

## PROFESSIONAL OR TECHNICAL SERVICES AGREEMENT

The Parties named below hereby agree to be bound to the terms and conditions on the following pages and in accordance with the Exhibits attached to and incorporated herein to this Agreement.

### ADS LLC:

340 The Bridge Street, Suite 204, Huntsville, Alabama 35806

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CLIENT: Bethany-Warr Acres Public Works Authority

Address: 4301 NW 192<sup>nd</sup> Street, Edmond, OK 73012

By: 

Printed Name: Nikki Lloyd

Title: Chair

Date: 10-12-2023

## TERMS AND CONDITIONS OF AGREEMENT

NOW THEREFORE, the Parties, agreeing to be legally bound, hereby agree as follows:

### ARTICLE 1 – RESPONSIBILITIES OF THE PARTIES

#### *1.01 ADS*

A. ADS shall provide the Services set forth herein and in the ADS Proposal dated 09/29/23 attached hereto and incorporated herein as Exhibit A.

B. The standard of care for all services performed or furnished by ADS under this Agreement will be the care and skill ordinarily used by members of ADS' profession practicing under similar circumstances at the same time and in the same locality. ADS makes no warranties, express or implied, under this Agreement or otherwise, in connection with ADS' services, except as provided in section 4.01.

#### *1.02 CLIENT*

A. Client shall have the responsibilities set forth herein and in Exhibit A.

### ARTICLE 2 – PRICING, PAYMENT AND INVOICES

#### *2.01 Pricing*

A. The prices set forth in Exhibit A are subject to being adjusted due to extraordinary market conditions. As used herein, "extraordinary market conditions" means any increase in the cost of materials caused by changes in the market or for any other reason that is outside of ADS' control such as tariffs, surcharges, increased logistics costs and fluctuations in currency and raw materials, which results in a price increase of the prices set forth in a contract, quote, purchase order or order acknowledgement.

#### *2.02 Compensation*

A. Client shall pay ADS in accordance with the schedule set forth in Exhibit A.

#### *2.03 Invoices*

A. Invoices will be prepared in accordance with ADS' standard invoicing practices, unless otherwise stated in Exhibit A. Invoices are due and payable within thirty (30) days after the date they are issued by ADS. If Client fails to make any payment due ADS for services and/or reimbursable expenses within thirty (30) days after issuance of ADS' invoice, the amounts due ADS will be increased at the rate of one and one-half percent (1.5%) per month (or the maximum rate of interest permitted by law) from said thirtieth day.

#### *2.03 Credit Check and Security*

A. This Agreement is contingent upon credit verification and approval of the Client by ADS. Client shall provide ADS with true and correct credit information if requested by ADS. Client authorizes ADS to make inquiries and to receive information about Client's credit history from others and to enter this information in Client's records and to disclose this information to appropriate third parties for reasonable business purposes. ADS, in its sole discretion, may deny the Services based upon an unsatisfactory credit history, or may condition the Services, which may include requiring (i) pre-payment for Services and other charges, and/or (ii) a security deposit, valid credit card on file or bank account information (EFT) to secure return of equipment and payment for Services and other charges.

### ARTICLE 3 – TERMINATION

#### *3.01 Termination*

A. *For Cause*

1. The obligation to provide further services under this Agreement may be terminated by either party for cause upon thirty (30) days written notice in the event of a substantial failure by either party to perform in accordance with the terms of this Agreement through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the Party receiving such notice begins, within seven (7) days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than thirty (30) days of receipt thereof.

2. In the event of termination by ADS for cause, ADS will be entitled to invoice Client and will be paid for all services rendered and all reimbursable expenses incurred through the effective date of termination.

#### *B. For Convenience*

1. Either party may terminate this Agreement for its convenience upon sixty (60) days written notice to the other party. If this Agreement is terminated by the Client for its convenience, ADS shall be paid a reasonable amount for expenses directly attributable to termination, both before and after the effective date of termination, including, but not limited to demobilization expenses and costs associated with terminating subcontract agreements.

