

**CONSULTANT AGREEMENT  
BETWEEN  
THREE RIVERS PARK DISTRICT  
AND  
WSB & Associates, Inc.**

This Agreement, made as of the 6<sup>th</sup> day of November, 2023, by and between Three Rivers Park District, hereinafter called the "Park District," and WSB & Associates, Inc. dba WSB, hereinafter called the "Consultant."

Whereas, the Park District intends to provide shoreline stabilization along the banks of the Mississippi River at Mississippi Gateway Regional Park, and

Whereas, the Park District desires to enter into an agreement with the Consultant for professional services necessary to prepare Final Plans and provide Bidding Services for the aforementioned project;

Now, therefore, in addition to the services outlined below, the attached Consultant Scope of Services is made part of this Agreement. The Park District and the Consultant, in consideration of the premises and agreements herein contained, agree as follows:

A. Scope of Services - Consultant

1. Basic Services

- a. Refer to attached Consultant Scope of Services, **Tasks 1, 2, 3, and 4.**
- b. The Consultant shall participate in meetings and work sessions as may be required with Park District staff, Committees and Board.

2. Additional Services

The Consultant may provide, if specifically requested and authorized by the Park District, additional services not covered in previous paragraphs. In the event of a claim made on the project by a Contractor, the Consultant shall provide such services as the Park District may reasonably request relating to said claim.

B. Standard of Care

1. Consultant shall use reasonable care in providing all services called for by this contract. Consultant shall exercise usual and customary professional care in its efforts to comply with and perform the Services in accordance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards and policies including all applicable human rights laws in effect at the time project documents are completed. Consultant shall notify the Park District if, for any reason, the Park District's requirements for the project cannot be met prior to the Park District incurring any expense or liability for work that will not achieve the requirements of the Park District.
2. The Consultant shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Work.

3. The Consultant represents that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities to provide the Services.

C. Park District Responsibilities

1. The Park District will make available:
  - a. Access to the site during normal hours or at other times as arranged.
  - b. Designation of a project representative who will be the contact for all primary communications with the Consultant.

D. Fees for Professional Services

1. For the Consultant's basic services as described in paragraphs A1 and attached Scope of Services (October 13, 2023) made part of this Agreement, the fee for this work will be hourly not-to-exceed amount of \$56,477, plus reimbursable expenses as follows:
  - a. Reimbursable expenses in the estimated amount of \$8,600, in addition to the above fee shall include, without mark-up, mileage (at the approved IRS rate), long-distance telephone calls, reproduction, permits, postage, photographic film and processing, soil borings and tests or other actual, out-of-pocket expenses as may be necessary to the project and approved by the Park District. Copies of these expenses shall be included in Consultant's invoices.
  - b. Reimbursable expenses shall remain in effect for the duration of the Work performed by the Consultant.
2. For additional services, as described in paragraph A2, fees shall be based on the hourly rates in accordance with the schedule submitted as part of the RFQ process for the Park District Consultant pool.
3. Payments to the Consultant will be made in proportion to services performed and will be paid within 30 days of receipt of billing.

E. Term, Termination, Successors and Assigns

1. Term of this Agreement shall be concurrent with the work authorized.
2. Termination of Agreement:
  - a. As this project is financed by public funds, the Park District desires to build it in the most economical fashion. If at any time it appears to the Consultant that the completion of this project will exceed the estimated construction budget, the Consultant shall immediately notify the Park District of that fact and shall not perform further services until notified to do so by the Park District.
  - b. This Agreement may be terminated by either party if the other violates or is in default on a material portion thereof and following 15 days written notice fails to correct the violation or default.

- c. Notwithstanding the foregoing, the Park District may at any time terminate the Agreement. If the project is terminated, the Consultant shall be compensated for time and materials already provided and in accordance with the limits provided in paragraph D above. In that event, after receipt of notice from the Park District, the Consultant will render no further services for the development of the project.
- d. In the event the Agreement is terminated prior to normal completion, upon payment for services provided, the Consultant will deliver to the Park District copies of all plans, specifications and drawings that have been prepared for the project.

### 3. Independent Consultant/Conflict of Interest

It is the intention and understanding of the Parties that the Consultant shall be an independent consultant and that the Park District shall be neither liable nor obligated to pay Consultant sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Consultant shall pay all income and other taxes due. Industrial or any other insurance that is purchased for the benefit of the Park District, regardless of whether such may provide a secondary or incidental benefit to the Consultant, shall not be deemed to convert this Agreement to an employment contract. It is recognized that Consultant may be performing professional services during the Term for other parties. Such performance of other professional services shall not conflict with or interfere with Consultant's ability to perform the Services defined by this Agreement. Consultant agrees to resolve any such conflicts of interest in favor of the Park District.

