

PROFESSIONAL SERVICES
CONTRACT NUMBER 12-05 -CRM
FOR
ADMINISTRATIVE AND MANAGEMENT ASSISTANCE
BY
AND
BETWEEN
City of Crossville, Tennessee
AND
UPPER CUMBERLAND DEVELOPMENT DISTRICT

This Professional Services Contract (hereinafter referred to as "Contract"), made and entered into this 29 day of May, 2012, by and between the City of Crossville, Tennessee (hereinafter referred to as the "GRANTEE" and the Upper Cumberland Development District (hereinafter referred to as the "DISTRICT").

WITNESSETH THAT:

WHEREAS, the GRANTEE intends to perform certain services, hereinafter referred to as the "Project," with funds from the Tennessee Department of Environment and Conservation (hereinafter referred to as TDEC); and

WHEREAS the Project is further described as A GIS Storm Water Inventory Program; and

WHEREAS there are certain administrative and management functions, hereinafter identified in the "Scope of Services," associated with the Project and required under TDEC; and

WHEREAS the DISTRICT represents that it is equipped, competent, and able to undertake the administrative and management functions associated with this Project; and

WHEREAS, the GRANTEE has indicated its desire to engage the DISTRICT to render certain professional services and assistance in connection with the Project; and

NOW THEREFORE, the GRANTEE and the DISTRICT, in consideration of the premises and of the mutual covenants herein set forth, do mutually agree as follows:

CONTRACT:

SECTION I: EMPLOYMENT OF THE DISTRICT

The GRANTEE agrees to employ the DISTRICT and the DISTRICT agrees to perform the professional services required in connection with the Project as stated hereinafter in the "Scope of Services" and, for the satisfactory performance of such services, the GRANTEE agrees to pay to the DISTRICT compensation as stated herein.

SECTION II: SCOPE OF SERVICE

The DISTRICT shall perform the following administrative and management assistance services for the Project and shall do, perform and carry out same in a satisfactory and proper manner in accordance with the regulations of the funding agency or agencies:

- A. Assist the GRANTEE in establishing a filing system in accordance with grant regulations including provisions of necessary forms and checklists;
- B. Assist with preparation of all Contract documentation necessary to begin Project implementation including: Meeting contract conditions of Tennessee Department of Environment and Conservation with the GRANTEE.

- C. Assist the GRANTEE in the establishment of policies and procedures for financial management and the orderly flow of Contract funds to include:
 - 1. Procedural activities including the establishment of source documentation but not the actual preparation of contracts, payroll, time sheets, purchase orders, vouchers, invoices, requests for partial payment, and other financial management documents as required; and
 - 2. Compliance with OMB Circular A-87 in determining allowable/non-allowable Project expenditures.
- D. Assist the GRANTEE with preparation of Requests for Payment to TDEC.
- E. Provide assistance to the GRANTEE in the preparation of any budget and/or program amendments.
- F. Provide a representative during any scheduling monitoring visits conducted by TDEC, and will provide assistance in responding to any comments made during these visits.
- G. Provide assistance to the GRANTEE on any written reports to TDEC during the course of the grant.
- H. Provide assistance in close-out documents.
- I. Conduct regularly scheduled program visits with the GRANTEE and, at the same time, will review all activities outlined in this Contract. DISTRICT staff will be available to make other on-site visits at the request of the GRANTEE or TDEC.

SECTION III: GRANTEE'S RESPONSIBILITIES

The GRANTEE shall provide to the DISTRICT complete and full information as may be required and necessary for the DISTRICT to fulfill the Scope of Services. The GRANTEE shall:

- A. Bear all costs incidental to compliance with the requirements of this Project.
- B. Designate, in writing, a person to act as the GRANTEE'S local representative.
- C. Provide the DISTRICT with all available information, which is pertinent to the Project.
- D. Guarantee access to the Project site and make all provisions for the DISTRICT to enter upon public and private lands as required to perform surveys, inspections, or other work essential to the development of the Project.
- E. Give thorough considerations to all documents presented by the DISTRICT, and inform the DISTRICT of all decisions within a reasonable time so as not to delay the timely completion of this Project.
- F. Hold promptly all required special meetings, serve all public and private notices, receive and act upon all protests and fulfill all requirements necessary in the development of the Project and pay all costs incidental thereto.
- G. Furnish approvals and permits from all government authorities having jurisdiction over the Project, and such approvals and consents from others as may be necessary for the completion of the Project.
- H. Comply with all applicable federal, state, and local laws and regulations as they relate to this Project.

