



# SAINT PAUL REGIONAL WATER SERVICES AGREEMENT AMENDMENT

## **Purchaser (Referred to as “The Board”)**

Board of Water Commissioners  
of the City of Saint Paul  
1900 Rice Street  
Saint Paul, MN 55113  
Phone: 651-266-6530

## **CONTRACTOR**

Brown and Caldwell  
30 7th Street E  
Suite 2500  
St. Paul, MN 55101

Contract No: 2248

Effective Date: May 24, 2019

Expiration Date: May 21, 2021

Contract Description: SPRWS-OWNERS REP FOR McCARRONS IMPROVEMENT PROJECT

## **Contacts**

Buyer Contact Information:

Queenie Tran - Queenie.Tran@ci.stpaul.mn.us

City Project Manager Contact Information:

Richard Hibbard - Richard.Hibbard@ci.stpaul.mn.us

William Menkhaus - William.Menkhaus@ci.stpaul.mn.us

Contractor Project Manager Contact Information:

Harold Voth - HVoth@brwncald.com

## **Water Contract - Terms and Conditions**

THIS AGREEMENT, made and entered into on the effective date above by and between the BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL, hereinafter referred to as “The Board,” and the above named Contractor, hereinafter referred to as “Contractor.” A Contractor is a party to a contract; and who contracts to do the work for another.

The Board and Contractor, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, agree as follows:

Contractor agrees to provide the services comprised of tasks, deliverables, and time lines described in this Agreement.

### **Section 1. Time For Completion.**

The services rendered by Contractor shall be commenced upon execution of the Agreement and notification by the Board to proceed and will be completed in accordance with the schedule mutually agreed upon with the Board which follows, but no later than the expiration date above.

Contractor shall not proceed with any task without specific authorization from the Project Manager designated by the Board (“Board’s Project Manager”).

In the event that there are delays caused by actions of the Board, a force majeure event described in

Section 26, or which may be reasonably requested by the Contractor which can change the completion date, Contractor shall request an extension of time for completion of the project. The Board's Project Manager will review the request and may grant to the Contractor such extensions of contract time as may be reasonable.

#### Section 2. Project Management & Performance.

The Board requires the Contractor to assign specific individuals as principal project members and to assure that the major work and coordination will remain the responsibility of these individuals during the term of the Agreement. Removal of any principal project member without replacement by equally qualified individuals or without the prior written approval of the Saint Paul Regional Water Services General Manager is grounds for termination of the Agreement by the Board.

The Board has designated the individual on Page 1, as the Board's Project Manager for this Agreement, and the individual to whom all communications pertaining to the Agreement shall be addressed. The Project Manager shall have the authority to transmit instructions, receive information, and interpret and define the Board's policy and decisions pertinent to the work covered by this Agreement.

#### Section 3. Billings and Payment.

That for Contractor's faithful performance of this Agreement, the Board hereby agrees to compensate Contractor in the amount(s) and according to the schedule herein.

The amounts herein shall fully compensate Contractor for all work and associated costs. The Board will honor no claim for services and/or costs provided by the Contractor not specifically provided for in this Agreement. Total costs for the project shall not exceed the amount referenced herein.

Contractor shall submit an itemized invoice monthly or after services are complete. Upon receipt of the invoice and verification of the charges by the Board's Project Manager, the Board shall make payment to Contractor within thirty-five (35) days.

#### Section 4. Board Responsibilities

The Board agrees to provide Contractor with access to any information from Board documents, staff, and other sources needed by Contractor to complete the work described herein.

#### Section 5. Amendment or Changes to Agreement.

A. Board or Contractor may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes and method of compensation must be authorized in writing in advance by the Board.

B. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.

C. Modifications or additional schedules shall not be construed to adversely affect vested rights or causes of action which have accrued prior to the effective date of such amendment, modification, or supplement. The term "this Agreement" as used herein shall be deemed to include any future amendments, modifications, and additional schedules made in accordance herewith.

#### Section 6. Notices.

Except as otherwise stated in this Agreement, any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed to the individuals and addresses listed above.

#### Section 7. Survival of Obligations.

A. The respective obligations of the Board and Contractor under these terms and conditions, which by their nature would continue beyond the termination, cancellation, or expiration hereof, shall survive termination, cancellation or expiration hereof.

B. If a court or governmental agency with proper jurisdiction determines that this Agreement, or a provision herein is unlawful, this Agreement or that provision, shall terminate. If a provision is so terminated but the parties legally, commercially, and practicably can continue this Agreement without the terminated provision, the remainder of this Agreement shall continue in effect.