### **ARTICLE 4 - GENERAL CONSIDERATIONS**

#### **4.01 Warranty**

A. All new products manufactured by ADS will be free from defects in material and workmanship for up to one (1) year following the date of shipment from ADS. Any unauthorized repair or replacement, use, installation or incorporation of unauthorized parts or accessories, including without limitation opening up a monitor, will void this product warranty. Any repair or replacement will be covered by this new product warranty for ninety (90) days from the date that such repaired or replaced product is shipped from ADS. This warranty is available to the Client as the original purchaser of the product and only if it has been installed, operated, and maintained in accordance with ADS' standards. This warranty does not apply to damage by catastrophes of nature, fire, explosion, acts of God (including, but not limited to, lightning damage and power surges), accidents, improper use or service, damage during transportation, or other similar causes beyond ADS' control. ADS expressly disclaims any and all implied warranties, including, but not limited to any warranty for fitness for a particular purpose.

2. To the extent allowed by law, ADS hereby expressly excludes any warranty for design defect. While products manufactured by ADS are designed and manufactured to meet published specifications, ADS may from time to time improve products currently in the market. However, purchased hardware manufactured to a previous design will only be replaced or upgraded at ADS' discretion.

#### **4.02 Use of Documents**

A. If required, ADS shall provide Client with a printed hard copy of the deliverable agreed upon in Exhibit A. All other deliverables shall be in the appropriate electronic media format.

B. Client agrees that it will perform acceptance tests or procedures on electronic files within thirty (30) days of receipt of same, after which the Client shall be deemed to have accepted the data thus transferred. Any errors detected within the thirty (30)-day acceptance period will be corrected by ADS.

C. Any reuse or modification of the Documents without written verification or adaptation by ADS, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to ADS or to ADS' Subcontractors. Client shall indemnify and hold harmless ADS and ADS' Subcontractors from all claims, damages, losses, and expenses, including attorneys' fees arising out of such use.

#### **4.03 Changes, Modifications and/or Amendments**

A. All changes, modifications and/or amendments to this Agreement or Exhibit A hereto shall be made in writing and shall be signed by both Parties.

#### **4.04 Insurance**

A. During the term of this Agreement, ADS shall at all times procure and maintain at a minimum the following insurance coverage:

*General Liability \$1,000,000 CSL and annual aggregate  
Automobile Liability \$1,000,000 CSL and annual aggregate  
Workers Compensation as required by statute*

ADS will provide Evidence of Insurance upon request.

#### **4.05 Controlling Law, Venue and Dispute Resolution**

A. The Parties shall endeavor to resolve any disputes through informal negotiations between the Parties. If the dispute cannot be resolved within sixty (60) days after first notice of the dispute, the Parties agree that the dispute may be submitted to the court of competent jurisdiction in the county in which the work under this Agreement was performed, or in an alternative location upon agreement of the Parties.

B. THE PARTIES HERETO EACH HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EITHER PARTY TO THIS AGREEMENT.

C. In the event of any dispute and/or legal action arising from an interpretation and/or the performance of any of the provisions of this Agreement, the Parties hereby agree that the prevailing Party shall be awarded reasonable attorney's fees and costs, including but not limited to, the cost of paralegals, accountants and attorney's fees and costs of appellate proceedings, if applicable.

#### **4.06 Successors, Assigns, and Beneficiaries**

A. Neither party shall assign this Agreement without the prior written consent of the other, which shall not be unreasonably withheld, except that without securing such prior consent either party shall have the right to assign this Agreement, and all obligations hereunder, to any successor by way of merger or consolidation or the acquisition of all or substantially all of the business and assets of the party relating to the subject matter of these terms. This right shall be retained provided that such successor shall expressly assume all of the obligations and liabilities of the assigning party under the Agreement. Any assignment in violation of this paragraph shall be void. The terms and conditions of this Agreement shall be binding upon and enforceable by the successor and permanent assign of the assigning party.

B. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and ADS and not for the benefit of any other third Party.

