



Madison Metropolitan Sewerage District



REQUEST FOR PROPOSAL

Municipal Advisory Services

Issue Date: March 20, 2024

Responses Due: 5:00 p.m. CDT on Friday, April 5, 2024

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Deputy Executive Director and Director of Budget and Planning

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Introduction

The Madison Metropolitan Sewerage District (MMSD or the District) seeks the consulting services of a municipal advisory firm advise on the issuance of bonds for capital projects and to review the District’s capital financing plan to optimize the use of Clean Water Fund program financing, bond financing, and cash for the 2024–2026 period. The District anticipates structuring services as a three-year agreement with option to renew for up to an additional two years. Specific terms will be agreed upon with the selected firm.

Since the early 1980s, the District has financed its infrastructure spending solely with subsidized loans through the State of Wisconsin’s Clean Water Fund loan program. However, the Wisconsin Department of Natural Resources (DNR) disclosed in early February that the program may be unable to meet all needs for wastewater utilities in 2024 and 2025. This places the District’s 2024 and 2025 capital projects plans at risk. The District needs to evaluate financing options and, expectedly, issue District bonds to finance a portion of its capital projects.

Background

The Madison Metropolitan Sewerage District is a municipal corporation created to collect and treat wastewater from the Madison, Wisconsin metropolitan area. The District owns and operates a regional interceptor system and the Nine Springs Wastewater Treatment Plant. The District serves over 20 municipal governments, a population of approximately 430,000 people, and an area of over 180 square miles. The District has 126.2 FTE authorized positions and annual revenues of approximately \$50 million as of 2023. Learn more at www.madsewer.org.

The District’s 2024–2029 capital improvements plan and capital financing plan are incorporated in the 2024 annual budget, available at <https://www.madsewer.org/who-we-are/budget-finance/>. The District’s 2022 audited financial statement is also available at this location.

Project Scope and Deliverables

MMSD requires a firm with extensive experience evaluating capital financing plans, providing advice on financing options, and managing the tasks necessary for bond issuance for municipal wastewater utilities of similar size to the District. The “project” of this RFP is for the District to obtain reliable, low-cost financing sufficient to continue the District’s capital projects plan despite reductions in Clean Water Fund loan program financing for the 2024–2026 period. The District needs to clarify 2024-year financing before the end of the third quarter of 2024. The selected firm will provide education and guidance to the District to enable the District to make informed decisions.

Respondents should be aware that the District intends to restrict the selected municipal advisory firm from serving as underwriter on any District bond issues for a period of five years following the termination of the advisory relationship.

Specific deliverables are:

1. Become familiar with the District's 2024–2029 capital financing plan, District budgetary structure, and District financial policies sufficient to advise on the matters of this request.
2. Review District financial policies. Advise on necessary or advantageous changes to policies related to capital financing, fund management, revenue, and other issues related to bond issuance and repayment.
3. Review District cash flow projections. Advise on corrections or issues related to those projections and analytical methods.
4. Recommend financial metrics.
5. Work with District staff to specify capital projects financing needs for 2024–2026.
6. Advise on capital projects financing strategies for 2024–2026.
7. Advise on implications and options for capital financing for 2027–2030.
8. Help the District select the best mix of financing for 2024–2026.
9. Estimate revenue needs and advise on revenue timing across years.
10. Lead structuring and issuance of bonds, disclosures, obtaining needed credit ratings (the District does not have a current rating), closing, and related tasks.
11. Advise on market favorability, bond pricing, and market timing.
12. Advise on need for other financial professionals related to capital project financing, if applicable.
13. Advise on regulatory impacts of financing options, particularly rate-related oversight by the Public Service Commission of Wisconsin, if any.
14. Provide initial training and development for District staff sufficient for the District to make informed decisions regarding project financing.
15. Be available and responsive to answer specific District questions on general financing matters up to a reasonable limit on contacts.

In addition, please note that the selected firm:

- Must act as a fiduciary for the District.
- Must have at least five years' experience providing municipal advising services to Wisconsin utilities.
- Must be registered as municipal advisors with the Securities and Exchange Commission and Municipal Securities Rulemaking Board.
- Must comply with Municipal Securities Rulemaking Board requirements and other regulatory requirements for municipal advisors.
- Must not engage in activities on behalf of the District that produce a direct or indirect financial gain for the municipal advisor, other than the agreed-upon compensation, without the District's informed consent.

- Must not charge the District for work other than work specifically authorized by the District.
- May not use contingent fee structures for this engagement.

RFP Timetable

The RFP timetable is tentative only and may be changed by MMSD at any time.

Target Date	Step	Notes
Wed. March 20	RFP Issuance	
Thu. March 28	Deadline for Respondent Questions	
Fri. March 29	Respondent Questions Answered	Answers will be posted on the District website.
Fri. April 5	Respondent Proposals Due	
Fri. April 12	District Proposal Review Completed	
April 15–19	District Interviews with Candidates	The District may omit this step if adequate information was obtained from written proposals.
Fri. April 26	District Selection Made and Applicants Notified	Selection and notification may be delayed depending on District staff availability.
Thu. May 16	Commission Transaction Approval	The District will omit this step if costs are below the threshold for Commission approval
Mon. May 20	Engagement begins	Exact date may be adjusted depending as mutually acceptable to the District and the selected respondent.

