERED TRANSACTIONS:

The prospective lower tier participant (SUBRECIPIENT) certifies, by submission of this grant contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this grant contract.

Federal Award Contract Provisions Addendum

This Federal Award Contract Provisions Addendum is attached and incorporated into the foregoing agreement (the "Agreement").

Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed in the Agreement. Additionally, the term "contract" shall mean the "Agreement"; the terms "contractor", "Contractor", and "CONTRACTOR" shall mean the party identified as "CONTRACTOR" or "PROVIDER" in the Agreement; and the terms "APPLICANT" and "COUNTY" shall mean the COUNTY OF HENNEPIN, STATE OF MINNESOTA. Citations included throughout this Addendum are for guidance and not determinative.

The provisions below may be applicable pursuant to (i) applicable federal law, including 2 C.F.R., Part 200, Appendix II (see, especially, 2 C.F.R. §200.327); (ii) COUNTY's application of federal awards to this transaction; and/or (iii) the nature and cost of the transaction.

In addition to CONTRACTOR's compliance with applicable provisions, CONTRACTOR shall ensure that its subcontractors or other parties performing on CONTRACTOR's behalf comply with the applicable provisions and confirm the same with necessary provisions in its subcontracts.

1) Remedies.

The remedy provisions in the Agreement shall apply.

2) Termination For Cause and/or For Convenience.

The termination provisions in the Agreement shall apply.

3) Equal Employment Opportunity.

During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action 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 apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- B. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- C. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- D. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- E. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- F. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- G. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- H. The contractor will include the portion of the sentence immediately preceding paragraph A and the provisions of paragraphs A through H, of this subsection, in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The APPLICANT further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: provided, that if the APPLICANT so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The APPLICANT agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The APPLICANT further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the APPLICANT agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part the federal award associated with this Agreement (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such

APPLICANT; and refer the case to the Department of Justice for appropriate legal proceedings.

- 4) Davis-Bacon Act.
 - A. All transactions regarding this contract shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable.
 - B. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.
 - C. Additionally, contractors are required to pay wages not less than once a week.
- 5) Copeland Anti-Kickback Act.
 - A. Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
 - B. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as federal agencies awarding funds to COUNTY, which funds are used by COUNTY in association with this Agreement, may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
 - C. Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.
- 6) Contract Work Hours and Safety Standards Act.
 - A. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - B. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In

addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$26 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

- C. Withholding for unpaid wages and liquidated damages. The U.S. Department of Homeland Security or such other applicable agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this section.
- D. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this subsection and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this subsection.

7) Rights to Inventions Made Under a Contract or Agreement.

The parties shall comply with the requirements of 37 CFR Part 401.

8) Clean Air Act and the Federal Water Pollution Control Act.

A. Clean Air Act.

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to COUNTY and understands and agrees that COUNTY will, in turn, report each violation as required to assure notification to the federal agencies awarding funds to COUNTY, which funds are used by COUNTY in association with this Agreement, and the appropriate Environmental Protection Agency Regional Office.

- (3) The contractor agrees to include these requirements in each subcontract hereunder that exceeds \$150,000.

B. Federal Water Pollution Control Act.

- (1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to COUNTY and understands and agrees that COUNTY will, in turn, report each violation as required to assure notification to the federal agencies awarding funds to COUNTY, which funds are used by COUNTY in association with this Agreement, and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract hereunder that exceeds \$150,000.

9) Debarment and Suspension.

- A. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- B. The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C. This certification is a material representation of fact relied upon by COUNTY. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to COUNTY, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

10) Byrd Anti-Lobbying Amendment.

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

If applicable, contractors must sign and submit to the non-federal entity the certification found in APPENDIX A, 44 C.F.R. PART 18 - CERTIFICATION REGARDING LOBBYING.

