

RESOLUTION NO. 22-025
Riley-Purgatory-Bluff Creek Watershed District
Board of Managers

Authorizing execution of a service contract with Carver Soil & Water Conservation District

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 that is self-implementing through various programs and projects that require RPBCWD to have trained and competent staff as well as technical service providers who complement RPBCWD's staff's qualifications and expertise and extend staff's capacity to implement the plan;

WHEREAS Carver Soil and Water Conservation District staff have well-established expertise in best-management practice design, erosion and sediment control practices, natural-resources management, and RPBCWD and CSWCD have a longstanding relationship whereby CSWCD has provided reliable and useful field services in support of RPBCWD's regulatory and cost-share programs, and RPBCWD recommend continuing the arrangement; and

WHEREAS Minnesota Statutes section 471.59 authorizes CSWCD and RPBCWD to enter this cooperative agreement to exercise powers common between them.

NOW THEREFORE BE IT RESOLVED that the RPBCWD Board of Managers authorizes the interim administrator, with advice of counsel, to enter the attached two-year services contract with Carver Soil and Water Conservation District for field services for a total cost not to exceed \$60,000, 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that the resolution is in full force and effect on this date, and Resolution 22-025 has not been modified, amended or rescinded since its adoption.

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

Dorothy Pedersen, Secretary

DRAFT

**Exhibit A
Agreement**

DRAFT

**SERVICE AGREEMENT BETWEEN
RILEY-PURGATORY-BLUFF CREEK WATERSHED DISTRICT AND
CARVER SOIL AND WATER CONSERVATION DISTRICT**

This agreement is entered into by Riley-Purgatory-Bluff Creek Watershed District, a governmental subdivision of the State of Minnesota with purposes and powers set forth in Minnesota Statutes chapters 103B and 103D (RPBCWD), and Carver Soil and Water Conservation District (CSWCD), a governmental subdivision of the State of Minnesota with purposes and powers set forth in Minnesota Statutes chapter 103C.

Agreement

1 Terms of Agreement

1.1 *Effective date:* The agreement is effective on the date all required signatures are obtained.

1.2 *Expiration date:* May 31, 2024. Obligations to hold harmless, defend and indemnify survive termination and expiration.

2 Purposes

WHEREAS RPBCWD has an established cost-share program to foster stewardship and demonstrate resource-protection strategies, and participants in the program benefit from hands-on technical assistance and guidance from RPBCWD;

WHEREAS RPBCWD has adopted rules that require property owners to construct and maintain best management practices and undertake other resource-protection strategies, and enforcement of the rules through the RPBCWD permitting program requires inspection of permit sites and communication with permittees;; and

WHEREAS Minnesota Statutes section 471.59 authorizes CSWCD and RPBCWD to enter this cooperative agreement to exercise powers common between them, , and CSWCD has a long history of working with private landowners to address soil erosion and water quality issues.

3 Scope of Services

CSWCD will provide technical support services to RPBCWD as described in task orders issued by the RPBCWD administrator from time to time during the term of this agreement (the Services). The Services will include but not be limited to site visits, site inspections, plan review and plant-schedule review. A task order will specify Services to be performed and, when applicable, the location of the Services to be performed, and a task order issued by the RPBCWD under the terms of this agreement will be incorporated into this agreement and binding on CSWCD as a term hereof. RPBCWD, at its discretion,

in writing may at any time suspend work or amend the Services to delete any task or portion thereof. Authorized work by CSWCD on a task deleted or modified by RPBCWD will be compensated in accordance with paragraph 4.

4 Cost

RPBCWD will compensate CWSCD for the Services on an hourly basis at a rate of \$55 per hour for technical assistance and \$90 per hour for regulatory assistance, as will be specified in relevant task orders. Invoices will be submitted semiannually for Services performed during the preceding six months. Payment for undisputed work will be due within 60 days of receipt of invoice. Direct costs incurred by CWSCD in performing the Services will not be reimbursed except with prior written approval of the RPBCWD administrator.

Total compensation for the Services under this agreement will not exceed \$60,000. Total compensation means all sums to be paid whatsoever, including but not limited to fees and reimbursement of direct costs and subcontract costs, whether specified in this agreement or subsequently authorized by the administrator.

5 Authorized Representatives

The RPBCWD Authorized Representative is
Terry Jeffery, Interim District Administrator
18681 Lake Drive East
Chanhassen, MN 55317
952-687-1348

CSWCD Authorized Representative is
Mike Wanous, District Manager
11360 Highway 212
Cologne, MN 55322
952-466-5235

6 Assignment and Subcontracting, Amendments, Waiver, Contract Complete and Severability

6.1 Assignment, Subcontracting. CSWCD will not 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 any subcontracting does not relieve CSWCD of its responsibility to perform the Services or any part thereof, nor in any respect its duty of care, insurance obligations, or duty to hold harmless, defend and indemnify under this agreement.

