

## CONSULTING AGREEMENT AND AUTHORIZATION TO PROCEED

This Agreement is between **ECOSYSTEM PLANNING AND RESTORATION, PLLC (EPR)**, a Texas based limited liability corporation, with an office at 204 Stone Ridge Blvd. Asheville, NC 28804 and ~~Wetland and Stream Restoration Services, LLC~~ ("**CLIENT**"), of 329 North Main Street, Crossville, TN 38555.

CITY OF CROSSVILLE, TENNESSEE

1. EPR agrees to perform the services described in its attached SCOPE OF WORK (Attachment A), including any attachments and amendments ("SERVICES").

2. CLIENT authorizes EPR to perform these SERVICES for the following project: City of Crossville Water Supply Project – Phase II Functional Loss Determination. The effective period of this Agreement begins on the date that the contract is signed and executed by both parties and ends two years after the date of contract execution.

3. EPR is willing to perform the SERVICES in exchange for the following compensation. (Select one option below):

CLIENT will pay a lump sum amount of \$128,360.00

CLIENT will pay based on the attached rate schedule (Attachment B) with a not-to-exceed amount of

4. **Billing:** EPR will submit invoices to CLIENT on a monthly basis. Such invoices shall only include unpaid amounts for services actually performed prior to the date of the invoice. CLIENT recognizes that timely payment is a material part of this Agreement. Each invoice is due and payable within thirty (30) calendar days of the received date of the invoice. CLIENT will pay an additional charge of one and one-half percent (18% annually) per month not to exceed the maximum rate allowed by law for any payment received by EPR more than thirty (30) calendar days from the date of the invoice. CLIENT will pay when due that portion of invoice, if any, not in dispute. If CLIENT fails to pay any undisputed invoiced amounts within thirty (30) calendar days of the date of the invoice, EPR may suspend its performance or terminate this Agreement without incurring any liability to CLIENT and without waiving any other claim against CLIENT. EPR will provide a monthly project summary with each invoice detailing the work completed, schedule changes, and other project issues. Invoices and Project Summaries will be sent to the Client PM electronically.

5. **Special Provisions:** NONE

6. **Standard of Care:** EPR will perform the Services in accordance with the standards of care and diligence normally practiced by consulting firms performing services of a similar nature in the same locale.

7. **Indemnity / Limitation of Liability:** To the fullest extent permitted by law, CLIENT and EPR (1) waive against each other, and the other's employees, officers, directors, agents, insurers, and partners any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that EPR's total liability to CLIENT under this Agreement shall be limited to \$1,000,000.

8. **Insurance:** During the period that Services are performed under this Agreement, EPR will maintain the following insurance: (1) Workers' Compensation coverage in accordance with

the laws of the states having jurisdiction over its employees engaged in the Services and Employer's Liability Insurance (limit of \$1,000,000 each occurrence.); (2) Commercial General Liability Policy with a limit of 1,000,000 per occurrence and a \$2,000,000 aggregate; and (3) Professional Liability coverage with a \$1,000,000 limit on each claim. Client agrees EPR will not be liable for any loss, damage, or liability arising out of this Agreement beyond the coverage, and conditions of such insurance with limits as stated above. EPR will provide proof of insurance to the Client upon execution of this agreement.

9. Hazardous Substances/Hazardous Waste: CLIENT represents that if CLIENT knows or has reason to suspect that hazardous substances or pollution may exist at the project site, CLIENT has fully informed EPR. In the event EPR encounters hazardous substances or contamination significantly beyond that originally represented by CLIENT, EPR may suspend its Services and enter into good faith renegotiation of this Agreement. CLIENT acknowledges that EPR has no responsibility as a generator, treater, storer, or disposer of hazardous or toxic substances found or identified at a site and CLIENT agrees to defend, indemnify, and hold harmless EPR, from any claim or liability, arising out of EPR's performance of work under this Agreement and made or brought against EPR for any actual or threatened environmental pollution or contamination except to the extent that EPR has negligently caused or contributed to any such pollution or contamination. This indemnification includes reasonable attorney fees and expenses incurred by EPR in defense of such claim.