Evaluation of Proposals, Consultant Selection, and Contracting

Proposals will be evaluated by a committee composed of District staff. Proposals will be scored based on the following weighted evaluation criteria:

25% — Qualifications and Experience

1. Qualifications and experience of the individuals on the team that would be providing services to the District, clarity on team management, clarity on percentage of time for each team member.
2. Experience of the firm overall in providing municipal advisory services to Wisconsin wastewater utilities of similar or greater financial size and complexity to the District.

3. Bond market experience and awareness of the team and the firm. Description of the firm's access to sources of current market information to assist in bond sales.
4. Bond issuance experience of the team and the firm.

45% — Understanding and Capabilities

5. Extent to which the response demonstrates genuine understanding of District needs related to this request including the District's financial situation and general ideas on how the District should approach financing issues.
6. Ability to identify and consider political, regulatory, legal and similar factors that are relevant to District bonding and financing generally.
7. Analytical capabilities of the team and the firm.
8. Ability to provide ongoing client training and developing as well as general advice. Availability and responsiveness to client questions and concerns.

20% — Costs and Insurance

9. Clarity and acceptability of fee structure and estimated costs. Include a detailed fee structure.
10. Ability to meet District insurance requirements. **Proposals must note the respondent's ability to meet requirements and proposed modifications, if any.** (For MMSD insurance requirements please see our standard contract for professional services which is attached to this RFP).

10% — Obligations, Disclosures and References

11. Firm's ability to meet fiduciary duties and preventing conflicts of interest, including but not limited to:
 - a. Disclosure of the firm's affiliation or relationship with any broker-dealer and whether any personnel of the MA firm who would provide advice to the issuer were associated with a broker-dealer firm within the two years preceding the RFP.
 - b. Disclosure of any finder's fees, fee splitting, payments to consultants, or other contractual arrangements of the firm that could present a real or perceived conflict of interest.
12. Disclosure of, or confirmation of lack of, any pending investigation of the firm or enforcement or disciplinary actions taken within the past three years by the SEC, FINRA, MSRB, or other regulatory bodies.
13. Quality of references. At least three references must be provided for public sector wastewater or similar utility clients of similar financial size and complexity.

Following the review of proposals, the District may, at its discretion, further evaluate applicants by interviews. All interviews will be remote via the Microsoft Teams platform. Interviews will be scheduled for the period in the timetable above.

The Review Committee's recommendation will be for the firm deemed to be in the best interest of the project based on written proposal and, if applicable, interview. The District reserves the right to contract for all or part of the project. The contract and associated scope of work will be a "not-to-exceed" contract.

Award shall be made to the consultant determined to be the best qualified by the review committee, based on the evaluation criteria set forth in the Request for Proposals and upon negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified consultant, negotiations may be conducted with such other consultant or consultants in the order of their respective ranking; and the contract may be awarded to the consultant then ranked as best qualified.

Additional Documentation Requirements

The proposing firm **must provide**:

- Certificate of Insurance (COI). If awarded the contract.
- Detailed fee schedule.

Proposal Submittal

Written proposals are to be submitted by email before 5:00 p.m. CDT on Friday, April 5, 2024. Proposals shall not exceed 20 pages. Send proposals to:

William D. Walker
Deputy Executive Director and Director of Budget and Planning
williamw@madsewer.org

The proposals shall address the requirements described above. Proposals must also include proof of ability to meet insurance. Proposals must note the respondent's ability to meet requirements and proposed modifications to District requirements, if any. (For MMSD insurance requirements please see our standard contract for professional services which is attached to this RFP).

Additional Provisions

Equal Employment Opportunity Requirements

In connection with the performance of work for this project and under the related contract, the Proposer agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, disability, sex, national origin, sexual orientation, gender identity, or other status protected by law. This provision 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.

Use, Disclosure, and Confidentiality of Information

The information supplied by a Proposer as part of an RFP response will become the property of the District. Proposals will be available to interested parties in accordance with the Wisconsin Open Records Law. None of the proposal responses will be made available to the public until after negotiation and award of a contract or cancellation of the procurement.

To the extent allowed by law, the District will treat trade secrets as confidential (if designated as confidential and submitted separately in a sealed envelope). If a Proposer wishes for a proposal to remain confidential, the Proposer must, before submitting a proposal, establish to the District's satisfaction that the proposal be given confidential status. The District reserves the right to make any final disclosure determinations in accordance with the law. (Note: Pricing information will not be considered confidential.)

Use of the District's Name

Upon entering an agreement, the successful Contractor agrees not to use the name of the Madison Metropolitan Sewerage District in relation to the agreement in commercial advertising, trade literature, or press releases to the public without the prior written approval of the District. The District has the right to enjoin the Contractor from any such use in violation of this provision, and the Contractor shall be responsible for damages and reimbursement of actual reasonable legal fees incurred with regard to legal evaluation and/or legal action taken by the District because of the Contractor's violation of this provision, including fees incurred to obtain an injunction.