6.2 **Amendments.** Any amendment to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.

6.3 **Waiver.** If RPBCWD fails to enforce any provision of this agreement, that failure does not waive the provision or RPBCWD's right to enforce the right on subsequent occasions.

6.4 **Contract Complete.** This agreement contains all negotiations and agreements between RPBCWD and CSWCD. No other understanding regarding this agreement, whether written or oral, may be used to bind either party.

6.5 **Severability.** If any part of this Agreement is rendered void, invalid or unenforceable, by a court of competent jurisdiction, such rendering shall not affect the remainder of this agreement unless it shall substantially impair the value of the entire agreement with respect to either party. The parties agree to substitute for the invalid provision a valid provision that most closely approximates the intent of the invalid provision.

7 Duty of Care; Indemnification

CSWCD will perform the Services with due care and in accordance with national standards of professional care. Each party will be liable for its own acts to the extent provided by law and hereby agrees to indemnify, hold harmless and defend the other, its board members, officers and employees against any and all liability, loss, costs, damages, expenses, claims or actions, including reasonable attorney's fees which the other, its board members, officers and employees may hereafter sustain, incur or be required to pay, arising out of or by reason of any act or omission of the party, its agents, servants or employees, in the execution or performance or failure to adequately perform its obligations pursuant to this agreement. This paragraph does not waive or diminish, with respect to any third party, any defense, immunity or liability limit that RPBCWD or CSWCD may enjoy under law.

8 Insurance

At all times during the term of this Agreement, CSWCD will have and keep in force the following insurance coverages:

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

CSWCD will not commence work until it has filed with RPBCWD a certificate of insurance clearly evidencing the required coverages and naming RPBCWD as an additional insured for general liability, along with a copy of the additional insured endorsement establishing coverage for CSWCD's work and completed operations as primary coverage on a noncontributory basis. The certificate will name RPBCWD as a holder and will state that RPBCWD will receive written notice before cancellation, nonrenewal or a change in the limit of any described policy under the same terms as CSWCD.

9 Equal Employment Opportunity – Civil Rights

During the performance of this agreement, CSWCD agrees to the following: No person will, on the grounds of race, color, religion, age, sex, disability, marital status, public assistance, criminal record, creed or national origin, be excluded from full employment rights in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of and all applicable federal and state laws against discrimination, including but not limited to the Civil Rights Act of 1964.

10 Compliance with Laws

In performing the Services, CSWCD will comply with all applicable federal and state statutes and regulations as well as local ordinances now in effect or hereafter adopted. Failure to comply may be cause for cancellation of this agreement effective as of the date of receipt of notice of cancellation.

11 Audits

CSWCD's books, records, documents, and accounting procedures and practices relevant to the Services will be maintained for six years and are subject to examination by the State Auditor and RPBCWD.

12 Government Data Practices

If CSWCD 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) CSWCD possesses or has created as a result of this agreement, it will inform RPBCWD immediately and transmit a copy of the request. If the request is addressed to RPBCWD, CSWCD will not provide any information or documents, but will direct the inquiry to RPBCWD. If the request is addressed to CSWCD, CSWCD 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 this section constitutes a determination that CSWCD 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.

13 Independent Contractor

It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of co-partners between the parties hereto or as constituting CSWCD as the agent, representative, or employee of RPBCWD for any purpose or in any manner whatsoever. CSWCD is to be and shall remain an independent contractor with respect to all services performed under this agreement.

CSWCD represents that it has, or will secure at its own expense, all personnel required in performing services under this agreement. Any and all personnel of CSWCD or other person, while engaged in the performance of any work or services required by CSWCD under this agreement, shall have no contractual relationship with RPBCWD and shall not be considered employees of RPBCWD.

The role of RPBCWD with respect to the installation of BMPs under this agreement is solely to provide funding support and RPBCWD exercises no control over the design or installation of any BMP. RPBCWD is not responsible for the design, means, method and manner of any such installation.

14 Venue

Venue for all legal proceedings out of this agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Minnesota.

15 Termination

RPBCWD or CSWCD may terminate this agreement at any time, with or without cause, upon 30 days' written notice to the other party's authorized representative as identified herein. If RPBCWD terminates this agreement, it may specify work to be performed by CSWCD before termination is effective and shall pay CSWCD for services performed by CSWCD up to the time specified for termination.

