

RESOLUTION NO. 22-041
Riley-Purgatory-Bluff Creek Watershed District
Board of Managers

Authorizing execution of a service contract with Peterson Companies

Manager _____ offered the following resolution and moved its adoption, seconded by
Manager _____:

WHEREAS Riley-Purgatory-Bluff Creek Watershed District developed and adopted a watershed management plan pursuant to Minnesota Statutes section 103B.251 which identifies potential projects including a water quality and stormwater abstraction project to improve water quality in Lake Susan (the Project);

WHEREAS at its July 21, 2017 meeting, the RPBCWD Board of Managers ordered the Project in accordance with Minnesota Statutes section 103B.251, and at the May 8, 2018 meeting of the RPBCWD Board of Managers, a Cooperative Agreement with Chanhassen was authorized; and

WHEREAS at its May 8, 2018, meeting the RPBCWD Board of Managers awarded the contract for construction of the Project to Peterson Companies which was subsequently executed by the District Administrator; and

WHEREAS Peterson Companies has worked with Chanhassen Parks Department to train staff on proper installation, operation, and removal, since project completion and the pump system regularly loses prime and RPBCWD is not warned of the alarm; and

WHEREAS as the RPBCWD Engineer, design engineers, and Peterson Company have sought to trouble shoot the Project over the course of the summers of 2020 and 2021; and

WHEREAS the Project continues to not function per design and does not, as a result, provide the anticipated reduction in total phosphorus and runoff volume; and

WHEREAS RPBCWD has \$99,540 in the 2022 budget dedicated to the maintenance of RPBCWD initiated capital projects and Peterson Companies has a unique knowledge of reuse in general and the Project specifically.

NOW THEREFORE BE IT RESOLVED that the RPBCWD Board of Managers authorizes the interim administrator, with advice of counsel, to enter the attached services contract with Peterson Companies for a total cost not to exceed \$11,100, as finalized with such nonsubstantive changes as are necessary to implement the intent of the managers and the Services.

The question was on the adoption of the resolution and there were ____ yeas and ____ nays as follows:

Yea Nay Abstain Absent

CRAFTON
KOCH
PEDERSEN
ZIEGLER

Upon vote, the president declared the resolution _____ on this 6th day of April, 2022.

* * * * *

I, Dorothy Pedersen, secretary of the Riley-Purgatory-Bluff Creek Watershed District, hereby certifies that I have compared the above resolution with the original thereof as the same appears of record and on file with RPBCWD and find the same to be a true and correct transcription thereof, and further that the resolution is in full force and effect on this date, and Resolution 22-041 has not been modified, amended or rescinded since its adoption.

IN TESTIMONY WHEREOF, I set my hand this ____ day of _____, 2022.

Dorothy Pedersen, Secretary

**Exhibit A
Agreement**

DRAFT

MEMORANDUM

TO: RPBCWD Board of Managers
FROM: Terry Jeffery, Interim District Administrator
DATE: May 4, 2022
RE: Lake Susan Park Pond Stormwater Reuse and Filtration Pump

In 2018, Peterson Companies constructed a stormwater reuse system to irrigate the baseball field at Lake Susan Park and to treat stormwater through an iron enhanced sand filtration system. Upon completion of the project in 2019, the system was turned over to Chanhassen to install the intake each spring and remove each subsequent fall. The system has only worked intermittently and seems to be losing prime in the system. Peterson Companies has returned to the site to troubleshoot the system several times.

Further complicating the issue, is that there is no remote telemetry system (SCADA) that alerts staff when the system is not functioning properly, nor to tell how much water is being treated when it does function properly. There is concern that the issue may be arising from errors during installation.

This proposal is to have Peterson Company install a telemetry system from a vendor known as Watervision with a five-year plan, to install the system and train Chanhassen staff, and to provide a retainer should we need additional site work. It is to be noted that a larger scope or other changes to the project such as redesign of the intake would involve a separate scope of services and contract.