10. Documents and Records: CLIENT acknowledges that EPR's reports, boring logs, field data, field notes, laboratory test data, calculations, estimates and other similar documents ("Records") are instruments of professional service, not products. All Records EPR prepares under this Agreement shall be the property of CLIENT. CLIENT will not use any EPR data or report for any purpose other than its original purpose as defined in the SCOPE OF WORK. CLIENT has no rights to incomplete or partial data. EPR will provide all records to CLIENT and retain copies of the Records for a period of three (3) years following completion of this project.

11. Acknowledgment of Risk: <sup>NOT APPLICABLE</sup> ~~CLIENT acknowledges that ecosystem restoration, including but not limited to stream restoration, is a dynamic process that contains project performance risk. As such, projects may require a range of maintenance activities for years after construction. CLIENT agrees that EPR cannot guarantee the success of a project in terms of stability, functional improvement, maintenance, quantity of mitigation credits, or any other performance standard.~~

12. Change Orders: EPR will treat as a change order any written or oral order (including directions, instructions, interpretations or determinations) from CLIENT which request changes in the Services. EPR will give CLIENT notice within ten (10) days of the change order of any resulting increase in fee. Client must consent to fee increase in writing for the change order to become a part of this Agreement.

13. Third-Party Rights: Except as specifically stated in this Agreement, this Agreement does not create any rights or benefits to parties other than CLIENT and EPR.

14. Assignment/ Status: The CLIENT will not delegate, assign, sublet, or transfer any interest in this Agreement without the written consent of EPR. EPR is an independent contractor and not the agent or employee of CLIENT.

15. Termination: Either party may terminate the Services with or without cause upon thirty (30) days advance written notice. If Client terminates without cause, CLIENT will pay EPR costs incurred, non-cancelable commitments, and fees for services actually performed prior to the date

of notice of termination and through demobilization, including any cancellation charges of vendors and subcontractors.

16. Complete Agreement: The Parties acknowledge this Agreement, including the Proposal and any Attachments constitute the entire Agreement between them. Unless stated otherwise in this Agreement, this Agreement may not be modified except in a writing signed by both parties. The parties agree that Tennessee law governs this Agreement and any dispute involving the Agreement. The Parties agree that the venue for any dispute, actions, or proceedings between the Parties relating to this Agreement shall be in Davidson County, Tennessee. The Party that prevails in such dispute actions or proceedings shall be entitled to recover from the other Party all of the prevailing Party's reasonable attorneys' fees, expert fees and court or arbitration costs.

CLIENT confirms reading this document in full. This Agreement when executed by EPR is an offer to perform the services, open for acceptance within 30 days. This Agreement becomes effective on the date CLIENT signs below.

CLIENT – City of Crossville, Tennessee

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Ecosystem Planning and Restoration, LLC

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **ATTACHMENT A - SCOPE OF WORK**

### **Meadow Park Lake Water Supply Project – Phase II Functional Loss Determination**

In response to the Request for Fee Proposal to Perform Phase II of the Baseline Environmental Assessment for the City of Crossville Water Supply Project, Ecosystem Planning and Restoration (EPR), is pleased to present this scope of work to evaluate streams that will be impacted by raising the water level in Meadow Park Lake, near the City of Crossville, Tennessee. This scope of work builds upon Phase I and includes tasks to provide Functional Loss Determinations for all stream reaches that will be impacted by the raising of the Meadow Park Lake Dam.

The following is a brief description of the services and deliverables that will be provided during Phase II efforts.

#### **1. DATA COLLECTION**

EPR will assess the project streams to evaluate functional loss from the proposed raising of the Meadow Park Lake dam. Data collection will follow the methods provided in the Rapid Data Collections Methods document (TDEC, 2019). The Tennessee Debit Tool, as described in the TDEC 2019 TN Stream Mitigation Guidelines (DWR-NR-G-01), will be used to evaluate and calculate functional loss. All required data will be collected, except physicochemical and biological parameters (Option 2).