SECTION IV: TIME OF PERFORMANCE

The GRANTEE and the DISTRICT agree that the term of this Contract shall be from the date of execution of the Contract by both parties to the final acceptance of the TDEC Program Compliance Close Out.

SECTION V: INDEPENDENT CONTRACTOR STATUS

- A. The DISTRICT is skilled, trained, knowledgeable, and experienced in the area of grant administration and management and in the requirements of state agencies such as the Tennessee Department of Environment and Conservation. The DISTRICT is offering its services under this Contract as an independent contractor to the GRANTEE. In determining the existence of the DISTRICT'S independent contractor status, the common law right to control shall apply. It is understood and agreed by the DISTRICT and the GRANTEE that the DISTRICT is and shall be viewed, treated and held out to be an independent contractor. As such the DISTRICT shall be responsible for any federal, state, and local taxes applicable to payment hereunder. The DISTRICT is not an employee or agent of the GRANTEE and is not eligible nor will receive any benefits through the GRANTEE, including without limitation federal, social security, health or dental or prescription of life insurance benefits, credit union or deferred compensation plans, and annual and sick leave benefits.
- B. The GRANTEE as part of this Contract will not do, require, provide, or furnish any of the following:
1. Instruction, training, supervision, oversight, control or direction in the modes, ways, methods, details, manner, or means of how the DISTRICT is to do the work or performs services under this Contract. The DISTRICT'S means of performance of this Contract are within the DISTRICT'S exclusive control.
 2. A schedule or routine of work except final completion date on assigned work, meetings, or projects.
 3. Infringe or inhibit the DISTRICT'S right and ability to employ others in assisting the DISTRICT in the performance of this Contract except that the DISTRICT warrants to the GRANTEE that it will adhere to the provisions of the non-discrimination and non-financial interest's provisions of this Contract.
 4. That the DISTRICT will work exclusively for the GRANTEE.
 5. Hold out, present, or imply that the DISTRICT is an agent, representative, or employee of the GRANTEE to others.
- C. All work performed by the DISTRICT under this Contract shall be considered work made for hire and shall be the property of the GRANTEE.

SECTION VI. COMPENSATION

For services rendered under Section II, the GRANTEE shall reimburse, compensate, and remunerate to the DISTRICT the sum of:

Three Thousand Five Hundred and 00/100 Dollars (\$3,500.00)

This maximum amount of reimbursement, compensation and remuneration shall be approved by TDEC. The said compensation shall be for the DISTRICT staff direct and indirect labor costs, general and administrative overhead costs, and travel expenses. This said maximum amount shall not be exceeded except as may be authorized by written amendment hereto and agreed upon by the GRANTEE, TDEC, and the DISTRICT. The said compensation shall also be for all reviews and reports.

Nothing contained herein shall be constructed to limit or otherwise effect any local membership contributions/dues normally remitted to the DISTRICT by the GRANTEE for services rendered outside the scope of this Contract.

The GRANTEE shall make periodic payments to the DISTRICT at intervals of no more than once per month, upon receipt of an invoice for services.

SECTION VII. OWNERSHIP OF WORK PRODUCT/ASSIGNMENT OF PRODUCT RIGHTS

- A. All work performed by the DISTRICT under this Contract shall be considered work made for hire and shall be the property of the GRANTEE. All work products including text, maps, calculations, and exhibits produced by the DISTRICT in the performance of this Contract shall be owned by the GRANTEE and, on completion or termination of the Contract, the DISTRICT shall deliver these materials to the GRANTEE.
- B. The DISTRICT hereby assigns to the GRANTEE all rights, title and interest, including but not limited to copyright rights, in all notes, data, reports, computer programs and documentation, and other materials resulting from his/her work under this Contract.

SECTION VIII. TERMS AND CONDITIONS

A. Termination of Contract for Cause

If, through any cause, either the DISTRICT or the GRANTEE shall breach this Contract by failing to fulfill in a timely and proper manner its obligations under this Contract or by violating any of the covenants, agreements, or stipulations of this Contract, the non-breaching party may terminate this Contract. The party seeking termination shall have the right to terminate this Contract by giving written notice to the other party of such termination and specifying the reason for the termination and the effective date thereof. This written notice shall be delivered to the breaching party at least five days before the effective date of the termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, and maps prepared under this Contract shall be turned over to the GRANTEE and become its property and the DISTRICT shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder and this shall be the sole remedy available to the GRANTEE and the DISTRICT.