Confidentiality

Any data or other information regarding the District's customers, operations, or methods obtained by the Contractor during the course of the project shall remain confidential and shall not be released to third parties without the express written consent of the District.

Errors in Proposals

Proposers will not be allowed to change or alter their proposals after the deadline for proposal submission. The District reserves the right, however, to correct obvious errors, such as math errors in extended pricing (not unit pricing). This type of correction may only be allowed for "obvious" errors such as arithmetic, typographical, or transposition errors. Any such corrections shall be approved by the District and countersigned by the Proposer. Proposers are advised to make sure that their proposals are true and correct.



Attachment: Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT

----INSERT PROJECT NAME AND SERVICES HERE----

THIS PROFESSIONAL SERVICES AGREEMENT (“**Agreement**”) is by and between the Madison Metropolitan Sewerage District (the “**District**”) and *****insert Consultant Name Here***** (“**Consultant**”) to be effective on **leave blank then fill in date when signed** (“**Effective Date**”). The Consultant shall provide professional services for the District’s Project (“**Project**”), which is generally described in **Exhibit A**, as set forth in this Agreement.

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AGREEMENT

In consideration of the mutual covenants set forth in this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the District and Consultant agree as follows:

1. SERVICES OF CONSULTANT

- 1.1 The professional services to be provided shall be those described in Exhibit B, attached hereto, and incorporated herein, which shall constitute the "Scope of Services" or "**Services**" for this Project. Services that are removed, reduced, exceeded or are in addition to the approved Scope of Services shall constitute amendments to the Scope of Services ("**Project Amendments**"). Services for Project Amendments shall be enumerated in a Project Amendment Work Order Exhibit C and shall require written pre-approval by the District. The Consultant warrants and represents itself as qualified and equipped to furnish all necessary labor, supervision, methods, equipment, and tools required to provide the Services. The Scope of Services shall be governed by and provided in full compliance with the terms and conditions of this Agreement. The District shall have the right to make any changes in the Scope of Services with the price being increased (subject to approval of additional expenditure, if required) or decreased accordingly, as agreed to by the parties hereto in writing as a Project Amendment Work Order Exhibit C. Changes to the Services shall be authorized only in writing, and no verbal order of any employee of the District or any other person will permit the Consultant to claim any additional compensation for the performance of the Services.
- 1.2 The cost for Services is specified in the schedule set forth in Exhibit D attached hereto and incorporated herein.

2. DISTRICT'S RESPONSIBILITIES

- 2.1 The District shall provide the Consultant with the criteria and information as to the District's requirements for the Project, including objectives and constraints, performance requirements, and any budgetary limitations, as part of the Scope of Services.
- 2.2 The District may furnish the Consultant reasonable information pertinent to the Project including relevant reports and data such as previous strategic plans, and existing conditions.
- 2.3 As reasonably requested by Consultant, the District shall furnish or otherwise make available additional project-related information and data as is reasonably required to enable Consultant to complete the Project.
- 2.4 The Consultant may reasonably rely upon the accuracy and completeness of all information furnished by the District. The Consultant may not rely on information furnished

by the District that Consultant knows or has reason to believe is not accurate. The Consultant shall immediately inform the District of any inaccurate or incomplete information.

3. **SCHEDULE FOR RENDERING SERVICES**

- 3.1 Consultant is authorized to begin services as of the Effective Date.
- 3.2 The specific periods of time for performing Services and/or specific dates by which Services are to be completed shall be as provided in Exhibit E attached hereto and incorporated herein (the "Schedule"), which Schedule is agreed to be reasonable and binding on the parties. The Schedule may be modified, but only for reasons set forth in this Agreement (see Sections 3.3 and 3.4), or by a written amendment to the Scope of Services executed by the District and Consultant.
- 3.3 If the District authorizes changes in the scope, extent, or character of the Project, then the time for completion of Consultant's services, and the rates and amounts of Consultant's compensation therefor, may be adjusted pursuant to a Project Work Order based on the fee schedule included in Exhibit D.
- 3.4 If the Consultant is hindered, delayed or prevented from performing the Services as a result of any act or neglect of the District (or those for whom the District is responsible) or force majeure, the Schedule may be extended by the period of the resulting delay and the rates and amounts of Consultant's compensation may be adjusted. Force majeure includes, but is not limited to acts of God, wars, terrorism, strikes, labor walkouts, fires, natural disasters, or requirements of governmental agencies. If Consultant believes that an adjustment to the schedule is appropriate for reasons set forth in this Section, Consultant must advise the District in writing within one week of the event(s) giving rise to the need for the delay and/or change in the Schedule. Force majeure does not include: (a) shortages of supervisors, labor, or equipment; (b) delays by Consultant; (c) failure of Consultant to pay amounts due and owing under this Agreement; and (d) increased costs of the Services due to general economic or industry conditions.

- 4. **TERM OF AGREEMENT.** This Agreement shall commence on the Effective Date. This Agreement shall expire on the date set forth in Exhibit E unless terminated earlier or extended through an Amendment pursuant to the terms set forth in this Agreement.