Section 8. Entire Agreement.

It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

Section 9. Commencement of Work.

Contractor shall not perform any work pursuant to this contract without the specific prior agreement of the designated representative of the BOARD OF WATER COMMISSIONERS OF THE CITY OF SAINT PAUL "the Board". No claim for services or products provided by the Contractor not specifically provided for in this contract, or not specifically agreed to in advance will be honored by the Board.

Section 10. Invoicing and Payment.

Contractor shall submit invoices to the Board department making the purchase clearly itemizing all goods and/or services provided. The Board will make payment in accordance with Chapter 471.425. Such payment may be made using a pay voucher, purchase order, or authorized procurement card, or department shall notify Contractor of any problems, omissions, or defects in the goods and/or services received.

Section 11. Records, Dissemination of Information.

A. For purposes of this Agreement, the following words and phrases shall have the meanings set forth in this section, except where the context clearly indicates that a different meaning is intended.

"Work product" shall mean any report, recommendation, paper, presentation, drawing, demonstration, or other materials, whether in written, electronic, or other format that results from Contractor's services under this Agreement.

"Supporting documentation" shall mean any surveys, questionnaires, notes, research, papers, analyses, whether in written, electronic, or in other format and other evidences used to generate any and all work performed and work products generated under this Agreement.

"Business records" shall mean any books, documents, papers, account records and other evidences, whether written, electronic, or in other forma, belonging to Contractor and pertaining to work performed under this Agreement.

B. All deliverable work products and supporting documentation that directly result from the Contractor's services under this Agreement shall be delivered to the City and shall become the property of the City after final payment is made to the Contractor with no right, title, or interest in said work products or supporting documentation vesting in Contractor, except as provided in this section. Contractor shall retain the right to all its software, intellectual property and templates that are not a project specific deliverable as well as to individual features of the design which Contractor would reasonably expect to be able to recreate in whole of in part in other projects.

C. In the event that deliverable work products include drawings, Contractor shall provide a complete set of as-built record drawings in AutoCAD or ESRI GIS format (plan view only in GIS), as may be determined appropriate by Board's Project Manager. AutoCAD drawings shall include any customized Plot Style Tables (.ctb or .stb) or line types (.lin) and shall not require links to other drawings. Whether required as an incidental or specifically addressed in the Proposal, final payment to Contractor for work of this Agreement will not be approved until as-built record drawings are received and approved by Board's Project Manager.

D. The Contractor agrees not to release, transmit, or otherwise disseminate information associated with or generated as a result of the work performed under this Agreement without prior knowledge and written consent of the Board.

E. In the event of termination, all documents finished or unfinished, and supporting documentation prepared by the Contractor under this Agreement, shall be delivered to the Board by Contractor by the termination date and there shall be no further obligation of the Board to Contractor except for payment of amounts due and owing for work performed and expenses incurred to the date and time of termination.

F. When remotely accessing the Board's electronic resources, the Contractor agrees to abide by the requirements outlined in "SPRWS Policy for Remote Access to Electronic Resources by Outside Parties", available from Board's Project Manager upon request.

G. The Contractor agrees to maintain all business records in such a manner as will readily conform to the terms of this Agreement and to make such materials available at its office at all reasonable times during this Agreement period and for six (6) years from the date of the final payment under the contract for audit or inspection by the City, the Board, the Auditor of the State of Minnesota, or other duly authorized representative.

H. The Contractor agrees to abide strictly by Chapter 13, Minnesota Government Data Practice Act, and in particular Minn. Stat. §§ 13.05, subd. 6 and 11; and 13.37, subd. 1 (b) and Minn. Stat §§ 138.17 and 15.17. All of the data created, collected, received, stored, used, maintained, or disseminated by the Contractor in performing functions under this Agreement is subject to the requirements of the Minnesota Government Data Practices Act and Contractor must comply with those requirements as if it were a governmental entity. If any provision of this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota state laws, state law shall control.

#### Section 12. Human Rights/Affirmative Action/Equal Economic Opportunity.

Contractors must comply with the City of Saint Paul's Human Rights Department's Affirmative Action Requirements in Employment pursuant to Section 183.04 of the Saint Paul Legislative Code, the Rules Governing Affirmative Requirements in Employment, and Chapter A-17 of the Saint Paul Administrative Code governing racial harassment. The Contractor agrees to comply with all federal, state and local laws, resolutions, ordinances, rules, regulations and executive orders pertaining to unlawful discrimination on account of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same.