B. Termination for Convenience of GRANTEE

The GRANTEE may terminate this Contract at any time by giving at least ten (10) days notice in writing to the DISTRICT. If the Contract is terminated by the GRANTEE as provided herein, the DISTRICT will be paid for the time provided and expenses incurred up to the termination date. If this Contract is terminated due to the fault of the DISTRICT, Paragraph A hereof, relative to termination shall apply.

C. Changes

The GRANTEE may, from time to time, request changes in the scope of the services of the DISTRICT to be performed hereunder. Such change, including any increase or decrease in the amount of the DISTRICT'S compensation, which are mutually agreed upon by and between the GRANTEE and the DISTRICT, shall be incorporated in written amendments to this Contract. Any increases in compensation to the DISTRICT due to such an amendment in excess of the Contract amount as stated in Section VI, Compensation, of this Contract shall be first approved by TDEC prior to the written amendment's execution.

D. Personnel

1. The DISTRICT represents that it has, or will secure at its own expense, all personnel required in performing the Scope of Services under this

Contract. Such personnel shall not be employees of or have any contractual employment relationship with the GRANTEE or TDEC.

2. All of the services required hereunder will be performed by the DISTRICT staff and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.
3. None of the work or services covered by this Contract shall be subcontracted without the prior written approval of the GRANTEE. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Contract.

E. **Assignability**

The DISTRICT shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment), without the prior written consent of the GRANTEE thereto: provided, however, that claims for money by the DISTRICT from the GRANTEE under this Contract may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the GRANTEE.

F. **Reports and Information**

The DISTRICT, at such times and in such forms as the GRANTEE may require, shall furnish the GRANTEE such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Contract.

G. **Records and Audits**

The DISTRICT shall maintain accounts and records, including personnel, property and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by the GRANTEE to assure proper accounting for all Project funds, both federal and non-federal shares. These records will be made available for audit purposes to the GRANTEE or any authorized representatives, and will be retained for three years after the expiration of this Contract unless permission to destroy them is granted by the GRANTEE.

H. **Findings Confidential**

To the extent permitted by law, all reports and information concerning a person's financial or personal data or a business' financial or personnel data prepared or assembled by the DISTRICT under this Contract are confidential and the DISTRICT agrees that they shall not be made available to any individual or organization without the prior written approval of the GRANTEE.

I. **Copyright**

No report, maps, or other documents produced in whole or in part under this Contract shall be the subject of an application for copyright by or on behalf of the DISTRICT.

J. **Compliance with Local Laws**

In fulfilling their obligations under this Contract, the parties shall comply with all applicable laws, ordinances and codes of the state and local governments.

K. **Equal Employment Opportunity, Civil Rights Act of 1964; Section 109 of the Housing and Community Development Act of 1974; Section 3 Compliance In The Provision of Training, Employment and Business Opportunity**

During the performance of this Contract, the parties to this Contract agree as follows:

1. **Equal Employment Opportunity**

- a. The parties will not discriminate against any employee or applicant for employment because of handicap and/or disability, age, race, creed, religion, sex, color or national origin, or any other classification protected by federal and/or Tennessee state constitutional and/or statutory law. The parties will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their handicap and/or disability, age, race, creed, sex, religion, color, or national origin, or any other classification protected by federal and/or Tennessee state constitutional and/or statutory law. Such actions 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 parties agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
- b. The parties will, in all solicitation or advertisement for employees placed by or on behalf of the parties, state that all qualified applicants will receive consideration for employment without regard to handicap and/or disability, age, race, creed, color, sex, national origin or religion or any other classification protected by federal and/or Tennessee state constitution and/or statutory law.
- c. The parties will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Contract so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.
- d. The parties will comply with all provisions of Executive Order 11246 of September 24, 1965, and by the rules, regulations and relevant orders of the Secretary of Labor.
- e. The parties will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the parties, USDA Rural Development and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- f. In the event of the parties' non-compliance with the equal opportunity clauses of this Contract or with any of such rules, regulations or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the parties may be declared ineligible for further government 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.
- g. The parties will include the provisions of paragraphs a. through g. 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 parties will take such action with respect to any subcontract or purchase order as either party may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event the parties become involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the parties, the parties may request the United States to enter into such litigation to protect the interests of the United States.