5. **COMPENSATION, INVOICES AND PAYMENTS**

- 5.1 The District shall pay the Consultant for the Services properly performed or furnished pursuant to the terms and conditions of this Agreement and in conformance with any invoice dates specified in a Scope of Services or Schedule.

- 5.2 The Consultant may submit requests for periodic progress payments for Services rendered. Payments of undisputed invoiced amounts shall be due and owing by the District within sixty (60) calendar days after receipt of the Consultants' invoice for services. Consultant may impose an additional late payment charge computed at an annual rate of six percent (6%) for undisputed invoiced amounts not paid without the sixty (60) day calendar day period and additionally, the Consultant may, after giving seven (7) days written notice to the District, suspend services under this Agreement until the Consultant has been paid in full all undisputed amounts due for services, and late payment charges
- 5.3 Consultant shall maintain a system of internal controls to ensure efficient and proper processing and application of funds used and received from the District related to this Project. Funds shall be applied by the Consultant for the purposes for which they have been paid by the District.
- 5.4 The District may, at any time, by written order, make changes to the Scope of Services or request a Project Amendment, which changes shall not become effective unless and until the District and Consultant execute a written amendment to this Agreement as described herein.
- 5.5 To request a change to the Scope of Services, the District shall issue a Project Amendment Work Order. The Project Work Order shall be executed by both parties to be effective.
- 5.6 If a change in scope causes an increase or decrease in the Consultant's fee or time required for performance, an adjustment may be made and set forth in a written amendment to this Agreement. Consultant shall not provide services for which added payment is to be made without first obtaining written authorization from the District.

6. **CONSULTANT'S PERFORMANCE**

- 6.1 The standard of care for all professional and related services performed or furnished by the Consultant and Consultant's personnel under this Agreement will be the professional standard of care and practice defined as the practice ordinarily used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality on similar projects.
- 6.2 The Consultant shall furnish all services, supplies, tools, and equipment appropriate and necessary to accomplish the Services in a professional and expeditious manner consistent with and limited to the Standard of Care. The Consultant will prepare and submit regular reports to the District, as the District may require, during the performance of the Services as specified in a Scope of Services. Other reports not identified in the Scope of Services may be prepared and submitted to the District at the District's request and following the Amendment provisions pursuant to this Agreement.

- 6.3 Consultant shall be responsible for the technical accuracy of its services and its instruments of service resulting therefrom, and the District shall not be responsible for discovering deficiencies, if any, in them. Consultant shall correct known deficiencies in its instruments of service without additional compensation.
- 6.4 The Consultant will comply with applicable laws, regulations, and District-mandated standards in effect as of the Effective Date of this Agreement. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to the District's responsibilities or to Consultant's Scope of Services, times of performance, or compensation, which may be adjusted equitably.
- 6.5 Consultant may employ sub-consultants to provide Services and to assist in the performance or furnishing of the Services, but only as follows:
(1) Consultant shall give the District prior written notice of its intent to employ sub-consultants; (2) the District shall have an opportunity to make reasonable, timely, and substantive written objections to the proposed sub-consultant (and if such objection is made, Consultant shall not engage the proposed sub-consultant); and, (3) Consultant shall ensure that any sub-consultant shall be subject to the confidentiality and all other provisions of this Agreement. The use of sub-consultants does not relieve Consultant from its responsibilities to the District for performance in accordance with this Agreement.
- 6.6 Consultant is not acting as a municipal advisor as defined by the Dodd-Frank Act. Consultant shall not provide advice or have any responsibility for municipal financial products or securities.
- 6.7 Consultant shall be responsible for Consultant and Consultant's own agents, employees, and sub-consultants and shall not be responsible for the acts or omissions of the District or District's agents, employees and sub-consultants who are furnishing or performing any work on the Project; or for any decision made regarding the Project, other than those made by the Consultant.
- 6.8 Consultant warrants that any associated physical items furnished in connection with providing the Services shall (i) be free from all latent and patent defects in materials and workmanship; (ii) be of good merchantable quality, fit and suitable for its intended purpose as specified in this Agreement; (iii) achieve all performance requirements specified in this Agreement; (iv); include only materials furnished or purchased by Consultant or is suppliers which are new, unused, and undamaged, unless otherwise expressly authorized by the District in writing; (v) be in full conformance with all the requirements of this Agreement; and (vi) be in compliance with all applicable laws.

7. **INSURANCE**

7.1 For the duration of the Project, the Consultant shall procure and maintain the following insurance coverage. The insurance required shall provide coverage for not less than the following amounts, and shall be greater where required by law:

(1)	Worker's Compensation	Statutory Limits
(2)	General Liability	
	Per Claim/Aggregate/ Products-completed operations	\$1,000,000/\$2,000,000/ \$2,000,000
(3)	Automobile Liability	
	Combined Single Limit	\$1,000,000
(4)	Excess Umbrella Liability	
	Per Claim/ Aggregate	\$5,000,000/\$5,000,000
(5)	Professional Liability	
	Per Claim and Aggregate	\$5,000,000/\$5,000,000

General liability insurance shall contain contractual liability coverage covering all liabilities assumed or created by virtue of this Agreement and specifically naming the District as being covered by the contractual liability coverage.

