

## AGREEMENT FOR PROFESSIONAL MANAGEMENT SERVICES

1. PARTIES:

This Agreement is made and entered into to be effective the \_\_\_\_ day of April, 2009 by and between Boxelder Basin Regional Stormwater Authority, a political subdivision of the State of Colorado (herein referred to as the "Authority"), and Local Government Solutions, LLC, a Colorado limited liability company (hereinafter referred to as "Manager"). Collectively Authority and Manager are referred to as the "Parties" or individually as a "Party".

Witnesseth, in consideration of the mutual covenants and obligations herein expressed, the Parties agree as follows:

2. RECITALS AND PURPOSE:

The Authority was organized pursuant to the laws of the State of Colorado in order to design, construct, operate and maintain certain regional stormwater facilities and improvements in accordance with the Intergovernmental Agreement for Stormwater Cooperation and Management dated August 20, 2008 by and among the Board of Commissioners of Larimer County, Colorado, the City of Fort Collins, Colorado, and the Town of Wellington, Colorado.

Pursuant to Section 29-1-204.2 C.R.S., the Authority is permitted to enter into contracts affecting the affairs of the Authority.

The Authority desires to procure professional management services which Manager has experience in providing as required by the Authority and as further described herein.

The Authority desires to engage Manager for the purpose of providing professional management services as needed by the Authority.

3. SCOPE OF SERVICES:

Manager agrees to provide Authority with the specific professional management services set forth on Exhibit A (Scope of Services) attached hereto and incorporated herein by this reference. The Parties understand and agree that service to be provided by Manager for this contract shall include both project specific services and administrative services. Project specific services are those services required to advance construction of an active project, funding for which will be generally charged as a project expense. Administrative services are those which

are required for the Authority to conduct its business. Administrative services may include activities related to planning of projects that are not yet active or funded.

4. RESPONSIBILITIES OF AUTHORITY:

In order for Manager to provide the services set forth in this Agreement, the Authority agrees to provide the following:

- A. The Board of Directors of the Authority, Authority consultants and representatives shall be available on a reasonable basis for meetings, consultation, and such other contact as required to carry out Manager's obligations hereunder.
- B. Authority shall provide an office location to be used by Manager to carry out Manager's services herein. The Parties agree that said office shall include access to copy machines, internet access and space for meetings with Authority constituents, consultants and other persons. At the inception of this Agreement, space has been made available in the Leeper Building by the Town of Wellington for this purpose. Alternatively, Manager may elect at its own expense to obtain other office space within the Town of Wellington, subject to approval by the Authority. In the case of such election, Manager shall supply its own internet access and space for meetings.
- C. The Authority shall provide Manager access to engineering, legal, accounting and other professional services at Authority's expense which may be reasonably required to carry out Manager's duties.

5. COMPENSATION:

- A. Authority shall pay Manager for its services as stated in Exhibit B (Compensation for Services).
- B. Special projects and additional services not included in Exhibit A (Scope of Services) will be billed on an hourly basis using actual hours and the hourly rate. Prior to the commencement of any additional services, Manager will provide an estimate of costs associated with the special project or additional scope of services. Written approval of special projects or additional services by the Authority shall be required prior to commencement of any special projects or additional services.
- C. Manager shall maintain an accounting of time associated with its services. Manager shall submit a monthly invoice by the 15<sup>th</sup> of each month to the Authority covering

the services rendered during the previous month. Upon receipt of the invoice by Authority, it shall be paid within forty-five (45) days.

6. CHANGES IN SCOPE OF SERVICES:

The Parties may mutually determine that changes in the Scope of Services are necessary. One such change will be a review of compensation which shall occur each year on the anniversary of this contract. Such changes shall be mutually agreed upon by the Parties and shall be incorporated in written amendments to this Agreement.

7. MANAGER CONTACT:

Authority will designate in writing the individual member(s) of the Board with whom Manager shall directly consult with respect to the services to be provided hereunder.

