

Attachment B

Professional Services Agreement

This Professional Services Agreement (this "**Agreement**"), dated as of _____, 20____ (the "**Effective Date**"), is by and between _____, a(n) _____, with offices located at _____ (the "**Service Provider**") and SOUTH FORK COEUR D'ALENE RIVER SEWER DISTRICT, with offices located at 1020 Polaris Avenue, P.O. Box 783, Osburn, Idaho 83849 (the "**SFSD**").

1. **Services.** Service Provider shall provide to SFSD the services (the "**Services**") set forth in Exhibit A. Service Provider shall provide the Services: (a) in accordance with the terms and subject to the conditions set forth in this Agreement; (b) using personnel of required skill, experience, licenses, and qualifications; (c) in a timely, workmanlike, and professional manner; (d) in accordance with generally recognized industry standards in Service Provider's field; and (e) to the satisfaction of SFSD. Nothing in this Agreement shall prevent SFSD from performing for itself or acquiring from other providers the same or similar services, nor prevent Service Provider from providing the same or similar services to others (subject to confidentiality obligations set forth below). Service Provider shall not subcontract the Services without SFSD's prior written consent, which shall not be unreasonably withheld. Any changes to the scope of Services must be agreed by the parties in a written amendment in accordance with Section 11.7.

2. **SFSD's Obligations.** SFSD shall: (a) provide Service Provider with access to SFSD's premises, office accommodation, and other facilities as may reasonably be required by Service Provider for the purposes of performing the Services; and (b) respond promptly to any Service Provider request for information or approvals that Service Provider requires to perform the Services.

3. **Term and Termination.**

3.1 **Term; Renewal.** This Agreement shall commence as of the Effective Date and shall continue thereafter until the completion of the Services, which shall be no later than the completion date listed in Exhibit A (the "**Term**"), unless sooner terminated pursuant to this Section 3. The Term may be extended upon mutual written agreement between the parties.

3.2 **Termination for Convenience.** SFSD, in its sole discretion, may terminate this Agreement, in whole or in part, at any time without cause, by providing at least 45 days' prior written notice to Service Provider.

3.3 **Termination for Cause.** Either party may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party: (a) materially breaches this Agreement, and such breach is incapable of cure, or with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within 10 days after receipt of written notice of such breach; (b) becomes insolvent; (c) admits its inability to pay its debts generally as they become due; (d) becomes subject to any bankruptcy proceeding; (e) is dissolved or liquidated; (f) makes a general assignment for the benefit of creditors; or (g) has a receiver, trustee, custodian, or similar agent appointed by court order to take charge of or sell any material portion of its property or business.

3.4 Effects of Termination or Expiration. Upon expiration or termination of this Agreement for any reason, (a) Service Provider shall: (i) deliver to SFSD all documents, work product, and other materials, whether or not complete, prepared by or on behalf of Service Provider in the course of performing the Services; (ii) return to SFSD all SFSD-owned property, equipment, or materials in its possession or control; (iii) remove any Service Provider-owned property, equipment, or materials located at SFSD's locations; and (iv) provide reasonable cooperation and assistance to SFSD in transitioning the Services to an alternate service provider; and (b) each party shall return to the other party or destroy, at the other party's discretion, all documents and tangible materials (and any copies, physical or electronic) containing, reflecting, incorporating or based on the other party's Confidential Information and certify in writing that it has done so; provided, however, that SFSD may retain copies of any Confidential Information of Service Provider to the extent necessary to allow it to make full use of the Services.