2. **Civil Rights Act of 1964**

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

3. **Section 109 of the Housing and Community Development Act of 1974**

No persons in the United States shall on the ground of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

- a. The parties to this Contract will include this Section 3 clause in every subcontract for work in connection with the Project and will, at the direction of the applicant for or a recipient of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The parties will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.
- b. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the Contract, shall be a condition of the federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its contractors and subcontractors, its successors and assigns to those sanctions specified by the grant or loan agreement or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

L. **Warranty of Non-Financial Interest and Non-Payment**

The DISTRICT warrants that no part of the funds received by the DISTRICT, in the performance of this Contract shall be paid directly or indirectly to an employee or official of the GRANTEE or the State of Tennessee or the federal government as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor, or consultant to the DISTRICT in connection with any work, contemplated or performed by the DISTRICT relative to this Contract.

M. **Federal Lobbying Disclosure Assurances**

The parties certify, to the best of their knowledge and belief that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the parties, to any person for influencing or attempting to

influence an officer or employee of any agency, a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement; and

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer, or employee of Congress, in connection with a federal contract, grant, loan, or cooperative agreement, the parties shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

N. Drug Free Work Place

The parties certify that they will continue to be drug free workplaces and will comply with the provisions of the Drug Free Workplace Act of 1988.

O. Limitation of Liability

1. The GRANTEE, being a political subdivision of the state, is governed by the provisions of the Tennessee Government Tort Liability Act, *Tennessee Code Annotated*, Sections 29-20-101 *et. seq.*, for causes of action sounding in tort. Further, no contract provision requiring a Tennessee political entity to indemnify or hold harmless the DISTRICT beyond the liability imposed by law is enforceable because it appropriates public money and nullifies governmental immunity without the authorization of the General Assembly.
2. It is expressly agreed by the parties that the DISTRICT shall not have or assume any responsibility for information or data obtained from other sources or generated by the DISTRICT from data, maps, or other information available to the DISTRICT which is associated with or included in the Environmental Review Record as it pertains to wetlands or in any construction related activities or effects of construction related activities of this Project to wetlands. To the extent permitted by law, the GRANTEE agrees to indemnify and hold harmless the DISTRICT, its officials, member governments and its employees from any and all claims, demands, actions or cause of action of whatsoever nature or character, damages, losses and expenses, including but not limited to attorney fees, arising out of any construction related activities or effects of construction related activities of this Project to wetlands and other habitat, plants, and animals protected by either state or federal laws or regulations.
3. To the extent permitted by law, the GRANTEE agrees to indemnify and hold harmless the DISTRICT, its member governments, its officers and employees from all claims, losses, or suits occurring or resulting to any person, firm, corporation or other entity which may be injured or damaged as a result of acts or omissions of the GRANTEE, its agents or contractors in construction of the Project.
4. The GRANTEE agrees that in the event the DISTRICT deems it necessary to take legal action or to defend itself in a legal action, such action arising from or resulting out of this Contract, the GRANTEE shall compensate the DISTRICT for its reasonable attorney fees and costs for such litigation.

P. Interest of DISTRICT and Employees, Member of GRANTEE, Other Local Public Officials

1. The DISTRICT covenants that it presently has no interest and shall not acquire interest, direct or indirect, in the Project area or any parcels

therein or any other interest which would conflict in any manner or degree with the performance of the services hereunder. The DISTRICT further covenants that in the performance of this Contract, no person having any such interest shall be employed.

2. The GRANTEE covenants that no member of the governing body of the GRANTEE and no other officer, employee, or agent of the GRANTEE who exercises any functions or responsibilities in connection with the planning and carrying out of the Project, shall have any personal financial interest, direct or indirect, in this Contract; and the GRANTEE shall take appropriate steps to assure compliance.
3. The GRANTEE covenants that no member of the governing body of the locality and no other public official of such locality, who exercises any functions or responsibilities in connection with the planning and carrying out of the Project, shall have any personal financial interest, direct or indirect, in this Contract; and the GRANTEE shall take appropriate steps to assure compliance.

- Q. This Contract shall be governed by laws of the State of Tennessee.
- R. This Contract entered into in Cumberland County, State of Tennessee.
- S. This Contract shall not be binding upon the parties until it is executed by the duly authorized officials of the parties.
- T. Should any provision of this Contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Contract.

IN WITNESS WHEREOF, the parties hereto have made and executed this Contract as of the day and year first above written.

City of Crossville, Tennessee

BY: _____
NAME: _____
TITLE: _____

UPPER CUMBERLAND DEVELOPMENT DISTRICT

BY: Earl L. Carwile
NAME: EARL L. Carwile
TITLE: Int. Executive Director