{Signature page follows.}

In testimony whereof, the parties duly execute this agreement by their duly authorized officers:

Riley-Purgatory-Bluff Creek Watershed District

By: Terry Jeffery

Title: Interim Administrator

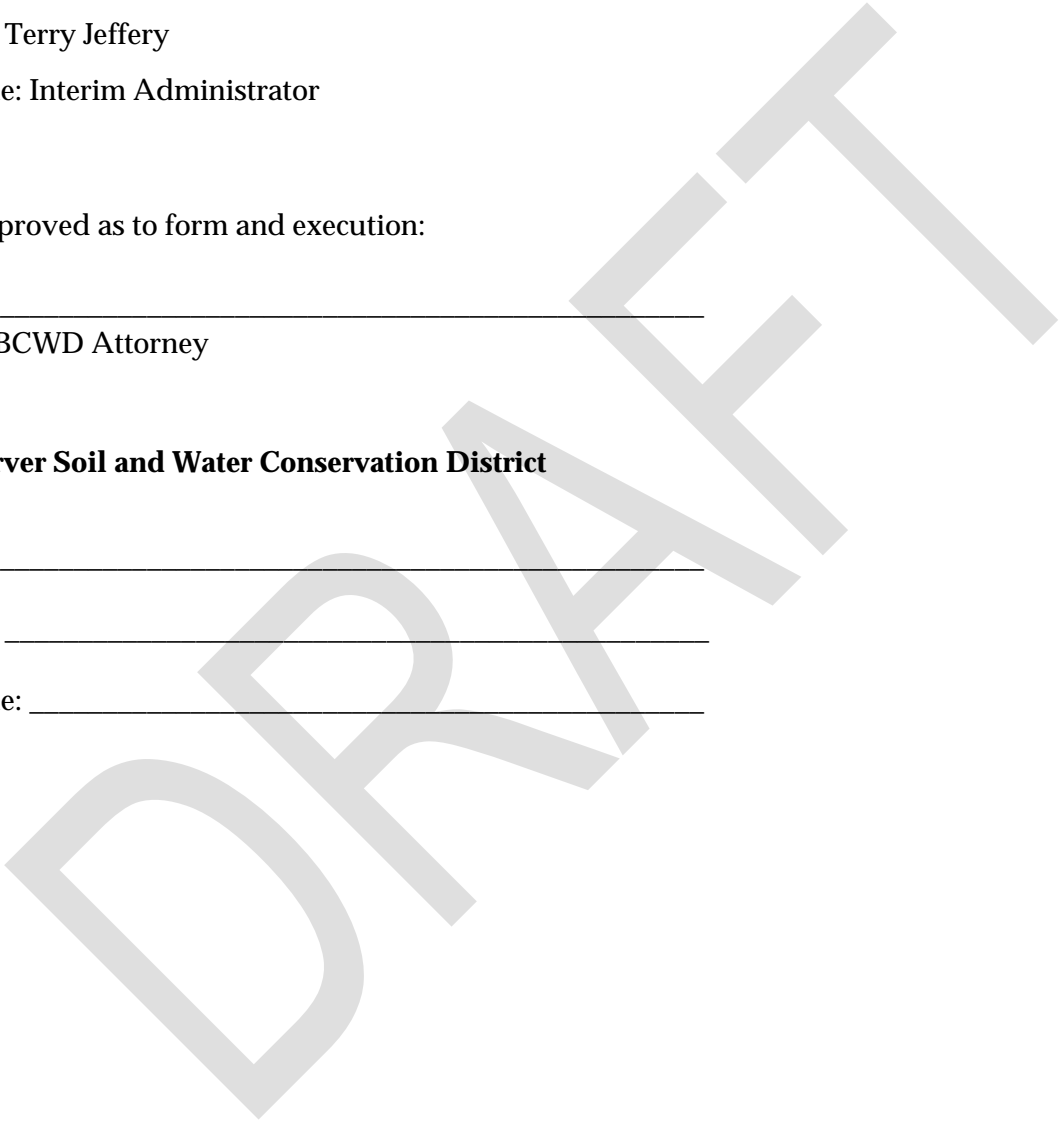
Approved as to form and execution:

RPBCWD Attorney

Carver Soil and Water Conservation District

By: _____

Title: _____



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In testimony whereof, the parties duly execute this agreement by their duly authorized officers:

Riley-Purgatory-Bluff Creek Watershed District

By: Terry Jeffery

Title: Interim Administrator

Date: _____

Approved as to form and execution:

RPBCWD Attorney

Carver Soil and Water Conservation District

By: _____

Title: _____

Date: _____

DRAFT