### 4. Consultant Responsible for Taxes

The Consultant shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

### F. Consultant Records, Documents and Insurance

- 1. The Consultant shall maintain time records, calculations and research notes in legible form. The Consultant will promptly make such documents available to the Park District upon request.
- 2. Upon project completion and prior to requesting final payment from the Park District, the Consultant shall submit final deliverables to the Park District meeting the following content and format requirements, where applicable.
  - a. Record drawings and specifications shall be inclusive of those documents issued by the Consultant during the bidding phase and revised by the Consultant during the construction phase, and shall be reflective of the work actually performed, as prepared, observed, and documented by the Consultant and/or recorded by the Consultant and subsequently verified by the Consultant during the execution of the Agreement.
    - i. Drawings shall include electronic sets of record project drawings: one sheet set in Portable Document Format (PDF), and one set of electronic drawing file(s) in AutoCAD Drawing Format (DWG) and/or Revit (RVT) with plan-view model space features geographically referenced into the horizontal coordinate

system utilized by the project, typically county ground coordinates or Universal Transverse Mercator coordinate system (UTM).

- ii. Specifications shall include an electronic set of project specifications in Portable Document Format (PDF), with revisions, amendments, and record notations clearly labeled.
  - b. The Park District shall have full rights to reproduce works under this Agreement in whole or in part.
- 3. The plans and specifications prepared under this Agreement shall become the property of Park District upon completion of the work and payment in full of all monies due Consultant. Park District shall not reuse or make any modification to plans and specifications without the written consent of Consultant, provided however, that consent shall not be unreasonably withheld nor shall any additional fee be requested by Consultant. Park District agrees to the fullest extent permitted by law, to indemnify and hold the Consultant harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs), arising or allegedly arising out of any unauthorized reuse or modification of the plans and specifications by the Park District.
- 4. Insurance
  - a. The Consultant shall carry, as a minimum, the following insurance in such forms and with a carrier rated A.M. Best "A:VII":
    - i. Workers' Compensation:  
Workers' compensation and employer's liability insurance in amounts required by the laws of the State of Minnesota.
    - ii. Commercial General Liability Insurance:  
Bodily Injury and Property Damage Liability:  
\$500,000 per claimant and \$1,500,000 per occurrence.
    - iii. Commercial Automobile Liability Insurance:  
\$500,000 per claimant and \$1,500,000 per occurrence.
    - iv. Professional Liability Insurance:  
Professional liability insurance with limits of liability not less than \$1,000,000 per claim and \$2,000,000 policy aggregate limits, for damages sustained by reason of or in the course of operation under this Agreement, whether occurring by reason of negligent or otherwise wrongful acts, errors or omissions of the Consultant.
  - b. Certificates of Insurance
    - i. The Park District shall be named as additional insured on all such insurance policies, with the exception of professional liability and workers' compensation coverage(s). The insurance provided to the additional insured shall be primary. Consultant shall provide Certificates of Insurance and an Additional Insured endorsement, concurrent with the execution of this Agreement, evidencing such coverage and, at Park District's request, furnish the Park District with copies of all insurance policies and with evidence of payment of premiums or fees of such policies. All insurance

policies shall contain a clause of endorsement providing that they may not be terminated during the Term of this Agreement, except after thirty (30) days prior written notice to the Park District. Consultant shall also notify the Park District thirty (30) days prior to any reduction in policy limits or a change in insurance providers for any of Consultant's insurance policies required under this Agreement. If Consultant's insurance policies are "claims made" or "claims paid," Consultant shall be required to maintain tail coverage for a minimum period of two (2) years from the date this Agreement is actually performed. Consultant's failure to maintain such insurance policies shall be grounds for the Park District's immediate termination of this Agreement.

ii. Consultant shall present a current Certificate of Insurance with the Park District named as an additional insured on its general liability coverage.

c. Insurance Limits

The insurance limits stated above are not intended to be an indication of exposure nor are they limitations on indemnification.

d. Expiration/Termination of Insurance

The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

G. Indemnification

1. Consultant Indemnification

The Consultant agrees to the fullest extent permitted by law to indemnify and hold the Park District, its elected officials, officers and employees harmless from any and all claims, demands, losses, actions and liabilities (including costs and reasonable attorney fees) to or by any and all persons or entities to the extent caused by the negligent or otherwise wrongful acts, errors or omissions of the Consultant, its partners, shareholders, or employees.

