**Anoka County Contract #2012-0285**

**PURCHASE OF SERVICE AGREEMENT**

**THIS AGREEMENT** is entered into between **Anoka County, a political subdivision of the State of Minnesota**, 2100 Third Avenue, Anoka, Minnesota, 55303 (County) and WSB & Associates, Inc., 701 Xenia Ave. South, Suite 300, Minneapolis, Minnesota, 55416 (Contractor).

**RECITALS:**

(1) The County is in need of land surveying and civil engineering services for the proposed water outlet diversion of Anoka County Ditch 56; and

(2) Contractor represents that it is in the business of providing engineering services and is qualified and willing to furnish these services; and

(3) Contractor has submitted a proposal to provide the required engineering services; and

(4) The County wishes to purchase these services from the Contractor.

**NOW, THEREFORE,** in consideration of the mutual promises and agreements contained in this document, the parties agree as follows:

1. TERM

1.1 This Agreement shall commence upon the signing of this Agreement and shall continue in effect through the satisfactory completion of the services to be provided unless terminated earlier pursuant to paragraph 17, EARLY TERMINATION.

2. SERVICES

2.1 The County agrees to purchase and Contractor agrees to furnish the services set forth in the Contractor’s Proposal dated June 15, 2012, which is attached hereto and incorporated as Exhibit A.

2.2 This Agreement authorizes the initial provision of those services outlined in Phase 1: Engineering Report, Tasks 1 through 10. The Contractor will not proceed to Phase 2 or Phase 3 without written authorization to begin additional services.

3. COMPENSATION

3.1 The County shall pay to the Contractor at the rates provided for in the proposal for Phase 1: Engineering Report, Tasks 1 through 10 according to the terms of §4 BILLING AND PAYMENT. This payment shall not exceed $15,248 unless otherwise authorized by the County in writing.

3.2 Upon written authorization to proceed with Phase 2: Final Design Services, Tasks 1 through 6, the County shall pay to the Contractor not more than $11,392.

3.3 Upon written authorization to proceed with Phase 3: Construction Services, the County shall pay to the Contractor not more than $11,126.

3.4 Upon written authorization to proceed with Phase 2: Final Design Services, Tasks 1 through 6, the County shall pay to the Contractor not more than $3,000 for geotechnical services.

3.5 The Total Cost of this Agreement shall not exceed $40,766.

4. BILLING AND PAYMENT

4.1 Upon completion of Phase 1: Engineering Report, Tasks 1 through 10 the Contractor shall submit to the County an itemized statement containing such information as is required by the County for work satisfactorily completed. Within thirty (30) days of its receipt of the billing statement, the County shall make payment to the Contractor or make reasonable arrangements for payment acceptable to the Contractor.

4.2 Within 30 days after receiving a billing statement, the County will make payment to Contractor in the manner provided by law and customary procedure for paying claims against a county.

4.3 With written authorization to proceed to Phase 2, and upon completion of Phase 2: Final Design Services, Tasks 1through 6, the Contractor shall submit to the County an itemized statement containing such information as is required by the County for work satisfactorily completed. Within thirty (30) days of its receipt of the billing statement, the County shall make payment to the Contractor or make reasonable arrangements for payment acceptable to the Contractor.

4.4 With written authorization to proceed to Phase 3, and upon completion of Phase 3: Construction Services, the Contractor shall submit to the County an itemized statement containing such information as is required by the County for work satisfactorily completed. Within thirty (30) days of its receipt of the billing statement, the County shall make payment to the Contractor or make reasonable arrangements for payment acceptable to the Contractor.

5. AUDIT DISCLOSURE AND RETENTION OF RECORDS

5.1 Contractor agrees to make available to duly authorized representatives of the County, the Coon Lake Improvement District, and of the State of Minnesota, for the purpose of audit examination pursuant to Minn. Stat. § 16C.05, Contractor’s books, documents, papers, and records that are pertinent to Contractor 's services for audit examination.

5.2 Contractor agrees to maintain records pertinent to Contractor’s services and to retain the records for 6 years after final payment and closing all other related matters.

6. SERVICES AND BENEFITS NOT PROVIDED FOR

6.1 No claim for services furnished by Contractor that are not specifically provided for in this document will be honored by the County unless mutually agreed to in writing by the parties, and included as an amendment to this Agreement, before the work is performed.

7. INDEPENDENT CONTRACTOR

7.1 At all times and for all purposes under this Agreement, Contractor’s relationship to the County is as an independent Contractor and not an employee or agent of the County.

8. INDEMNIFICATION

8.1 Contractor agrees to hold harmless, indemnify, and defend Anoka County, its commissioners, officers, agents, and employees against any and all claims, expenses (including attorney's fees), losses, damages or lawsuits for damages arising from, or related to, providing or failing to provide Purchased Services, including but not limited to the negligence of the Contractor.

8.2 Section 8. INDEMNITY provisions do not independently create liability as to any third party.

8.2.1 The provisions are intended to protect Anoka County from any liability related to Purchased Services performed by Contractor.

8.3 Nothing in this Agreement waives any limitation on liability provided by Minn. Stat. Chap. 466 or Minn. Stat. §§ 3.732 et seq. or any other applicable law.

9. INSURANCE

9.1 Contractor agrees that, at all times during this Agreement in order to protect itself as well as Anoka County under Section 8. INDEMNITY, it will have and keep in force insurance coverage for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The insurance coverage shall satisfy the requirements set forth in Exhibit B, which is attached hereto and incorporated herein.