8. TERM:

The term of this Agreement shall commence effective the 1<sup>st</sup> day of April, 2009 and continue until terminated. Either Party may terminate this Agreement upon sixty (60) days written notice to the other Party. In the event of such notice of termination, Manager shall continue its duties to the date of termination and shall be paid for services rendered to the effective date of termination by the Authority, subject only to the satisfactory performance of the Manager's obligations under this Agreement. Manager shall be entitled to receive compensation for all unpaid services within fifteen (15) days of the date of termination.

9. INDEMNIFICATION:

- A. Manager agrees to indemnify and hold harmless the Authority and its officers, insurers, volunteers, representatives, agents, employees and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney's fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement or the services provided by the Manager if such injury, loss, or damage is caused in whole or in part by, the negligent act or negligent omission of Manager, any subcontractor of Manager, or any officer, employee, representative, or agent of Manager or of any subcontractor of Manager, or which arise out of any

workmen's compensation claim of any employee of Manager or of any employee of any subcontractor of Manager.

- B. To the extent permitted by Colorado law, the Authority agrees to indemnify, defend and hold harmless the Manager, with respect to claims, losses, injuries, expenses and costs arising out of or related to Manager's services caused by the negligent act or negligent omission of the Authority, or any person directly or indirectly employed by the Authority while engaged in performing services to the Authority.

10. INSURANCE:

- A. The Manager shall carry, provide and maintain, in full force and effect at all times during the term of this Agreement, at its sole costs and expense, workmen's compensation insurance required for all its employees, commercial general liability insurance, and automobile insurance in conjunction with the performance of its obligations under the terms of this Agreement. Said insurance coverage shall be in amounts no less than the liability limits specified in the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S. as currently exists or may be amended hereafter.
- B. Such policies shall provide that Authority be an additional insured and the Authority shall be entitled to recovery under said policies for any loss occasioned to it, its officers, employees, and agents by reason of the acts or omissions of Manager, its officers, employees, agents, subcontractors, or business invitees. Such policies shall be written as primary policies not contributing to and not in excess of coverage Authority may carry.
- C. The Manager shall provide the Authority with certificates of insurance evidencing the policies listed above during the term of this Agreement. Such policies shall include a provision requiring a minimum of thirty (30) days written notice to the Authority of any change or cancellation.

11. OWNERSHIP OF WORK PRODUCT:

All documents, other materials or information relating to the Authority that are produced by Manager shall be delivered and become the property of the Authority. The Manager may retain copies of any such documents.

12. QUALITY OF WORK:

The work performed by the Manager shall be done in a competent, timely and workmanlike manner in accordance with generally accepted practices for management of political subdivisions and special districts in Northern Colorado.

13. INDEPENDENT CONTRACTOR:

The parties agree that Manager shall be an independent contractor and shall not be an employee, agent, or servant of the Authority. **Manager is not entitled to workers' compensation benefits from the Authority and is obligated to pay applicable federal and state income tax on any money earned pursuant to this Agreement.**

14. WORK BY ILLEGAL ALIENS PROHIBITED.

- A. Manager hereby certifies that, as of the date of this Agreement, it does not knowingly employ or contract with an illegal alien and that Manager has participated or attempted to participate in the E-Verify Program or Department Program as defined in C.R.S. §8-17.5-101(1) ("Program") in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.
- B. Manager shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to Manager that the Manager shall not knowingly employ or contract with an illegal alien to perform work under this Agreement.
- C. Manager hereby certifies that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the Program and, if Manager is not accepted into the Program prior to entering into this Agreement, that Manager shall apply to participate in the Program every three (3) months until Manager is accepted or this Agreement has been completed, whichever is earlier.
- D. Manager is prohibited from using the Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

- E. If Manager obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, Manager shall be required to:
  - i). Notify the subcontractor and the Authority within three (3) days that Manager has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
  - ii). Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that Manager shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- F. Manager shall comply with any reasonable request by the Colorado Department of Labor and Employment ("Department") made in the course of an investigation that the Department is undertaking pursuant to the authority established in C.R.S. Article 17.5.
- G. If Manager violates this paragraph, the Authority may terminate this Agreement for cause. If this Agreement is so terminated, Manager shall be liable for actual and consequential damages to the Authority.