2. Park District Indemnification

The Park District agrees to indemnify and hold the Consultant, its officers, directors, shareholders, partners and employees harmless from any and all claims, demands, losses, actions and liabilities (including costs and reasonable attorney fees) to or by any and all persons or entities to the extent caused by the negligent or otherwise wrongful acts, errors, or omissions of the Park District.

3. Neither the Park District nor the Consultant shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

H. -Not Used-

I. Extent of Agreement and Applicable Law

1. This Agreement represents the entire and integrated agreement between the Park District and the Consultant and supersedes all prior negotiations, representations, or agreements, whether written or oral with respect to the project. This Agreement may

be amended only by written instrument signed by both the Park District and the Consultant.

2. Unless otherwise specified, this Agreement shall be governed by law of the State of Minnesota.

J. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

1. By signing the agreement below, the Consultant certifies to the best of its knowledge and belief, that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
  - b. Have not, within a three (3) year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are presently indicated for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph J.1.b. of this certification; and
  - d. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.
  - e. Where the Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this proposal.

K. Severability

In the event any portion of this contract is deemed unenforceable, the balance of the contract shall be saved and shall be fully enforceable.

In witnesseth whereof, the parties have made and executed this Agreement the day and year first written above.

I certify that I am authorized to execute this contract on behalf of the Park District.

**THREE RIVERS PARK DISTRICT**

Boe R. Carlson 11/08/2023 16:22 UTC  
Boe R. Carlson, Superintendent and Secretary to the Board Date

AG  
JV

**WSB & Associates, Inc.**

John Flueke 11/08/2023 20:01 UTC  
(Signature) Date

Jason Amberg 11/08/2023  
Print Name, Title Date



November 6, 2023

Mr. Matt Swenson, Project Manager  
Three Rivers Park District  
Administrative Center  
3000 Xenium Lane North  
Plymouth, MN 55441

RE: MGRP – Shoreline Stabilization Professional Services, Stage II

Dear Mr. Swenson,

As requested, the following services are proposed for Stage II of the Mississippi Gateway Regional Park – Shoreline Stabilization project. The following scope and fee is based on revising the previously prepared shoreline stabilization plans, which were included in the 90% Construction document package for the Mississippi Gateway Regional Park Improvements project.

#### **SCOPE OF SERVICES**

- 1) Preconstruction River Corridor Survey
  - a) River Channel Topography and Cross Section Survey
    - i) Update survey information for riverbank stabilization areas and channel, to record changes to the project area from the 2023 spring flooding events, as well as collect data for new areas to be stabilized.
- 2) Final Design
  - a) Revise 90% Shoreline Stabilization design package per client direction in 2023, including access to designated viewing / fishing platform locations. Work areas identified below coincide with the areas labeled in the 90% Shoreline Stabilization package:
    - i) Revise extents of hard armor stabilization in Work Area 1 to not extend as far into river channel.
    - ii) Expand stabilization treatment in Work Area 1 to include area behind concrete dam embankment.
    - iii) Add stabilization measures south of Work Area 1, in the existing outdoor classroom area which was impacted by Spring flooding in 2023.
    - iv) Reduce limits of stabilization in Work Area 5, as it appears to be stable following 2023 flood.
    - v) Incorporate adjustments to stream/river confluence area, reflecting current conditions and alignment.
    - vi) Confirm trail alignments and adjust alignments to limit impacts to significant trees and other existing elements in the project area.
    - vii) Confirm and revise staging and mobilization areas as needed.
    - viii) Update cost estimate prepared in September 2023, for the proposed improvements. Cost estimate will be organized to identify costs associated with the following categories:
      - (a) Mobilization, Permitting and Contingencies
      - (b) Removals, clearing and grubbing
      - (c) Class V Riprap
      - (d) Toewood protection / Anchors
      - (e) Trails and pathways
      - (f) Stairs and railings