3.5 Survival. The rights and obligations of the parties set forth in this Section 3.5 and Section 3.4, Section 5, Section 6, Section 7, Section 9, and any right or obligation of the parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

4. Fees; Payment Terms.

4.1 In General. In consideration of the provision of the Services by the Service Provider and the rights granted to SFSD under this Agreement, SFSD shall pay all fees (the “Fees”) for the Services according to Service Provider’s rates and/or the payment schedule set forth in Exhibit A

4.2 Invoicing and Payment. Service Provider shall issue invoices to SFSD: (a) by the 5th day of each month for the Fees for the immediately preceding month for time and materials Services; and (b) as otherwise indicated in Exhibit A according to the deadlines therein. SFSD shall pay all invoiced amounts due to Service Provider within 30 days after SFSD's receipt of such invoice. All payments hereunder shall be in US dollars and made by check or wire transfer.

4.3 Taxes. SFSD shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by SFSD hereunder except for any taxes imposed on, or with respect to, Service Provider's income, revenues, gross receipts, personnel, or real or personal property or other assets.

5. Confidential Information. Any documents, reports, information, or other data and materials provided by SFSD to Service Provider, or prepared or assembled by Service Provider or subcontractors under this Agreement are considered confidential, and shall not be made available to any person, organization, or entity by Service Provider without consent in writing from SFSD.

6. Representations and Warranties.

6.1 **Mutual.** Each party represents and warrants to the other party that: (a) it has the full right, power, and authority to enter into this Agreement, to grant the rights and licenses granted hereunder, and to perform its obligations hereunder; and (b) when executed and delivered by such party, this Agreement will constitute the legal, valid, and binding obligation of such party, enforceable against such party in accordance with its terms.

6.2 **Service Provider.** Service Provider represents and warrants to SFSD that: (a) it shall perform the Services in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and in compliance with all applicable laws, and shall devote adequate resources to meet its obligations under this Agreement; and (b) the Services shall conform in all respects with the specifications and will be performed to SFSD's satisfaction.

6.3 EXCEPT FOR THE EXPRESS WARRANTIES IN THIS SECTION 6, (A) THE PARTIES MAKE NO WARRANTIES WHATSOEVER AND (B) EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT.

7. **Indemnification.** Service Provider shall indemnify, defend, and hold harmless SFSD and its employees, agents, affiliates, successors, and permitted assigns (each an "**SFSD Indemnified Party**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and costs, incurred by an SFSD Indemnified Party (collectively, "**Losses**"), arising out of or resulting from any claim of a third party arising out of or occurring in connection with: (a) bodily injury, death of any person, or damage to real or tangible personal property resulting from Service Provider's willful, fraudulent or grossly negligent acts or omissions; or (b) Service Provider's negligence, willful misconduct, or material breach of this Agreement, including but not limited to material breach of any representation or warranty made by Service Provider in this Agreement.

8. **Limitation of Liability** Except for Losses resulting directly or indirectly from Service Provider's intentional misconduct (i) the total cumulative liability of the Service Provider to SFSD for claims covered by insurance shall not exceed the coverage limits required under this Agreement, and (ii) the total cumulative liability of Service Provider to SFSD for claims not covered by insurance shall not exceed the cumulative price paid by SFSD for the Services. Neither Party shall be liable in contract, tort, or otherwise for consequential, indirect, or incidental damages of any nature whatsoever

9. **Insurance.** During the Term and for a period of 2 years after expiration or termination of this Agreement for any reason, Service Provider shall, at its own expense, maintain and carry insurance in full force and effect with financially sound and reputable insurers, that includes, but is not limited to: (a) Commercial General Liability with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, including bodily injury and property damage, which policy will include contractual liability coverage insuring the activities of Service Provider under this Agreement; (b) Worker's Compensation with limits no less than the minimum amount required by applicable law; (c) Commercial Automobile Liability with limits no less than \$1,000,000, combined single limit; and (d) Errors and Omissions with limits no less than

\$500,000 per occurrence and \$1,000,000 in the aggregate. Upon SFSD's request, Service Provider shall provide SFSD with a certificate of insurance from Service Provider's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name SFSD as an additional insured. Service Provider shall provide SFSD with 10 days' advance written notice in the event of a cancellation or material change in Service Provider's insurance policy. Except where prohibited by law, Service Provider shall require its insurer to waive all rights of subrogation against SFSD's insurers and SFSD or the Indemnified Parties.