15. ASSIGNMENT:

It is understood that the Authority enters into this Agreement based on the knowledge, experience and special abilities of the Manager specifically its principal, Rex A. Burns. Accordingly the Manager shall not assign any responsibilities or delegate any duties of Manager to any other person and/or entity without the prior written consent of the Authority. This shall not prevent Manager from hiring such staff to assist in the performance of any duties that may be determined to be appropriate.

16. NOTICES:

Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, or by electronically confirmed facsimile transmission addressed to the party to whom such notice is to be given at the address set forth below, or at such other

address as has been previously furnished in writing, to the other party or parties. Such notice shall be deemed to have been given when deposited in the United States Mail to the following addresses:

A. If to the Authority:

Boxelder Basin Regional Stormwater Authority  
c/o Wellington Town Manager

B. If to the Manager:

Local Government Solutions, LLC  
Attention: Rex A. Burns  
108 Racquette Drive, Suite 18  
Fort Collins, CO 80524

17. EXHIBITS:

All exhibits referred to in this Agreement are, by reference, incorporated herein for all purposes.

18. FORCE MAJEURE:

Any delays in or failure of performance by any Party of the obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of any such Party.

19. CAPTIONS:

The captions of the paragraphs are set forth only for convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Agreement.

20. ADDITIONAL DOCUMENTS OR ACTION:

The Parties agree to execute any additional documents or take any additional actions that are reasonably necessary to carry out the intent of this Agreement.

21. INTEGRATION AND AMENDMENT:

This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding and all of the remaining provisions of this Agreement shall continue in full force and effect.

22. DEFAULT:

Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered or performed by either Party, after notice of default and failure of defaulting Party to cure within thirty (30) days, then this Agreement, at the option of the Party who is not in default, may be terminated and the nondefaulting Party may recover such damages, including attorneys fees and costs as may be proper. If the nondefaulting Party elects to treat this Agreement as being in full force and effect, the nondefaulting Party shall have the right to an action for specific performance or damages or both.

23. WAIVER OF BREACH:

A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

24. GOVERNING LAW:

This Agreement shall be governed by the laws of the State of Colorado with venue in Larimer County, Colorado.

25. BINDING EFFECT:

This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

26. COMPLIANCE WITH APPLICABLE LAW:

Manager shall provide its services set forth herein in a manner which, to the best knowledge of Manager's belief is full compliance with all applicable laws, ordinances, rules, and regulations of any federal, state, county, or municipal body or agency thereof having jurisdiction in which this Agreement is performed. Manager declares that Manager has complied with all federal, state and local laws regarding business permits, certificates and licenses that may be required to carry out the services to be provided under this Agreement.

27. LIABILITY OF THE AUTHORITY:

No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon the Authority shall constitute or create an indebtedness or debt of the Authority within the meaning of any Colorado constitutional provision or statutory limitation.

28. SUBJECT TO ANNUAL BUDGET AND APPROPRIATION:

The Authority does not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the Authority hereunder requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations of the Authority.

29. SOLE SOURCE CONTRACTS:

To the extent this Agreement may be construed to be a 'sole source contract' within the meaning of sections 15 through 17 of Article XXVIII of the Colorado Constitution, and to the extent these constitutional provisions have not been enjoined or invalidated by a court of competent jurisdiction, the requirements and limitations of these constitutional provisions are hereby incorporated in this Agreement.

30. CONFLICT OF INTEREST:

The Manager shall disclose any personal or private interest related to property or business within the Authority. Upon disclosure of any such interest, the Authority shall determine if the interest constitutes a conflict of interest. If in the opinion of the Authority a conflict of interest does exist, the Manager shall take all necessary actions to avoid the conflict or the appearance of a conflict. If the Authority determines that a conflict of interest exists that has not been disclosed, or if the Manager is not able or willing to avoid a conflict or the appearance of a conflict, the Authority may treat such conflict of interest as a default and terminate this Agreement.

31. OUTSIDE OR OTHER EMPLOYMENT.

Manager, including its principal, Rex Burns, shall be entitled to seek other work and/or employment from any third party during the term of this Agreement subject to satisfactory performance of the services required by Manager herein and also subject to Paragraph 30 above with regard to conflict of interest. Manager shall inform the Authority Board in writing of any other work and/or employment by a third party.