#### Section 13. Affirmative Action Contract Specifications.

Every contractor or subcontractor whose total accumulated contract awards from the City of Saint Paul over the preceding twelve months have met or exceeded \$50,000 must complete and submit to the Department an Affirmative Action Program Registration form along with a \$75 registration fee (City of Saint Paul Administrative Code Ordinance 86.06 and City of Saint Paul Legislative Code Ordinance 183.04).

#### Section 14. Compliance With Applicable Law.

The Contractor agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations and standards established by any agency of such governmental units, insofar as they apply to the Contractor's performance of the provisions of this Contract. It shall be the obligation of the Contractor to apply for, pay for and obtain all permits and/or licenses required.

#### Section 15. Conflict of Interest.

Contractor's acceptance of this agreement indicates compliance with Chapter 24.03, City of Saint Paul Administrative Code: "Except as permitted by law, no city official or employee shall be a party to or have a direct financial interest in any sale, lease, or contract with the City. The contractor also affirms that to the best of the Contractor's knowledge, their involvement in this contract does not result in a conflict of interest with any part or entity which may be affected by the terms of this contract. The Contractor agrees that should any conflict or potential conflict of interest become known to the contractor, they will immediately notify the Purchasing Systems Manager of the situation so that a determination can be made about Contractor's ability to continue performing services under this Agreement.

#### Section 16. Hold Harmless.

The Contractor shall indemnify, protect and defend the City of Saint Paul, its officers, agents, and employees and the Board of Water Commissioners of the City of Saint Paul, its officers, agents and employees, from all claims, actions, or suits of any character brought for or on account of any claimed or alleged injuries or damages received by any person or property, to the extent caused by an act or omission of Contractor or any person employed by Contractor in carrying out the terms of this Contract.

#### Section 17. Assignment.

The Board and Contractor each binds itself and its successors, legal representatives, and assigns of such other party, with respect to all covenants of this Contract; and neither the Board nor the Contractor will assign or transfer their interest in this Contract without the written consent of the other.

Section 18. Termination.

This Agreement will continue in full force and effect until completion of the project as described herein unless either party terminates early for cause.

A. With Cause. The Board reserves the right to terminate this Agreement, upon 7 days' written notice and a reasonable opportunity for Contractor to cure, if the Contractor violates any of the terms or does not fulfill, in a timely and proper manner, its obligations under this Agreement as determined by the Board. In the event that the Board exercises its right to withhold payment or terminate under this Section, it shall submit written notice to the Contractor, specifying the extent of such withholding or termination under this Section, the reasons therefore, and the date upon which such withholding or termination becomes effective. Upon receipt of such notice, the Contractor shall take all actions necessary to discontinue further commitments of funds to the extent that they relate to the terminated portions of this Agreement.

B. In the event of termination, the Board will pay Contractor for all services and/or products, actually, timely, and faithfully rendered up to the receipt of the notice of termination and thereafter until the date of termination. The Contractor will deliver all work products and supporting documentation developed up to the time of termination prior to the Board rendering final payment for service.

Section 19. Amendments or Changes.

Any alteration, variation, modification or waiver of the provisions of the specifications that may have occurred during the bidding process or amendments to this Contract shall be valid only when reduced to writing and duly signed by the Contractor and the Board.

Section 20. Interpretation of Agreement, Venue.

This Contract shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this agreement shall be venued in the District Court of the County of Ramsey, Second Judicial District, State of Minnesota.

Section 21. Independent Contractor.

It is agreed by the parties, that at all times and for all purposes, within the scope of the Agreement resulting from this solicitation, the relationship of the Contractor to the Board is that of independent contractor and not that of employee. No statement contained in the specification or resulting Agreement shall be construed so as to find the Contractor an employee of the Board, and Contractor shall be entitled to none of the rights, privileges, or benefits of Saint Paul employees.

Section 22. Waiver.

The waiver by the Board of any breach under the terms of this Agreement or the foregoing by the Board of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of the Board's right to any rights and/or remedies with respect to any subsequent breach or default of the terms of the contract. The rights and remedies of the Board provided or referred to under the terms of the contract are cumulative and not mutually exclusive.

Section 23. Setoff.

Notwithstanding any provision of this Agreement to the contrary, the Contractor shall not be relieved of liability to the city for damages sustained by the Board by virtue of any breach of the contract by the Contractor. The Board may withhold a reasonable portion of payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due the Board from the Contractor is determined.

Section 24. Additions.

During the contract period, the Board reserves the right to request pricing for and add to the contract a limited number of like items to accommodate the need for any items that may have been inadvertently omitted from the lists included in this request document.

Section 25. Subcontracting.