All policies of insurance required by this Agreement, except workers' compensation and professional liability, shall specifically name the District as an additional insured as evidenced by an additional-insured endorsement acceptable to the District. All policies shall be underwritten by insurer(s) with a minimum A.M. Best Ratings of A-VII. Each policy of insurance shall provide that it will not be canceled by the insurance company or the Consultant, except upon thirty (30) days' written notice to the District, such notice to be delivered by registered mail to the authorized representative who executes this Agreement. In addition, all insurance maintained by the Consultant, including any excess or umbrella policy(ies), shall be primary with respect to the interest of the District, with any other insurance maintained by the District being excess and not contributory with the Consultant's insurance. The certificates of insurance and endorsements shall be delivered to the District upon execution of this Agreement but in no event later than fifteen (15) days prior to commencement of the services. Certificates of insurance for new or renewed policies of insurance issued pursuant to this paragraph shall be provided to the District within fifteen

(15) days of their issuance.

The Consultant agrees that any dispute that arises between the Consultant and the insuring agent regarding coverage relating to Services performed under this Agreement shall solely be a dispute between the Consultant and the insuring agent or insurance company and should be resolved by the Consultant and the insuring agent or insurance company. The Consultant agrees that any dispute and associated costs, including reasonable attorneys' fees, regarding insurance coverage pursuant to the terms of this Agreement will be the sole responsibility of the Consultant. Any damage to property, personal injury, or other injury or damage for which Consultant is responsible to indemnify the District under the Agreement shall not be affected by the coverage or lack of coverage by any insurance obtained by Consultant, or by any coverage dispute between Consultant and its insurer.

8. **INDEMNIFICATION**

- 8.1 To the extent permitted by law, Consultant shall indemnify and hold harmless the District and its officers, insurers, directors, agents, and employees (collectively, the "Indemnified Parties" and individually, an "Indemnified Party") from and against claims, costs, losses, expenses and damages (including but not limited to all reasonable fees and charges of Consultants, architects, attorneys, and other professionals, and all court, mediation, or other dispute resolution costs) because of bodily injury, sickness, disease, or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by the Consultant's negligent or intentional acts or omissions.
- 8.2 In the event one or more of the Indemnified Parties is made a party to any suit or litigation because of injury or damage or alleged injury or damage to person, life, or property or injury or alleged injury resulting in the death of any person or persons arising out of or in connection with a Project, performance of this Agreement, or progress of the Services to be done hereunder, the Consultant shall defend such action on behalf of the Indemnified Party or Parties by counsel chosen by the applicable Indemnified Party or Parties being defended and shall pay all damages, costs, expenses, and reasonable attorneys' fees incurred in connection with such defense. If judgment shall be obtained or claim allowed in any of such proceedings against any of the Indemnified Parties or a settlement is reached, the Consultant shall pay and satisfy such judgment, claim, or settlement, except the portion thereof that shall be determined or mutually agreed to be caused by the negligence of one or more of the Indemnified Parties. In the event claims, losses, damages, or expenses are caused by the joint or concurrent fault of the Consultant and the District, they shall be borne by each party in proportion to their respective fault, as determined by a mediator or court of competent jurisdiction.
- 8.3 Additional Indemnity. Consultant also agrees to indemnify and hold harmless the Indemnified Parties from and against all claims, damages, losses, forfeitures, penalties, and expenses including, but not limited to, reasonable attorneys' fees and court,

mediation, or other dispute resolution costs arising out of or resulting from:

8.3.1 Claims growing out of lawful demands of any Consultant employee arising from or related to wages or benefits including, without limitation, all expenses and attorneys' fees incurred by any Indemnified Party in discharging any such demands, liens, or similar encumbrances.

8.3.2 Any breach by Consultant of any applicable laws including, without limitation, the Fair Labor Standards Act, ERISA, Wisconsin's Fair Employment Law, Wisconsin's wage and hour laws, and immigration laws; and any claim or action by any Consultant employees against the District alleging any violation by the District of any applicable laws including, without limitation, the Fair Labor Standards Act, ERISA, Wisconsin's Fair Employment Law, Wisconsin's wage and hour laws and immigration laws.

8.4 To the extent permitted by law and to the extent this section does not waive the protections provided to the District under Wis. Stat. § 893.80(3), the District shall indemnify and hold harmless the Consultant and its officers, directors, employees, agents and consultants from and against all claims, costs, losses, and damages (including but not limited to all reasonable fees and charges of Consultants, architects, attorneys, and other professionals, and all court, mediation, or other dispute resolution costs) provided that any such claims, costs, losses, or damages are attributable to bodily injury, sickness, disease, or death of, or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by the negligent acts or omissions of the District.

9. **TERMINATION**

9.1 This Agreement may be terminated, in whole or in part, by either party if the other party fails to fulfill its obligations under this Agreement through no fault of the terminating party. However, no such termination will be effective unless the terminating party gives the other party (1) not less than ten (10) business days written notice of intent to terminate, and (2) an opportunity for a meeting with the terminating party to resolve the dispute before termination.