This project will be funded from the maintenance fund.

**Agreement between
Riley-Purgatory-Bluff Creek Watershed District
Peterson Companies**

Remote monitoring and pump management – Lake Susan reuse system

This agreement is entered into by the Riley-Purgatory-Bluff Creek Watershed District, a special purposes governmental subdivision with powers set forth at Minnesota Statutes chapters 103B and 103D (RPBCWD), and Peterson Companies Inc., a private Minnesota corporation (Contractor). In consideration of the terms and conditions set forth herein, including mutual consideration, the sufficiency of which is hereby acknowledged, RPBCWD and Contractor agree as follows:

1. Scope of Work

Contractor will perform five years of remote electronic pump-system monitoring and pump-startup and shutdown work in coordination with the City of Chanhassen as described in the scope of services attached hereto as Exhibit A (the Services). RPBCWD, at its discretion, in writing may suspend work immediately or amend the Services to delete any task or portion thereof. Contractor will furnish all materials, machinery, equipment, tools, labor and expertise as needed to complete the Services. RPBCWD, at its discretion, in writing may at any time suspend work or amend the contract documents to delete any task or portion thereof. Authorized work by Contractor on a task deleted or modified by RPBCWD will be compensated in accordance with the terms of this agreement generally and sections 6 and 7 specifically.

2. Independent Contractor

Contractor is an independent contractor. Contractor will select the means, method and manner of performing the Services. Nothing herein constitutes Contractor as the agent, representative or employee of RPBCWD in any respect. Personnel performing the Services on behalf of Contractor or a subcontractor will not be considered employees of RPBCWD and will not be entitled to any compensation, rights or benefits of any kind from RPBCWD.

3. Subcontract and Assignment

Contractor will subcontract with Watervision for five years of remote electronic monitoring, as described in Exhibit A. Contractor will not otherwise assign, subcontract or transfer any obligation or interest in this agreement or any of the Services without the written consent of RPBCWD and pursuant to any conditions included in that consent. RPBCWD consent to the subcontracting of remote electronic monitoring with Watervision, or other subcontracting approved in accordance with the terms herein, does not relieve Contractor of its responsibility to perform the Services or any part thereof, nor

in any respect its warranty, insurance, indemnification, duty to defend or agreement to hold harmless with respect to the Services. Contractor is responsible to RPBCWD for any subcontractor's conformance to sections 9, 10, 11, 12 and 13 of this agreement in the same manner as those sections bind Contractor.

4. Duty of Care; Delay

Contractor will perform the Services in a proper, workmanlike and good quality manner, with due professional care. Contractor warrants the work for one year from the date of completion.

Contractor will not be entitled to an adjustment in contract price or contract time for delays within the control of Contractor. Delays beyond the control of Contractor will include, but not be limited to, acts or neglect by RPBCWD, acts or neglect of utility owners or other contractors performing other work, fires, floods, epidemics, abnormal weather conditions or acts of God.

5. Indemnification

Contractor will defend, indemnify and hold harmless RPBCWD, its officers, council and board members, employees and agents from any and all actions, costs, damages and liabilities of any nature arising from: (a) Contractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty; or (b) a subcontractor's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty owed by Contractor to RPBCWD. For any claim subject to indemnification under this paragraph by an employee of Contractor or a subcontractor, the indemnification obligation is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or a subcontractor under workers' compensation acts, disability acts or other employee benefit acts.

RPBCWD will indemnify, defend and hold harmless Contractor, its officers, employees and agents, from any and all actions, costs, damages and liabilities of any nature to the degree they are the result of any action or inaction by RPBCWD that is the basis for RPBCWD's liability in law or equity.