The Contractor agrees not to enter into any subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the Board.

Section 26. Force Majeure.

Neither the Board nor the Contractor shall be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control, including, but not limited to: severe weather and storms, earthquake or other natural occurrences, strikes and other labor unrest, power failures, electrical power surges or current fluctuations, nuclear or other civil military emergencies, or acts of legislative, judicial, executive.

Section 27. Entire Agreement.

The specifications and other solicitation materials associated with this Agreement and these General Terms and Conditions shall constitute the entire Agreement between the parties and shall supersede all prior oral or written negotiations.

Section 28. Insurance.

A. Contractor shall be required to carry insurance of the kind and in the amounts shown below for the life of the contract. Certificates for General Liability Insurance should state that the City of Saint Paul, its officials, employees, agents and representatives and the Saint Paul Board of Water Commissioners, its officials, employees, agents and representatives are Additional Insureds.

1. General or Business Liability Insurance

\$1,500,000 per occurrence

\$2,000,000 aggregate per project

\$2,000,000 products/completed operations total limit

\$1,500,000 personal injury and advertising

Policy must include an "all services, products, or completed operations" Endorsement when appropriate.

2. Automobile Insurance-(When Commercial vehicles are used in connection with a contract)

a. Bodily Injury \$750,000 per person \$1,000,000 per accident

b. Property Damage not less than \$50,000 per accident Coverage shall include: hired, non-owned and owned auto

Automobile Insurance – When Personal vehicles are used in connection with a contract, the Board and the City are not required to be named as Additional Insureds, but proof of insurance is required prior to commencement of activities. Contractor must provide the Board and the City with Endorsements from insurance company.

a. Bodily Injury \$30,000 per person \$60,000 per accident

b. Property Damage \$20,000 per accident

Automobile Insurance – When Rental vehicles are used in connection with a contract, the Contractor shall either purchase insurance from the rental agency, or provide the Board and the City with proof of insurance as stated above.

3. Worker's Compensation and Employer's Liability

a. Worker's Compensation per Minnesota Statutes

b. Employer's Liability shall have minimum limits of \$500,000 per accident; \$500,000 per employee; \$500,000 per disease policy limit.

c. Contractors with 10 or fewer employees who do not have Worker's Compensation coverage are required to provide the Board and the City with a completed "Certificate of Compliance" (State of Minnesota form MN LIC 04) verifying their number of employees and the reason for their exemption.

4. Professional Liability Insurance is required when a contract is for service for which professional liability insurance is available for purchase .

a. \$1,000,000 per claim

b. \$2,000,000 aggregate

5. General Insurance Requirements

a. All policies shall be written on a claims-made or occurrence basis as identified in this Section 28, or as acceptable to the Board and the City. Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. Agent must state on the certificate if company carries errors and omissions coverage.

b. The Contractor may not commence any work until Certificates of Insurance covering all of the insurance required for this project is approved and the Project manager has issued a notice to proceed. Insurance must remain in place for the duration of the original contract and any extension periods.

c. The Board and the City reserve the right to review Contractor's insurance policies at any time to verify that City requirements have been met, provided Contractor shall be entitled to redact any information it

considers confidential and/or proprietary.

d. Nothing shall preclude the Board and the City from requiring Contractor to purchase and provide evidence of additional insurance if the scope of services change, if the amount of the contract is significantly increased, or if the exposure to the City or its citizens is deemed to have increased. The cost of such additional insurance coverage shall be paid through the applicable amendment or modification.

e. Satisfaction of policy limits required above for General Liability and Automobile Liability Insurance, may be met with the purchase of an umbrella or excess policy. Any excess or umbrella policy shall be written on an occurrence basis, and if such policy is not written by the same insurance carrier, the proof of underlying policies shall be provided with any certificate of insurance.

f. For any Professional Liability policies that are issued on a 'claims made' basis, proof of insurance, in the form of a certificate of insurance, shall continue to be provided for six (6) years following the last day that payment for services has been made by City to vendor, or for as long of a period of time as the most current tort liability Statute of Limitations in the State of Minnesota.

## **EXHIBIT A - SOW**

### **SCOPE OF WORK INCLUDING DELIVERABLES:**

Contractor's scope of work is pursuant to Event #788 Plans, Specifications, Addenda, and all related documents, to include Contractor's Proposal.

