

Conservation Solutions

5670 Wedgewood Drive

Excelsior, MN 55331

612-308-6172

September 6, 2023

Terry Jeffrey

District Administrator

Riley Purgatory Bluff Creek Watershed District

18681 Lake Dr E, Chanhassen, MN 55317

Re: Change Order Request

Dear Terry –

When we first discussed our potential work together on this project, I recall ballparking likely costs in the \$20,000 - \$30,000 range. As my proposal was open ended, I understood the Board wanted a way to cap expenses. In my first meeting with the Board, I suggested an initial start-up amount of \$10,000 and noted I would advise you as I approached the 50% and 75% spending marks.

As work on the project progressed and we approached exceeding that initial authorization, the Board authorized an additional \$10,000 on July 12, 2023. As work continued under that second authorization, I updated you as we approached the 50% and 75% mark of that second authorization. As of this writing, we are 87% through that second authorization.

I'd recommend an additional authorization of \$10,000. My hope is that will cover the remaining work I will do under the proposed purchase agreement as well as most, if not all, of the work on a potential conservation easement. As always, I will keep you posted on progress and do my best to be efficient with my engagement.

I am glad our negotiations with the Sellers provided a significant savings against the appraised value to cover much of the District's various consultant costs on this project (if not all).

Please let me know if you have any questions or would like further information.

Sincerely,

A handwritten signature in blue ink that reads "Michael Pressman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Pressman

**Agreement between
Riley-Purgatory-Bluff Creek Watershed District and
Michael Pressman**

Land Conservation Consulting Services – Standal Property

This agreement is entered into by the Riley-Purgatory-Bluff Creek Watershed District, a public body with powers set forth at Minnesota Statutes chapters 103B and 103D (RPBCWD), and Michael Pressman, an individual doing business as Conservation Solutions (Consultant). In consideration of the terms and conditions set forth herein and the mutual exchange of consideration, the sufficiency of which hereby is acknowledged, RPBCWD and Consultant agree as follows:

1. Scope of Work

Consultant will provide property-acquisition support services as described in the July 3, 2023, scope of services attached as Exhibit A (the Services). Exhibit A is incorporated into this agreement and its terms and schedules are binding on Consultant as terms hereof. The Services will be provided at the direction of the RPBCWD administrator. 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 Consultant on a task deleted or modified by RPBCWD will be compensated in accordance with paragraphs 5 and 6. Time is of the essence in the performance of the Services.

2. Independent Contractor

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

3. Subcontract and Assignment

Consultant 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 Consultant 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.

4. Duty of Care; Indemnification

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

RPBCWD will defend Consultant from any and all actions, costs, damages and liabilities of any nature arising from and hold Consultant harmless, and indemnify it, to the extent due to RPBCWD's negligent or otherwise wrongful act or omission, or breach of a specific contractual duty. For any claim subject to this paragraph by an employee of Consultant or a subcontractor, the indemnification obligation is not limited by a limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or a subcontractor under workers' compensation acts, disability acts or other employee benefit acts.

5. Compensation

RPBCWD will compensate Consultant for the Services on an hourly basis at the rate in Exhibit A and reimburse Consultant for direct costs in accordance with Exhibit A and for time and expenses incurred in responding to requests for data. Invoices will be submitted no more frequently than monthly for work performed during the preceding month. Payment for undisputed work will be due within 45 days of receipt of invoice. Direct costs not specified in Exhibit A will not be reimbursed except with prior written approval of the RPBCWD administrator. Subcontractor fees and subcontractor direct costs, as incurred by Consultant, will be reimbursed by RPBCWD at the rate specified in RPBCWD's written approval of the subcontract.

The total payment for the Services will not exceed \$20,000. Total payment in each respect 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.

Consultant will maintain all records pertaining to fees or costs incurred in connection with the Services for six years from the date of completion of the Services. Consultant agrees that any authorized RPBCWD representative or the state auditor may have access to and the right to examine, audit and copy any such records during normal business hours.

6. Termination; Continuation of Obligations

This agreement is effective when fully executed by the parties and will remain in force until December 31, 2024, unless earlier terminated as set forth herein.

RPBCWD may terminate this agreement at its convenience, by a written termination notice stating specifically what prior authorized or additional tasks or services it requires Consultant to complete. Consultant will receive full compensation for all authorized work performed, except that Consultant will not be compensated for any part performance of a specified task or service if termination is due to Consultant's breach of this agreement.

Insurance obligations; duty of care; obligations to defend, indemnify and hold harmless; and document-retention requirements will survive the completion of the Services and the term of this agreement.

7. No Waiver

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

Notwithstanding any other term of this agreement, RPBCWD waives no immunity in tort. This agreement creates no right in and waives no immunity, defense or liability limit with respect to any third party.

8. Insurance

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

- A. Automobile liability: \$1.5 million combined single limit each occurrence coverage for bodily injury and property damage covering all vehicles on an occurrence basis.

9. Compliance With Laws

Consultant will comply with the laws and requirements of all federal, state, local and other governmental units in connection with performing the Services and will procure all licenses, permits and other rights necessary to perform the Services.