6. Compensation

RPBCWD will compensate the Contractor on a progress payments basis for completed work and reimburse direct costs in accordance with the agreement and Exhibit A. Total compensation for the Services under this agreement will not exceed \$10,746. Invoices will be submitted no more frequently than monthly. RPBCWD will pay for undisputed work within 45 days of receipt of invoice. In accordance with Minnesota Statutes section 471.425, subdivision 4a, Contractor will pay any subcontractor within 10 days of Contractor's receipt of payment from RPBCWD for undisputed Services provided by the subcontractor. Contractor will pay interest of 1½ percent per month or any part of a month

to a subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, Contractor will pay the actual penalty due to the subcontractor.

Contractor will maintain all records pertaining to fees or costs incurred in connection with the Services for six years from the date of completion of the Services. Any authorized RPBCWD representative or representative of the Minnesota State Auditor will have access to and the right to examine, audit or copy any such records during normal business hours.

7. Termination; Continuation of Obligations

This agreement is effective upon execution of both parties and will remain so until December 31, 2027, unless earlier terminated as set forth herein. RPBCWD may suspend or terminate this agreement with or without cause, by a written termination notice stating specifically what prior authorized or additional services it requires Contractor to complete. If the agreement is suspended or terminated for convenience, Contractor will be compensated for all authorized work performed, including reasonable costs for actions directed by RPBCWD to stabilize the site of the Services. If suspension or termination is for cause, Contractor will stabilize the site before vacating, without extra compensation. Contractor will be given a reasonable opportunity to cure before termination for cause.

It is understood and agreed that insurance obligations; warranties and obligations to defend, indemnify and hold harmless; and document-retention requirements survive the completion of the Services and the term of this agreement.

8. Waiver

RPBCWD's failure to insist on Contractor's strict performance of any obligation, condition or provision of this agreement, or to exercise any option, remedy or right herein, will not waive its rights in the future to do so. The waiver of either party on one or more occasion of any provision or obligation of this agreement will not be construed as a waiver of any subsequent breach of the same provision or obligation, and the consent or approval by either party to or of any act by the other requiring consent or approval will not render unnecessary such party's consent or approval to any subsequent similar act by the other.

Notwithstanding any other term herein, the agreement creates no rights in any third party, and RPBCWD waives no tort defense, immunity or liability limit with respect to contractor or any third party.

9. Insurance

At all times during the term of this agreement, Contractor will have and keep in force the following insurance coverage:

- A. General liability: \$1.5 million each occurrence and aggregate, covering contractual liability on an occurrence basis and including standard marine services liability coverage.
- B. Automobile liability: combined single limit each occurrence coverage for bodily injury and property damage covering all vehicles on an occurrence basis, \$1.5 million.
- C. Workers' compensation: in accordance with legal requirements applicable to Contractor.

Contractor will not commence work until it has filed with the RPBCWD a certificate of insurance clearly evidencing the required coverages and naming the RPBCWD as an additional insured with primary coverage for general liability on a non-contributory basis, as well as a copy of the additional insured endorsement. The certificate will name the RPBCWD as a holder and will state that the RPBCWD will receive written notice before cancellation, nonrenewal or a material change in any described policy under the same terms as Contractor.

10. Compliance with Laws; Site Control

Contractor will comply with the laws and requirements of all federal, state, local and other governmental units in connection with performing the Services. Contractor will identify and procure all licenses, permits and other rights and approvals required for the Services, including but not limited to securing access rights from the City of Chanhassen necessary for completion of the Services. Contractor is responsible for site conditions relating to worker and public safety, cleanliness and environmental protection and in all other respects.

In its performance of the Services, Contractor will ensure that no person is excluded from full employment rights or participation in or the benefits of any program, service or activity on the ground of race, color, creed, religion, age, sex, disability, marital status, sexual orientation, public assistance status or national origin; and no person who is protected by applicable federal or state laws, rules or regulations against discrimination otherwise will be subjected to discrimination.

11. Records

All documents and information obtained or generated by Contractor or a subcontractor in performing the Services, including hard and electronic copy, software, and in any other forms in which the materials are contained, documented or memorialized, are the property of RPBCWD.