9.2 The District may immediately terminate this Agreement without penalty, in whole or in part, with written notice to Consultant, if funds are no longer available from anticipated sources of revenue. The District may also immediately terminate this Agreement without penalty for its convenience and with written notice to Consultant if the District elects not to further pursue the Project.

9.3 In addition, upon the occurrence of one or more of the following events, either party may, after giving the other party written notice, terminate this Agreement:

- 9.3.1 If the other party commences a voluntary case under any chapter of the Bankruptcy Code as now or hereafter in effect or takes any equivalent or similar action by filing a petition or otherwise relating to bankruptcy, receivership, or insolvency.
 - 9.3.2 If a petition is filed against the other party under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing or if a petition is filed seeking any such equivalent or similar relief against Contractor under any applicable laws in effect at the time relating to bankruptcy, receivership, or insolvency.
 - 9.3.3 If the other party makes a general assignment for the benefit of creditors.
 - 9.3.4 If the other party admits in writing an inability to pay its debts generally as they become due.
- 9.4 If this Agreement is terminated, the Consultant shall be paid for Services properly performed to the effective date of termination, including reimbursable expenses. In the event of termination, the District will receive electronic files of all Project Deliverables (defined below) within the Scope of Services or Project completed by the Consultant up to the date of termination. Electronic files shall be in a mutually agreed upon format that is usable by the District and shall be subject to Section 10 below.

10. **USE OF DOCUMENTS AND ELECTRONIC FILES**

- 10.1 Consultant may retain its documentation related to the Project, including work papers, documents, spreadsheets, and electronic data, provided that all such documentation remains confidential and is not disclosed to third parties except where disclosure is expressly required by law and subject to the confidentiality provisions of Section 11 below. The District acknowledges that Consultant may have a responsibility to retain the documentation for a period of time sufficient to satisfy any applicable legal or regulatory requirements for records retention. If required by law, regulation, or professional standards to make certain documentation available to Consultant's regulators, the District authorizes Consultant to do so but only after providing prior written notice of such disclosure to the District.
- 10.2 Notwithstanding the foregoing, Consultant shall provide the District with copies or originals of all work papers, documents, spreadsheets, and electronic data in a mutually agreed upon format that is usable by the District, spreadsheet financial models in a mutually agreed upon format that is usable by the District and any and all keys or passwords needed for the District

to access same (collectively herein, "**Project Deliverables**"). It is expressly understood that the Project Deliverables are intended to be and shall remain the property of the District. Consultant shall provide the Project Deliverables to the District in a mutually agreed upon standard format (such as, for example, Excel) so that the District can use the Project Deliverables independently from the Consultant.

10.3 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests and/or procedures within sixty

(60) calendar days of receipt, after which the receiving party shall be deemed to have accepted the transferred data as transmitted. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.

10.4 Following Project closeout, the Consultant shall act in a manner that ensures and maintains confidentiality of information obtained during the course of the Project. Consultant's document retention policies shall ensure that Project Deliverables are retained for a minimum of seven (7) years from Project closeout. Upon the request of the District, Consultant shall certify to the District that all materials shall be destroyed and deleted in a manner that ensures confidentiality.

11. **CONFIDENTIALITY AND TRADE SECRETS**

11.1 As used in this Agreement, the term "Confidential Information" shall mean and include all information disclosed by the District to Consultant verbally, electronically, visually, or in written or other tangible form which is either identified as confidential or should be reasonably understood by Consultant to be confidential or proprietary, including but not limited to ideas, concepts, theories, designs, approaches, improvements, methods, techniques, procedures, processes, communications, financial information, business information, rate or economic data, trade secrets, hardware, software, IT security information, customer information, billing or collection information, account information, employee information, correspondence, memoranda, data, reports, forecasts, projections, customer lists, potential customer lists, business requirements, strategy or plans, or any discussions or negotiations which incorporate, include, or refer to Confidential Information described in this paragraph.

11.2 Consultant agrees for itself and its employees, agents, and sub-consultants to keep confidential and not to disclose to any person or entity the Confidential Information that the District provides to Consultant or to which Consultant gains access in the course of performing the Services, without the District's prior written consent, which consent may be granted, withheld, or conditioned in the District's sole discretion. The confidentiality obligations set forth in this section shall not apply to information and materials (i) that are

or subsequently become publicly available without Consultant's breach of this confidentiality provision, (ii) that were known to Consultant prior to the District's disclosure to Consultant, (iii) that became known to Consultant from a source other than the District and other than by the breach of an obligation of confidentiality owed to the District, (iv) is independently developed by Consultant, or (v) is a public record required to be disclosed by the District pursuant to Subchapter II of Chapter 19 of the Wisconsin Statutes. Consultant shall notify the District prior to making any disclosure so that the District can dispute whether disclosure pursuant to (i) through (v) above is appropriate. Consultant shall indemnify, defend, and hold the District harmless from all damages, claims, losses, and costs (including attorneys' fees) related to or arising from Consultant's breach of these confidentiality provisions. The confidentiality obligations and indemnities contained in this section shall survive for a period of three (3) years following the expiration or termination of this Agreement.