32. WORK PROGRAM AND ANNUAL REVIEW:

Manager shall prepare an annual work program for review and adoption by the Board. On or about each anniversary date of this Agreement, the Board of Directors shall conduct a review of Manager's performance based on the Manager's success in implementing the work program.

In witness whereof, the Parties hereto have made and executed this Agreement to be effective as of the 6<sup>th</sup> day of April, 2009.

AUTHORITY:

Boxelder Basin Regional Stormwater Authority

Signed By: 

Printed Name: HENRY K. OBERMEYER

Title: PRESIDENT

MANAGER:

Local Government Solutions, LLC

Signed By: 

Printed Name: Rex A. Burns

Title: Manager / Member

# EXHIBIT A

## SCOPE OF SERVICES

### AUTHORITY MANAGEMENT - ADMINISTRATION

Manager shall conduct all activities necessary to enable the Authority to fulfill its mission, including but not limited to the following:

- **Board Meeting:** Preparation, Postings, Packets, Attendance, Minutes and follow up
- **Record Management:** Files, Records, Title Information, Property Closing Support and Research
- **Payables:** Review and Approve Invoices and Bills
- **Reporting:** Monthly Memos, Action Plans, Budget Tracking as necessary
- **Compliance:** Monitor compliance with all contracts, grants, loan agreements & IGAs
- **Audit:** Coordination of Audit with Auditor
- **Budget:** Preparation and Monitoring of Annual Budget
- **Financial:** Coordination of Financial Reporting with Authority's Bookkeeper
- **Public Relations:** Provide public relations services
- **Non Active Project Services:** Coordinate, plan and actively participate in public involvement activities  
  
Coordinate plan, and facilitate conceptual engineering design and configuration of future projects
- **Work Program:** Prepare annual Authority Work Program

### **ACTIVE PROJECT SPECIFIC ACTIVITIES**

Manager shall conduct all activities necessary to enable successful completion of projects, including but not limited to the following:

- Coordination of design, construction, project administration, and oversight of specific Authority projects
- Reporting to the Board of project activities
- Public information coordination with all interested parties and stakeholders in Authority projects
- Coordination of all interested parties in any project including FEMA, Bureau of Reclamation, and any other regulatory agencies with regard to Authority projects
- Negotiating with entities for contractual rights needed for project completion

### **OTHER DUTIES**

- Any other duties specified by the Board and agreed to by Manager

## EXHIBIT B

### Compensation for 2009 Services:

Authority shall pay Manager for all services to be performed herein on an hourly basis.

- A. Manager shall be compensated at the rate of \$60.00 per hour for management services subject to the following:
1. The Parties understand and agree that the scope of services is divided between project specific activities and administrative services. Manager shall be compensated for a minimum of twenty-four (24) hours per week for administrative services. If Manager services for project specific work is necessary, then said additional work shall be compensated to a maximum of forty (40) hours per week.
  2. Reimbursement for insurance as required by this Agreement, copying, computer availability and usage, cell phone or other out-of-pocket expenses of Manager shall be paid at \$2.13 per hour not to exceed \$4,264 per calendar year.
  3. In the event that services to the Authority by Manager exceed forty (40) hours per week, Manager shall be compensated at the hourly rate for all additional time over and above forty (40) hours per week subject to approval of all additional time over forty (40) hours per week by the Authority's President or his designee.
  4. Manager shall maintain a detailed accounting of time associated with its services. Manager shall provide a monthly invoice by the 15<sup>th</sup> of each month to the Authority specifying the services rendered.
  5. Manager, as an independent contractor, shall be responsible for all taxes, insurance, employment benefits, health, and unemployment tax for Manager.
- B. Manager may from time to time employ one or more technicians whose function will be to provide for more cost-effective services to be provided under this Agreement. Manager shall be compensated at the rate of \$25 per hour for such services.

- C. Authority shall reimburse Manager at the rate of \$.55 per mile for necessary travel associated with provision of services. Such travel shall not include travel between a residence and a normal place of doing business.
- D. Absent written approval by the Board of Directors, total compensation under this agreement for hourly services, not including reimbursement for expenses shall not exceed \$125,000 per contract year.

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