#### **2. DATA PROCESSING AND REPORTING**

EPR will process the field collected data and produce summaries that detail the existing functional condition of the site streams. EPR will use the collected data as well as watershed and land use data, as inputs to the TN Debit Tool to determine the debits (required mitigation credits) for each of the impacted stream reaches. Two separate TN Debit Tool workbooks will be developed for each stream. The same functional parameter inputs will be used for both workbooks. Only the stream lengths will change. These lengths will be based upon BDY's approved HD and provided by BDY. The two separate lengths will correlate with the elevation of the existing spillway (1818.2') to the top of the existing dam (1827.3') and from the top of the existing dam (1827.3') to the proposed spillway elevation (1836.5').

A Functional Loss Memorandum will be developed that documents the data collection efforts and summarizes the results. All field data sheets, field notes, workbooks, cross sections, etc. will be documented and provided for each assessed stream reach and will include representative photographs. Existing Conditions Workbooks, Debit Calculator, and Project Assessment (from TN Debit Tool) will be included as appendices to the Functional Loss Memorandum. TN Debit Tool EXCEL files will also be provided to the CLIENT.

#### **3. REGULATORY MEETING AND REVISIONS**

EPR anticipates one on-site regulatory meeting with the USACE, TDEC and others to review the findings from the data collection, processing, and reporting tasks.

EPR will address one round of comments from the regulatory agencies regarding the Functional Loss Memorandum including updating data in the TN Debit Tool if required.

EPR will provide information to Client in electronic format – hard copies will not be provided.

## **ASSUMPTIONS**

The following assumptions have been used to develop the preceding scope of work:

- The streams that are in the approved HD prepared by BDY Environmental (3/13/21) are included as part of this work excluding WC's 3, 5, 11, 15, 24, and 43. The total number of stream reaches to be assessed is 41. If additional reaches are required, a change in fee may be required.
- Three-person field crews will be utilized to perform the assessments in a safe and efficient manner. One or two field crews will be utilized.
- Boats will be provided to EPR for their use during the field assessments.
- The upper and lower elevation limits of streams that will be impacted will be broken into two separate groups. These groups are the elevation of the existing spillway (1818.2') to the top of the existing dam (1827.3') and from the top of the existing dam (1827.3') to the proposed spillway elevation (1836.5'). Topographic data to be used to determine the locations of these elevations along the impacted streams will be provided to EPR.
- Georeferenced shapefiles developed by BDY Environmental as part of the approved HD showing locations of streams will be utilized for stream lengths entered into the TN Debit Tool.
- All streams will be assigned a Tier 6 Impact Severity Tier.
- Physicochemical and Biology data will not be collected (Option 2). Standard scores will be utilized in the TN Debit Tool for Physicochemical and Biology Functional Categories. This is due to the relatively undisturbed watershed of most of the impacted streams. It is assumed that these parameters would score reasonably well, and the costs associated with the data collection would outweigh any potential reduction in required mitigation credits. If the Client request that Physicochemical and Biology data be collected along with the required Hydrology, Hydraulics, and Geomorphology data (Option 1), EPR will subcontract with a qualified consultant. A change in fee will be required if Option 1 is requested.
- One on-site regulatory meeting is included as part of this scope. If additional meetings are requested, a change in fee may be required.
- Permitting is not included as part of this scope.
- Development of a mitigation plan is not included as part of this scope.

## **COST ESTIMATE**

The total lump sum cost for this work shall be **\$128,360.00**. EPR will submit monthly invoices to Client on a Lump Sum/Percent Complete basis as set forth in the Consulting Agreement and Authorization to Proceed. Tasks 1 and 2 are expected to be completed by September 30, 2022. Task 3 will depend on regulatory agency schedules. The schedule also assumes full notice-to-proceed on the work on or before June 3, 2022.

<b><u>Task</u></b>	<b><u>Proposed Fee</u></b>
1. Data Collection	\$96,040.00
2. Data Processing and Reporting	\$23,040.00
3. Regulatory Meeting and Revisions	\$9,280.00
<b>Total</b>	<b>\$128,360.00</b>