11.3 All copies of all materials relating to the Services whether constituting Confidential Information or not, must be returned to the District upon completion of the Project. Regarding documents including Confidential Information, Consultant shall comply with Section 10.4 above. The Consultant may not publish, release, disclose, or disseminate to anyone other than the District employees the results of any Services performed or any information obtained from Services performed under this Agreement unless required to do so in accordance with litigation or applicable state law or unless the District grants written approval to publish, release, disclose, or disseminate such information. Materials which are reviewed by the Consultant in the course of this Agreement may contain trade secrets which are the property of the District, or which have been purchased or leased for use by the District. The Consultant may not reveal any trade secrets to any person in any form and may not use any such trade secrets itself for any purpose.

11.4 All Confidential Information in whatever form provided shall remain the property of the District. The Consultant agrees to take all necessary and appropriate actions to protect and maintain the confidentiality of the Confidential Information. The Consultant shall cooperate with the District in regard to disclosure of Confidential Information that may be required to respond to a public records request.

11.5 The Consultant agrees not to use the District's name, logo, or trademark or refer to the District in any advertising; promotion; announcement; marketing literature; or other type of publication, marketing effort, or advertisement, whether written or oral, without the express prior written approval of the District.

11.6 Consultant shall require personnel provided to the District to comply with the

confidentiality provisions set forth in this Section 11. By signing this Agreement, Consultant certifies that its employees, agent, and sub-consultants shall each comply with this Section 11.

12. COPYRIGHT AND PATENT GUARANTEES.

12.1 The Consultant warrants its Services covered by this Agreement will not infringe or contribute directly or indirectly to the infringements of any patents, trademarks, inventions, or copyrights, either in the USA or foreign countries. Consultant **(i)** shall indemnify and hold the District harmless from and against any and all claims, liabilities, causes, damages, costs or expenses, including attorneys' fees of any kind involving any actual or alleged infringements (excluding, however, any infringements solely related to concepts, designs, or ideas furnished in writing by the District which, as between the District and the Consultant, originated with the District) or **(ii)** at the District's option, shall reimburse the District for all damages, costs, and expenses of any kind including reasonable attorneys' fees incurred by the District in defending any such suits or proceedings. In addition to the foregoing, Consultant shall save the District harmless against and shall pay all awards of damages assessed and all costs of suit adjudged against the District in such suits or proceedings, provided the District gives Consultant reasonable notice in writing of the institution of any such suit or proceeding; permits Consultant to defend it; and gives Consultant all such information, assistance, and authority as shall be reasonably necessary to enable it to do so. In case any part of the Services is held in any such suit or proceeding to constitute infringement and its use is enjoined, Consultant shall, at the District's option, within a reasonable time either **(i)** secure for the District the perpetual right to continue the use of such part of the Work by procuring for the District a royalty-free license or such other permission as will enable Consultant to secure the suspension of any injunction, **(ii)** replace at Consultant 's own expense such part of the Services with an adequate noninfringing part, or **(iii)** modify it so that it becomes noninfringing.

13. SUCCESSORS, ASSIGNS AND BENEFICIARIES

13.1 The District and Consultant are hereby bound, as are their respective successors, employees, and representatives to the other party to this Agreement with respect to all covenants, terms, promises, and obligations contained herein.

13.2 Neither the District nor Consultant may assign, sublet, subcontract or transfer any rights or obligations under or interest (including, but without limitation, monies that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is required by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any obligation under this Agreement.

13.3 Unless expressly provided otherwise in this Agreement, nothing contained shall be construed to create, impose, or give rise to any duty owed by the District or Consultant to any third party, or other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken to this Agreement will be for the sole and exclusive benefit of the District and Consultant and not for the benefit of any other party.

14. **DISPUTE RESOLUTION**

14.1 The District and Consultant agree to negotiate all disputes between them in good faith for a period of 30 calendar days from the date of notice prior to invoking other provisions of the Agreement, or exercising their rights underlaw.

15. **MISCELLANEOUS PROVISIONS**

15.1 This Agreement is to be governed by the laws of the State of Wisconsin without regard to Wisconsin's or any other state's conflict of laws principles. The parties agree that any judicial action arising under this Agreement shall be brought exclusively in a Wisconsin court in Dane County, Wisconsin, with subject matter jurisdiction. The parties irrevocably consent to personal jurisdiction of the Dane County state courts for judicial actions arising under this Agreement.

15.2 Any notice required under this Agreement will be in writing, addressed to the designated party at its address in the signature page and served personally, by email, by facsimile, by registered or certified mail (postage prepaid), or by a commercial courier service. All notices shall be effective upon the date of receipt.

15.3 All express representations, waivers, and indemnifications in this Agreement will survive its completion and/or termination.

15.4 Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the District and Consultant, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that expresses the intention of the stricken provision.

15.5 A party's non-enforcement of any provision shall not constitute a waiver of the provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

15.6 To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of substantial completion of the Project, which is the point where the Project

can be utilized for the purposes for which it was intended.

15.7 This Agreement constitutes the entire agreement between the District and Consultant and supersedes all prior and/or oral understandings. This Agreement may only be amended by a mutually agreed and executed written instrument. Oral understandings are not binding.