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

10. Data and Information

All data and information obtained or generated by Consultant in performing the Services, including documents in hard and electronic copy, software, and all other forms in which the data and information are contained, documented or memorialized, are the property of RPBCWD. Consultant hereby assigns and transfers to RPBCWD all right, title and interest in: (a) its copyright, if any, in the materials; any registrations and copyright applications relating to the materials; and any copyright renewals and extensions; (b) all works based on, derived from or incorporating the materials; and (c) all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and all causes of action in law or equity for past, present or future infringement based on the copyrights. Consultant agrees to execute all papers and to perform such other proper acts as RPBCWD may deem necessary to secure for RPBCWD or its assignee the rights herein assigned.

RPBCWD may immediately inspect, copy or take possession of any materials on written request to Consultant. On termination of the agreement, Consultant may maintain a copy of some or all of the materials except for any materials designated by RPBCWD as confidential or non-public under applicable law, a copy of which may be maintained by Consultant only pursuant to written agreement with RPBCWD specifying terms.

11. Data Practices; Confidentiality

If Consultant 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)

Consultant 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, Consultant will not provide any information or documents, but will direct the inquiry to RPBCWD. If the request is addressed to Consultant, Consultant will be responsible to determine whether it is legally required to respond to the request and otherwise what its legal obligations are, but will notify and consult with RPBCWD and its legal counsel before replying. Nothing in the preceding sentence supersedes Consultant's obligations under this agreement with respect to protection of RPBCWD data, property rights in data or confidentiality. Nothing in this section constitutes a determination that Consultant 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.

Consultant agrees that it will not disclose and will hold in confidence any and all proprietary materials owned or possessed by RPBCWD and so denominated by RPBCWD. Consultant will not use any such materials for any purpose other than performance of the Services without RPBCWD written consent. This restriction does not apply to materials already possessed by Consultant or that Consultant received on a non-confidential basis from RPBCWD or another party. Consistent with the terms of this section 11 regarding use and protection of confidential and proprietary information, Consultant retains a nonexclusive license to use the materials and may publish or use the materials in its professional activities. Any Consultant duty of care under this agreement does not extend to any party other than RPBCWD or to any use of the materials by RPBCWD other than for the purpose(s) for which Consultant is compensated under this agreement.

12. RPBCWD Property

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

Any property including but not limited to materials supplied to Consultant by RPBCWD or deriving from RPBCWD is supplied to and accepted by Consultant as without representation or warranty including but not limited to a warranty of fitness,

merchantability, accuracy or completeness. However, Consultant's duty of professional care under paragraph 4, above, does not extend to materials provided to Consultant by RPBCWD or any portion of the Services that is inaccurate or incomplete as the result of Consultant's reasonable reliance on those materials.

13. Notices

Any written communication required under this agreement to be provided in writing will be directed to the other party as follows:

To RPBCWD:

Administrator
Riley-Purgatory-Bluff Creek Watershed District
18681 Lake Drive East
Chanhassen MN 55317
952-607-6512
tjeffery@rpbcwd.org

To Consultant:

Michael Pressman
Conservation Solutions
5670 Wedgewood Drive
Excelsior MN 55331
612-308-6172

Either of the above individuals may in writing designate another individual to receive communications under this agreement.

14. Choice of Law; Venue

This agreement will be construed under and governed by the laws of the State of Minnesota. Venue for any action will lie in Hennepin County.

15. Whole Agreement

The entire agreement between the two parties is contained herein and this agreement supersedes all oral agreements and negotiations relating to the subject matter hereof. Any modification of this agreement is valid only when reduced to writing as an amendment

to the agreement and signed by the parties hereto. RPBCWD may amend this agreement only by action of the RPBCWD Board of Managers acting as a body.

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

Michael Pressman

Michael Pressman

By Michael Pressman

Date: 2023-08-07

Riley-Purgatory-Bluff Creek Watershed District

Terry Jeffery

By Terry Jeffery, its Administrator

Date: 2023-08-07

Approved as to form and execution

Louis Smith

RPBCWD attorney

Exhibit A
Scope of Services

Conservation Solutions

5670 Wedgewood Drive

Excelsior, MN 55331

612-308-6172

July 12, 2023

Terry Jeffery
District Administrator
Riley Purgatory Bluff Creek Watershed District
18681 Lake Dr E, Chanhassen, MN 55317

Re: Land Acquisition Services

Dear Terry:

Thank you for your interest in my assistance with your potential land acquisition project. This summer will mark the 30th anniversary of the start of my land conservation career. Since that time, I have worked for small and large non-profit organizations, local governments, and as a consultant. I have worked to help conserve land from a few acres to a few million acres. From 2004-2007, I built the Minnehaha Creek Watershed District's land conservation program and led all of its acquisitions of fee-title properties and conservation easements. I also played key roles in the early stages of what become the Washington County Land and Water Legacy Program and the Dakota County Farmland and Natural Areas Program. As a resident of the west metro, I'd be honored to help the Riley Purgatory Bluff Creek Watershed District (RPBCWD) with its acquisition opportunity.