RPBCWD may immediately inspect, copy or take possession of any such materials on written request to Contractor. Contractor may maintain a copy of any such materials at its expense.

Any document or information supplied to Contractor by RPBCWD or deriving from RPBCWD is given and accepted without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness. Absent RPBCWD written approval, Contractor will not use any such document or information other than for performance of the Services. Contractor will not disclose to any third party proprietary material so denominated by RPBCWD.

12. Data Practices; Confidentiality

If Contractor receives a request for data pursuant to the Data Practices Act, Minnesota Statutes chapter 13 (DPA), that may encompass data (as that term is defined in the DPA) Contractor possesses or has created as a result of this contract, it will inform RPBCWD immediately and transmit a copy of the request. If the request is addressed to RPBCWD, Contractor will not provide any information or documents, but will direct the inquiry to RPBCWD. If the request is addressed to Contractor, Contractor will be responsible to determine whether it is legally required to respond to the request and otherwise what its legal obligations are, but will notify and consult with RPBCWD and its legal counsel before replying. Nothing in the preceding sentence supersedes Contractor's obligations under this agreement with respect to protection of RPBCWD data, property rights in data or confidentiality. Nothing in this section constitutes a determination that Contractor is performing a governmental function within the meaning of Minnesota Statutes section 13.05, subdivision 11, or otherwise expands the applicability of the DPA beyond its scope under governing law.

Contractor agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by RPBCWD and so denominated by RPBCWD. Contractor will not use any such materials for any purpose other than performance of the Services without RPBCWD written consent. This restriction does not apply to materials already possessed by Contractor or that Contractor received on a non-confidential basis from RPBCWD or another party.

13. RPBCWD Property

All property furnished to or for the use of Contractor or a subcontractor by RPBCWD and not fully used in the performance of the Services, including but not limited to equipment, supplies, materials and data, both hard copy and electronic, will remain the property of RPBCWD and returned to RPBCWD at the conclusion of the performance of the Services, or sooner if requested by RPBCWD. Contractor further agrees that any proprietary materials are the exclusive property of RPBCWD and will assert no right, title or interest in the materials. Contractor will not disseminate, transfer or dispose of any proprietary

materials to any other person or entity unless specifically authorized in writing by RPBCWD. Any property including but not limited to materials supplied to Contractor by RPBCWD or deriving from RPBCWD is supplied to and accepted by Contractor as without representation or warranty including but not limited to a warranty of fitness, merchantability, accuracy or completeness. However, Contractor's warranty under section 4, above, does not extend to materials provided to Contractor by RPBCWD or any portion of the Services that is inaccurate or incomplete as the result of Contractor's reliance on those materials.

14. Notices

Any written communication to RPBCWD required under this agreement will be directed to administrator, Riley-Purgatory-Bluff Creek Watershed District, 18681 Lake Drive East, Chanhassen, MN 55317.

Written communication to Contractor will be addressed to:

Peterson Companies
8326 Wyoming Trail
Chisago City MN 55013
PHONE/EMAIL

15. Choice of Law, Venue and Jurisdiction

This agreement will be construed under and governed by the laws of the State of Minnesota. Venue and jurisdiction for any legal proceedings arising from this agreement, or its breach, or the Services, must be in the appropriate state or federal court with competent jurisdiction in Hennepin County, Minnesota.

16. Whole Contract

The entire agreement between the two parties is contained herein and this agreement supersedes all oral contracts and negotiations relating to the subject matter hereof. RPBCWD may amend this agreement by means of a proper work change order clearly denominated as such. Any other amendment must be signed by both parties.

{Signature page follows.}

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto execute and deliver this agreement.

Peterson Companies

_____ Date: _____

By _____

Its _____

APPROVED AS TO FORM & EXECUTION

By _____

RPBCWD Counsel

Riley-Purgatory-Bluff Creek Watershed District

_____ Date: _____

Terry Jeffery
Its Interim Administrator

Exhibit A
Scope of Services

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