10. COMPLIANCE WITH LAWS

10.1 In providing all services pursuant to this Agreement, the Contractor shall abide by all statutes, ordinances, rules and regulations pertaining to or regulating the provision of such services, including those now in effect and hereafter adopted. Any violation of said statutes, ordinances, rules or regulations shall constitute a material breach of this Agreement and shall entitle the County to terminate this Agreement immediately upon delivery of written notice of termination to the Contractor.

11. STATE TAX LAWS

11.1 The County may not make final payment until Contractor has made satisfactory showing that it has complied with the provisions of Minn. Stat. §290.92 requiring State Income Tax withholding from wages paid to Contractor 's employees and to employees of any subcontractors hired by the Contractor for work performed under this Agreement.

11.2 The Contractor will provide the County with proof that the requirements have been met.

12. SUBCONTRACTING AND ASSIGNMENTS

12.1 Contractor shall not enter into any subcontract for performing any services contemplated under this Agreement, nor assign any interest in the Agreement, without the prior written approval from the County and subject to any conditions and provisions that the County may deem necessary.

12.2 Contractor is responsible for the performance of all subcontractors.

12.3 Contractor must comply with the provisions of Minn. Stat. §471.425 subd. 4a, relating to prompt payment to subcontractors. The Contractor shall pay any subcontractor for undisputed services provided by the subcontractor within 10 days after Contractor receives payment for services.

11.3.1 Contractor agrees to pay interest as provided in Minn. Stat. §471.425 on any undisputed amount not paid on time to the subcontractor.

13. MODIFICATIONS

13.1 To alter, modify, or amend the Agreement, the parties must have a written Agreement signed by their authorized representative(s).

13.2 An interpretation or variation to the Agreement that is not viewed by the parties as material does not require signature.

14. CONFLICT OF TERMS AND CONDITIONS

If there is a conflict in the terms and conditions contained in this Agreement and the proposal submitted by the Contractor, the terms and conditions contained in this Agreement shall take precedence over those in the Contractor’s proposal.

15. AFFIRMATIVE ACTION

15.1 In accordance with Anoka County's Affirmative Action Policy and Anoka County Commissioners' policies against discrimination, no person shall illegally be excluded from full-time employment rights in, be denied the benefits of, or be otherwise subjected to discrimination in the program which is the subject of this Agreement on the basis of race, creed, color, sex, marital status, public assistance status, age, sexual orientation, disability, or national origin.

15.2 Contractor will comply with any applicable federal or state law regarding non-discrimination.

16. DATA PRACTICES

16.1 In collecting, maintaining, storing, using, and disseminating data (including data on individuals) while providing Purchased Services, Contractor agrees to abide by all pertinent state and federal statutes, rules and regulations covering data privacy, including, but not limited to, the Minnesota Government Data Practices Act and rules promulgated by the Commissioner of the Department of Administration.

16.2 All data created, collected, received, stored, used, maintained or disseminated by the Contractor in performing the services in this Agreement is also subject to the provisions of Minnesota Statutes § 13 et. Seq. and, pursuant to that statute, the Contractor must comply with the requirements of that statute as if it were a government entity.

16.3 Pursuant to Minn. Stat. § 13.05, subd. 11, all remedies set forth in Minn. Stat. § 13.08 may apply to Contractor .

16.4 Contractor is not required to provide public data to the public if that same data is available from Anoka County.

17. EARLY TERMINATION

17.1 This Agreement will terminate under the following circumstances:

17.1.1 by the parties’ mutual written agreement;

17.1.2 by the County upon fourteen (14) days written notice delivered in person or by mail, specifying the termination date, with or without cause;

17.2 If this Agreement is terminated early, Contractor is entitled to receive payment for Purchased Services satisfactorily performed up to the termination date.

17.3 Indemnity, Audit, and other affirmative obligations, such as records retention and data practices provisions, survive this Agreement’s termination.

18. DEFAULT AND REMEDY

18.1 Failure of the Contractor (including failure of any employee or agent of the Contractor) to abide by any of the terms, conditions, or requirements expressed in this Agreement shall constitute a default if not properly corrected by the Contractor upon receipt of a notice of deficiency and a request for compliance from the County. In the event of a default by the Contractor, the County may cancel this Agreement by sending a written notice of cancellation to the Contractor at the address stated above, and may recover from the Contractor any damages sustained by the County which may directly or consequently arise out of the breach of this Agreement by the Contractor.

19. ENTIRE AGREEMENT

19.1 The parties’ entire Agreement is contained in this document.

19.2 This Agreement supersedes all oral Agreements and negotiations by the parties relating to its subject matter.

19.3 Items referred to in this Agreement are incorporated or attached and deemed to be part of the Agreement.

Contractor having signed this Agreement and the Anoka County Board of Commissioners having approved this Agreement on September 11, 2012, and the proper County officials having signed this Agreement, the parties agree to be bound by its provisions.

**ANOKA COUNTY WSB & ASSOCIATES, INC.**

By: \_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Rhonda Sivarajah, Chair Pete Willenbring, P.E.

Anoka County Board of Commissioners Project Manager

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Jerry Soma

Anoka County Administrator

Approved as to Form:

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Nancy Norman Sommer,

Assistant Anoka County Attorney