- (g) Fishing nodes
    - (h) Viewing platforms
    - (i) Benches / other amenities
    - (j) Other categories as appropriate
  - ix) Prepare specification package.
  - x) 90% Plan Review meeting with owner
  - xi) Design team attendance at permitting coordination meetings with reviewing agencies
- b) 100% Plans and Specifications
  - i) Review meeting with owner to review agency feedback.
  - ii) Prepare final plans and specifications, incorporating permitting agency and owner comments for the shoreline stabilization.
  - iii) Prepare 100% Cost estimate, organized per categories listed above.
- 3) Permitting
  - a) Aquatic Resource Impact Permitting. Subconsultant Bolton & Menk will use the aquatic resource delineation to determine and prepare the appropriate permit application to account for the proposed aquatic resource impacts. This will include the MN Interagency Water Resource Application submitted to the Local Government Unit (Shingle Creek/West Mississippi WMC), US Army Corps of Engineers (USACE), MnDNR, and MPCA permitting. USACE will initiate any Section 106 consultation processes and the Minnesota State Historic Preservation Office (SHPO) and Tribal Nations will assess site conditions. However, we do not anticipate any additional environmental/archeological reviews. Based on recent permitting for similar project types, we have assumed that no tributary mitigation will be required. ***If any mitigation is required, we can provide an additional scope and fee at that time.***
  - b) Threatened and Endangered Species Permitting. Bolton & Menk will complete an NHIS request on the Minnesota Conservation Explorer website and coordinate with MnDNR to follow the current Minnesota Endangered Species Statute. We will complete preliminary federal threatened and endangered species coordination with USFWS. The MnDNR will then dictate permitting requirements. ***Threatened and endangered species surveys and permits are dependent on MnDNR review. Please note that if this permit is not requested by the MnDNR, the client will not be invoiced.***
  - c) Meetings and Additional Requests. In some cases, the reviewing agencies request additional information and/or an on-site meeting during the review process. If our attendance is requested at a meeting to discuss the acceptance of the delineated boundaries or the agencies request additional information, this service will be provided on an hourly basis at our Natural Resource Specialist rate. ***Please note that if these tasks are not requested, the client will not be invoiced.***
- 4) Bidding Services
  - a) It is understood that the project will be bid as a single package. WSB will provide services for bidding assistance associated with the bid package, including the following:
    - i) Advertisement for bids
    - ii) Coordinate plan set availability to Contractors.
    - iii) Issue addenda as necessary.
    - iv) Attend the bid opening.
    - v) Prepare tabulation of bids
    - vi) Prepare letter of recommendation for contract award

#### ASSUMPTIONS

- a) The aquatic resource delineation has been completed and is still valid.
- b) An individual US Army Corps permit will be required (9-to-12 month process).

- c) A 401 Water Quality Certification will be required.
- d) No tributary mitigation will be required.
- e) No Environment Field assessments will occur.
- f) No wetland impacts will occur.
- g) Archeological Phase 1 not included.
- h) All permit application fees will be billed as reimbursable expenses.

**PROPOSED FEE**

It is proposed that Tasks listed above will be billed on an hourly-not-to-exceed basis according to the following breakdowns:

Task 1: Preconstruction River Corridor Survey	\$ 7,834
Task 2: Final Design	
a) Revise 90% Design package	\$ 12,795
b) 100% Plans and Specifications	\$ 12,051
Task 3: Permitting	
a) Aquatic Resource Impact Permitting	\$ 11,000
b) Threatened and Endangered Species Permitting	\$ 5,500
c) Meetings and Additional Requests	\$ 3,500
Task 4: Bidding Services	\$ 3,797
<b>Total Fee:</b>	<b>\$ 56,477</b>

**EXPENSES**

We estimate **\$8,600** for reimbursable expenses for this project. Expenses will be billed in addition to the proposed fee defined above. Permitting fees for this type of project are dependent upon planned improvements and project costs and may vary. The permit fees represent estimated amounts and are based on our experience with similar project types.

**FEE & ESTIMATED EXPENSE SUMMARY**

Professional Fees	\$56,477
Estimated Reimbursable Expenses	\$8,600
<b>Total Fee + Estimated Expense</b>	<b>\$65,077</b>


**ACCEPTANCE**

This letter represents our entire understanding of the project scope. If Three Rivers Park District is in agreement, the necessary contract documents can be provided and signed. WSB will start work upon receipt of a signed contract.

Thank you for considering this request. Please let me know if you have any questions.

Sincerely,

WSB



Jason Amberg, PLA  
Director of Landscape Architecture  
Ph. 612.518.3696

cc: Jeff Feulner, Luke Lunde & Amy Anderson, WSB  
Jason Zemke & Brian Vlach, TRPD

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1. Amy Gurski (amy.gurski@threeriversparks.org)
2. Jonathan Vlaming (jonathan.vlaming@threeriversparks.org)
3. Boe R. Carlson (boe.carlson@threeriversparks.org)
4. Jason Amberg (jamberg@wsbeng.com)

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