10. **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from events outside of the party's reasonable control ("**Force Majeure Events**"), including but not limited to: (a) acts of God; (b) flood, fire, earthquake, national epidemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (d) government order or law; (e) actions, embargoes, or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; and (g) national or regional emergency. The affected party shall resume performance under this Agreement as soon as reasonably practicable after the Force Majeure Event has been resolved or terminated.

11. **Miscellaneous.**

11.1 **Independent Contractors.** Service Provider is an independent contractor, and nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between Service Provider and SFSD. Neither party shall be authorized to contract for or bind the other party in any manner whatsoever.

11.2 **No Publicity.** Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to this Agreement, or otherwise use the other party's trademarks, service marks, trade names, logos, symbols, or brand names, in each case, without the prior written consent of the other party.

11.3 **Notice.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") shall be in writing and addressed to the parties at the addresses set forth below (or to such other address or in such other manner that may be designated by the receiving party from time to time in accordance with this Section):

SFSD: South Fork Coeur d'Alene River Sewer District
1020 Polaris Avenue, P.O. Box 783
Osburn, Idaho 83849
Attn: _____
Phone: _____
Email: _____

With a copy to: Parsons Behle & Latimer
800 W. Main Street, Suite 1300
Boise, Idaho 83702
Attn: Norm M. Semanko
Email: nsemanko@parsonsbehle.com

Service Provider: _____

Attn: _____
Phone: _____
Email: _____

All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (a) upon receipt by the receiving party; and (b) if the party giving the Notice has complied with the requirements of this Section.

11.4 Entire Agreement; Order of Precedence. This Agreement, together with all Schedules and Exhibits and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any conflict between the terms and provisions of this Agreement and those of any Schedule or Exhibit, then the terms of this Agreement shall control unless expressly set forth otherwise in the applicable Schedule or Exhibit.

11.5 Assignment. Neither party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed. No assignment shall relieve the assigning party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be

null and void. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

11.6 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

11.7 Amendment and Modification; Waiver. This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each party hereto. No failure to exercise any rights, remedy, power, or privilege ("**Right(s)**") arising from this Agreement shall operate or be construed as a waiver thereof. No single or partial exercise of any Right hereunder precludes any other or further exercise thereof or the exercise of any other Right.

11.8 Severability. No invalidity, illegality, or unenforceability of any provision herein in any jurisdiction, shall affect any other term or provision of this Agreement or invalidate or render such provision unenforceable in any other jurisdiction. If any provision is determined to be invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible.

11.9 Governing Law: Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Idaho without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any other jurisdiction. Any legal suit, action, or proceeding arising out of this Agreement or the Services provided hereunder shall be instituted in the state courts in Shoshone County, Idaho or the federal courts in Kootenai County, Idaho, and each party irrevocably: (a) submits to the exclusive jurisdiction of such courts; (b) waives any objection to such courts based on venue or inconvenience; and (c) waives any right to trial by jury. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

11.10 Equitable Relief; Cumulative Remedies. Each party acknowledges that a breach of Section 5 (Confidential Information) may cause the other party irreparable damages, for which an award of damages would not be adequate compensation. In the event of such breach or threatened breach, the other party will be entitled to seek equitable relief. Except as expressly set forth in this Agreement, the right and remedies under this Agreement are cumulative and in addition to any other rights or remedies available at law or in equity or otherwise.

11.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or

other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SFSD

SOUTH FORK COEUR D'ALENE RIVER
SEWER DISTRICT

By: _____

Name:

Title:

SERVICE PROVIDER

By: _____

Name:

Title:

EXHIBIT A

Scope of Services

Objectives:

-

Scope of Work:

-

Deadlines:

-

Fees:

Pay Rates:

○

Fixed Prices:

○

Payment Schedule:

○

Additional Compensation:

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