### **COMPENSATION/PAYMENT TERMS:**

1. Contractor will invoice on a monthly basis. Every invoice will include the following minimum information, summarized by phase:
  - a. Contractor staff person doing the work
  - b. Actual hours worked by Contractor staff person
  - c. Billing rates by Contractor staff person
  - d. Total Monthly cost
  - e. Project summary that tracks the authorized amount, the amount earned and the remaining balance, all per phase.
2. Contractor acknowledges that this will not be a lump sum contract. Contractor will be paid at the hourly rates listed in the proposal for actual hours worked at a cost not to exceed \$2,393,090. As noted in Contractor's cost proposal, Contractor would implement rate adjustments at the end of each calendar year with the understanding that rate adjustments would not change the maximum contract amount of \$2,393,090.
3. If during the course of the project, SPRWS determines the project cannot proceed further, SPRWS will pay for all hours Contractor has worked on the project that have not yet been billed.
4. Each invoice will include the minimum information identified in item 1 above.

### **Amendment 1**

This Agreement is being amended on the 2nd day of June 2020 to update contractor rates.

See attached for the updated rate of 2020.

All other terms and conditions of the original agreement shall remain in full force and effect through the term of this Amendment.

### **Amendment 2**

This Agreement is being amended on the 24th day of August 2020 to add the following additional tasks to the scope of work.

Change Order 1 - Add \$65,000.00

To conduct a bench-scale investigation into the efficacy of pre-ozonation for reducing coagulant chemical usage while providing taste and odor treatment. Scope of Work will include:

1. The following sequence of tests run twice, at 5 degree C and 20 degree C:
  - a. Demand-decay test on raw water establishing demand at 4 doses and decay curves for 2 doses, with geosmin spiking, geosmin sampling at the 4 tested doses, and bromate sampling at the 4 tested doses
  - b. Coagulation with ferric and lime softening tests with raw water at ambient pH over six (6) different coagulant doses and with two (2) different coagulants (for 12 doses total)

- c. Generation of preozonated water dosed at the ozone demand for further coagulation tests and extra sample, if available, to be sent back to SPRWS
  - d. Repeat coagulation/softenings tests with pre-ozonated raw water at the demand point for comparison (for 12 doses total)
  - e. Bromate and geosmin tests: Will include geosmin spiking
2. Seven SDS tests on the following conditions with measurement of 6 nitrosamine species
    - a. Raw
    - b. Preozonated water at 5 °C and 20 °C
    - c. Preozonated and Alum+softened water at 5 °C and 20 °C
    - d. Preozonated and PASS+softened water at 5 °C and 20 °C

3. Costing analysis, considering anticipated coagulant chemical usage and ozone costs, at a level corresponding to an AACE Class IV Estimate.

During the coagulation tests, data on the following water quality parameters will be recorded:

- TOC
- DOC
- UV254
- SUVA
- Turbidity
- Alkalinity
- Aluminum residual
- pH
- Silicate Residual

Deliverables:

- Technical memo documenting:
  - Test results for each parameter and experimental condition
  - Costing analysis with expected financial return of pre-ozonation

Original Contract Amount - \$2,393,090.00  
 Amendment 1 - \$0.00  
 Amendment 2 - \$65,000.00  
 Total Revised Contract - \$2,458,090.00

All other terms and conditions of the original agreement shall remain in full force and effect through the term of this Amendment.

**CONTRACT LINES**

Item	Item Description	Unit of Measure	Base Cost
PROFESSIONAL SERVICES	SEE EXHIBIT A - SOW	8P	2,393,090.00000
AMENDMENT 2	CHANGE ORDER 1	8P	65,000.00000



SPRWS WTP Improvements Rate  
Table Project 153796

	Billing Rate
Job Classification	2020
Project Manager	294
Owner's Representative	335
OR - Procurement II	319
OR - Procurement I	180
OR-Market Specialist/Estimating	283
OR- Operations Specialist II	283
OR-Contract Specialist	258
OR-Bid Evaluation	206
Expert Engineer	319
Principal Engineer	283
Senior Engineer	258
Engineer	232
Staff Engineer	206
Health and Safety Mgr	206
Principal Structural Engineer (BCG)	192
Associate Prinsipal Structural Engineer (BCG)	182
Operations Specialist I (Pro-Ops)	180
Junior Engineer	180
Engineering Specialist	149
Designer	129
Communication/Funding Specialist	232
Adminstrative Support	108



Board of Water Commissioners  
of the City of Saint Paul  
1900 Rice Street  
Saint Paul, MN 55113

Brown and Caldwell  
30 7th Street E  
Suite 2500  
St. Paul, MN 55101

Board of Water Commissioners  
of the City of Saint Paul:  
This Agreement has been duly executed by the  
Board of Water Commissioners of the City of Saint Paul via  
electronic approval

Contractor:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date