I would propose to work with a team including your legal counsel and staff to take an integrated approach to the opportunity. My intended approach is to lean on others for activities they should or can lead and focus my activities on those elements I can best add to your team's capabilities. Below is a high-level list of activities and potential roles and responsibilities for the various parties. I share this as a proposed approach and would welcome the opportunity to refine it with you.

1. Project scoping – Michael lead supported by Terry and real estate attorney
 - Determine project scope, timelines, team members and roles, and likely sources of funding and financing.
 - RPBCWD staff to provide basic property information, mapping services, and the like. Additional mapping as needed to serve the project by RPBCWD staff.
 - Long-term ownership and management options discussed in consultation with District staff and partners.
2. Property Appraisal – Michael recommends potential consultants, RPBCWD staff hires consultant, Michael reviews and comments on draft appraisal

- Note – depending on the potential funding sources and timing of the transaction, there may be a need for a review or second appraisal and/or appraisal update along the way. We can discuss the best timing of the appraisal assignment so as to manage costs.
3. Negotiate purchase agreement –
 - Should you desire, I can serve as lead negotiator, informed by the appraisal, RPBCWD desired parameters, and your real estate attorney.
 - The purchase agreement could be drafted by your real estate attorney with my input and review.
 - We will need to ascertain early in the project to whether the developer has legal rights that would be required to be bought out in any potential purchase.
 4. Due diligence -
 - Phase 1 environmental assessment – we can explore whether the existing Phase 1 can be assigned to RPBCWD or if a new one needs to be ordered. Depending on the findings of the assessment a Phase 2 may be needed.
 - I can advise on scoping as well as review of the document if desired.
 - I'd ask RPBCWD's staff to do any necessary contracting
 - Title review – your real estate attorney can order a title inspection and ultimately title insurance. If needed, I can review and advise on issues that come up, but your real estate attorney should be able to lead on this.
 - Minerals evaluations - if mineral rights are severed, there may be additional issues to investigate, but in this suburban area, I wouldn't expect mineral potential to be much of an issue.
 - Boundary survey – RPBCWD staff could contract for a survey as needed, depending on what already exists for survey information. Your real estate attorney can review the survey's findings and identify any issues that need to be addressed. If desired, I can review and advise on issues that arise.
 5. Clearing title issues raised in the title review - (boundary discrepancies, corrective deeds, confining utility company rights of way, etc.) – your real estate attorney should be able to lead on this. I can advise as necessary, but am hoping they could lead on any title issues that need resolution.
 6. Project funding and financing – I can advise on potential sources of funding in consultation with RPBCWD leadership to determine preferred scenarios. Any grant applications and/or testimony required for public grants would be the responsibility of RPBCWD staff. Though I could advise on potential grant approaches.
 7. Closing – this should be led by your real estate attorney in partnership with the title company. Should it be desired, I can review and comment on draft documents and/or negotiate if last minute issues came up that needed to be resolved.
 8. Post closing documentation and records closeout – once the project closes, I would consolidate my files and deliver a jump drive of documents to be saved with RPBCWD records. In terms of records management, I would also include any time and direct out of pocket expenses for any Minnesota Data Practices Act information requests that I had to

respond to. I understand reimbursement for any time and expenses for this item would be subject to my total services not exceeding any authorized amounts by RPBCWD through the contract or subsequent amendments.

I would charge \$235 per hour for services as needed, billing monthly (or less often during periods of low activity).

Please let me know once you have had the opportunity to review this proposal. I'd be happy to meet with you to discuss the proposed roles and responsibilities and adapt it to additional thoughts you may have.

I look forward to talking further with you.

Sincerely,

A handwritten signature in blue ink that reads "Michael Pressman". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Pressman

Signature Certificate

Reference number: Z6FU7-ITIEH-WNDPQ-MQ2BM

Signer

Timestamp

Signature

Michael Pressman

Email: conservationsolutions@q.com

Sent: 02 Aug 2023 14:02:04 UTC
Viewed: 07 Aug 2023 12:55:50 UTC
Signed: 07 Aug 2023 13:05:02 UTC



Recipient Verification:

✓ Email verified 07 Aug 2023 12:55:50 UTC

IP address: 70.59.71.173
Location: Minneapolis, United States

Louis Smith

Email: smith@smithpartners.com

Sent: 02 Aug 2023 14:02:04 UTC
Viewed: 07 Aug 2023 13:39:10 UTC
Signed: 07 Aug 2023 13:40:26 UTC



Recipient Verification:

✓ Email verified 07 Aug 2023 13:39:10 UTC

IP address: 108.147.92.98
Location: Chicago, United States

Terry Jeffery

Email: tjeffery@rpbcd.org

Sent: 02 Aug 2023 14:02:04 UTC
Viewed: 07 Aug 2023 17:49:35 UTC
Signed: 07 Aug 2023 17:50:26 UTC



Recipient Verification:

✓ Email verified 07 Aug 2023 17:49:35 UTC

IP address: 65.124.136.170
Location: Bloomington, United States

Document completed by all parties on:
07 Aug 2023 17:50:26 UTC

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