- 11) Procurement of Recovered Materials.
- A. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired:
- (1) Competitively within a timeframe providing for compliance with the contract performance schedule;
 - (2) Meeting contract performance requirements; or
 - (3) At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- C. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.
- 12) Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.
- A. Contractor is prohibited from obligating or expending loan or grant funds to:
- (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment

is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (a) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (b) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

B. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

C. See Public Law 115-232, section 889 for additional information.

D. See also § 200.471.

13) Domestic preferences for procurements.

A. Contractor should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subcontracts including all contracts and purchase orders for work or products under this contract.

B. For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

DRAFT

Attachment B



Quote – Q-111851

In-Situ, Inc.
221 E. Lincoln Avenue
Fort Collins, CO 80524
U.S.A.

Tel: (800) 446-7488
Fax: (970) 498-1598
Email: sales@in-situ.com
Web: www.in-situ.com

Issued By: Andrew Luessenhop
Date: August 20, 2023
Quote Valid for 30 days

| | | | | | |
|---|-------------------------------|-------------------------------------|--|-------------------|--|
| Sales Manager Andrew Luessenhop | Customer ID C004017 | Payment Terms NET 30 DAYS | Shipping Method FedEx Ground | INCO Terms | Final Destination United States Minnesota |
|---|-------------------------------|-------------------------------------|--|-------------------|--|

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|---|
| Quote To: |
| Minnehaha Creek Watershed Dist 15320 MINNETONKA BLVD MINNETONKA, Minnesota 55345 United States |
| Attn: |
| Kailey Cermak kcermak@minnehahacreek.org (952) 471-0590 |

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|---|
| Ship To: |
| Minnehaha Creek Watershed Dist 15320 Minnetonka Blvd Minnetonka, Minnesota 55345 United States |
| Comments: |
| |

| Equipment | | | | | | |
|------------------|---|-------------------|--------------|------|------------|--------------------|
| Line | Product Description | Part Number | Unit of Sale | Qty. | Unit Price | Total Price |
| 1. | Aqua TROLL 200 Level Sensor Range - 11M, 35 ft (15 psig) | 0056010 | Each | 7 | \$1,995.00 | \$13,965.00 |
| 2. | Rugged Twist-Lock Cable, Vented, TPU, No Reel, Twist-Lock, | 0052000-01-01-07- | 25ft | 7 | \$243.75 | \$1,706.25 |
| 3. | VuLink CI (Global Cellular, does not include antenna) | 0094840 | Each | 7 | \$895.00 | \$6,265.00 |
| 4. | VuLink 4G/LTE/2G Cellular Antenna with 1.5m cable (IP67, recommended for VuLink CI) | 0043630 | Each | 7 | \$35.00 | \$245.00 |
| 5. | VuLink Lithium Battery Set (Lithium MnO2) | 0103050 | Each | 7 | \$80.00 | \$560.00 |
| Subtotal: | | | | | | \$22,741.25 |

| Quote Total | |
|--|---|
| <p><i>Tax is not normally quoted due to State & local variability. If you need to have Tax included in this quotation, please contact us.</i></p> <p><i>If your organization is a tax-exempt entity, please email or fax a copy of your tax-exempt certificate to taxcerts@in-situ.com or fax to (970) 498-1598.</i></p> <p><i>Tax rates will be based on delivery address of the order.</i></p> | <p>Sales Tax: \$0.00</p> |
| <p>For further information regarding the Warranty or Terms and Conditions, please refer to our website at http://in-situ.com/terms-conditions/</p> <p>All quoted product & service prices are in U.S. Dollars unless specifically noted otherwise.</p> | <p>Shipping: \$363.86</p> |
| <p>Total Amount (Excludes Optional Items): USD \$23,105.11</p> | |



In-Situ, Inc.
221 E. Lincoln Avenue
Fort Collins, CO 80524
U.S.A.

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Fax: (970) 498-1598
Email: sales@in-situ.com
Web: www.in-situ.com

Quote – Q-111851

Issued By: Andrew Luessenhop
Date: August 20, 2023
Quote Valid for 30 days

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