15.8 Consultant is an independent contractor and not an employee of the District.

15.9 Facsimile and electronic signatures shall have the same effect as original signatures. Execution in counterparts shall have the same effect as execution in a single document.

15.10 With the execution of this Agreement, Consultant and the District shall designate specific individuals to act as Consultant's and District's representatives with respect to the services to be performed or furnished by Consultant and responsibilities of the District under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

CONSULTANT:

****Insert Consultant Company Here****

By: _____

Name of signer

Title: **XXXXXX**

Date Signed: _____

Address for giving notices:

INSERT ADDRESS HERE

Designated Representative:

FILL IN NAME

Phone Number: Direct:

Office: | **Mobile:**

Email Address:

Fill in email

DISTRICT:

Madison Metropolitan Sewerage District

By: _____

D. Michael Mucha, P.E.

Title: Executive Director

Date Signed: _____

Address for giving notices:

1610 Moorland Road, Madison, WI 53713-3398

Designated Representative:

FILL IN NAME

Phone Number: 608.222.1201 x **_____**

Email Address:

Fill in Email

EXHIBIT A.
PROJECT

The Consultant shall provide **insert general scope of services here...a paragraph or two detailing the scope of services.**

EXHIBIT B.

SCOPE OF SERVICES PROVIDED BY CONSULTANT

THE SCOPE OF SERVICES SHALL BE CONSISTENT WITH THIS EXHIBIT B OR OTHERWISE AGREED IN A WRITTEN AMENDMENT EXECUTED BY THE PARTIES. THE SCOPE OF SERVICES CANNOT BE CHANGED BY VERBAL AGREEMENT.

Insert the scope of services from RFP or from the Consultant's proposal.

Exhibit C.

PROJECT AMENDMENT WORK ORDER

All Project Amendments require a written Project Amendment Work Order EXECUTED PRIOR TO COMMENCEMENT OF THE PROJECT AMENDMENT that enumerates changes to the services to be provided, the schedule adjustment for the change in services, and a reasonable estimate of fees and costs (if any). Professional services for Project Amendments shall be provided in accordance with the terms and conditions of the Agreement.

A blank Project Amendment Work Order is attached to this Exhibit C. The form may be used, modified, or supplemented as necessary to convey all required project amendment information.

PROJECT AMENDMENT WORK ORDER

Project: **INSERT PROJECT**

Project Amendment Work Order No.: _____

Expand, reduce, or modify fields as required.

- A. Purpose and description of project amendment:

- B. Services added/subtracted as part of this amendment:

- C. Schedule adjustment required for this project amendment:

- D. Adjustment in fees/costs for this project amendment:

Additional Comments:

Provide attachments as necessary and list here:

- a)
- b)
- c)

Approved by:

Consultant's Authorized Representative

Date

District's Authorized Representative

Date

Effective Date of Amendment: _____

Exhibit D.
COMPENSATION AND FEE SCHEDULE

COMPENSATION FOR SERVICES DESCRIBED IN EXHIBIT B SHALL BE ON AN HOURLY RATE BASIS PLUS EXPENSES FOR A TOTAL ESTIMATED FEE OF \$XXXXX. A BREAKDOWN OF THE COMPENSATION IS INCLUDED ON THE FOLLOWING PAGES AND IS PROVIDED AS AN INDICATION OF CONSULTANT’S ANTICIPATED HOURS AND FEES FOR THE SERVICES. HOWEVER, THE BREAKDOWN OF ACTUAL HOURS, EXPENSES, AND TOTAL COMPENSATION FOR EACH TASK MAY VARY FROM THAT SHOWN, SO LONG AS THE TOTAL ESTIMATED FEE INDICATED HEREIN IS NOT EXCEEDED.

The fee schedule shall be as set forth herein. All hourly services shall be invoiced to Owner in 1/4 hourly increments. Descriptions of services provided, and time spent shall be described on the invoice.

The Consultant’s Hourly Rate Schedule for the services follows. This list includes employees of the Consultant and Consultant’s sub-consultants that will be providing services for the Project as planned at the time of the Agreement. It may not include all support staff and it is understood that changes in staffing may occur as the result of unforeseen events. To that extent, employees not listed will be identified on invoices and will be billed at their standard billable hourly rates.

INSERT BREAKDOWN OF COMPENSATION AS NEEDED.

NOTE ANY BREAKDOWN FOR ITEMIZING PROJECT ELEMENTS, IF NEEDED.

MONTHLY INVOICES ARE TO BE ITEMIZED BY PROJECT ELEMENT AS INDICATED BELOW:

1. xxx
2. xxx
3. xxx
4. xxxx

INSERT CONSULTANTS HOURLY RATE SCHEDULE

Exhibit E.
PROJECT SCHEDULE

The Schedule for the Scope of Services described in Exhibit B shall commence upon the Effective date of this agreement and continue until **XXXX FILL IN END DATE** unless modified by a written project amendment.

The following table includes significant project tasks and milestones and the anticipated order and timing. Both Consultant and District agree to advise the other as early as possible regarding scheduling or completion date concerns/issues.

Insert Project Schedule