#### **4.07 Limitation of Liability**

A. TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL ADS, OR ANY OF ITS AFFILIATES, DIRECTORS, EMPLOYEES, AGENTS OR PARENT COROPRATIONS, BE LIABLE TO ANY PERSON, FIRM OR ENTITY, INCLUDING, BUT NOT LIMITED TO CLIENT, FOR ANY INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, BUSINESS INTERRUPTION, LOST DATA, LOST REVENUE AND/OR LOST SAVINGS, EVEN IF CLIENT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE OR IF SAME WERE REASONABLY FORESEEABLE.

#### **4.08 Force Majeure**

A. Neither Client nor ADS shall hold the other responsible for damages or delays in performance caused by Force Majeure or other events beyond the control of the other Party which could not reasonably have been anticipated or prevented. Force Majeure shall include, but not be limited to, unusually severe weather, floods, power outages, epidemics, war, acts of terrorism, riots, strikes, lockouts, exercise of police power, condemnation or eminent domain. The foregoing shall not give rise to any claims or damages or be considered a waiver by either Party of the obligations of this Agreement.

#### **4.09 Confidentiality and Non-disclosure**

A. Both Parties acknowledge that, in the course of performing this Agreement, certain employees, agents or representatives may be exposed to or acquire information which is proprietary or confidential. Such proprietary and confidential information may include without limitation information related to research, development, designs, plans, reports, investigations, materials, data, pricing, trade secrets, customer lists, salaries, or business information (“Confidential and Proprietary Information”).

B. Both Parties agree to hold each other’s Proprietary and Confidential Information in strict confidence and not to make each other’s Proprietary and Confidential Information available in any form to any third party or to use each other’s Proprietary and Confidential Information for any other purpose than for the performance of work under the implementation of this Agreement.

#### **4.10 EEO Statement**

A. It is the policy of ADS to recruit, hire, train, compensate, promote, discipline, and otherwise treat its employees and applicants without regard or consideration for the individual’s race, color, religious creed, sex, age, national origin, ancestry, mental or physical disability, marital status, citizenship status or any other reason prohibited by law. In addition, ADS is committed to fully complying with all applicable laws and regulations regarding the Americans with Disabilities Act of 1990, Title VII of the Civil Rights Act, and the Vietnam Era Veterans Readjustment Assistance Act and applicable Federal, State, and Local regulations. ADS also provides equal employment opportunity in all employment practices to qualified applicants and employees without regard to disability.

#### **4.11 Notices**

A. Any notice required under this Agreement shall be in writing, addressed to the appropriate Party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

#### **4.12 Survival**

A. All express representations, indemnifications, limitations of liability, and assurances of confidentiality included in this Agreement shall survive its completion or termination for any reason.

#### **4.13 Severability**

A. Any provision or part of this Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and ADS, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

#### **4.14 Waiver**

A. Non-enforcement of any provision by either Party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

#### **4.15 Headings**

A. The headings used in this Agreement are for general reference only and do not have special significance.

**4.16 Entire Agreement**

A. This Agreement constitutes the entire agreement between the Parties and exclusive statement of the terms between the Parties with respect to services to be performed hereunder. The Exhibits referenced in this Agreement and the specifications and drawings referenced therein are a part of this Agreement with the same force and effect as if fully set forth herein. No alteration, modification, or amendment of any of the provisions hereof shall be binding unless in writing and signed by duly Authorized Representatives of the Parties.

Exhibit A

**PROPOSAL**

ADS Proposal dated 09/29/23 containing the agreed upon scope of work, compensation and Party responsibilities is attached hereto and incorporated as if fully set forth herein.

**ADS Maintenance & Service Pricing Schedule 05-01-23 Through 11-30-23**

**09/29/23**

Category	System	Description	No. of Meters	Unit Price	Total
Flow Monitoring	Triton+	Maintenance & Service	5	\$2,223.00	\$11,115.00
Rainfall Monitoring	RainAlert III	Maintenance & Service	4	\$270.00	\$1,080.00
Level Monitoring	ECHO	Maintenance & Service	2	\$506.00	\$1,012.00
				<b>Total</b>	<b>\$13,207.00</b>

**Notes:**

1. This proposal is valid for 7 days.
2. The Maintenance & Service period begins on 05-01-23 and ends on 11-30-23.
3. Maintenance & Service includes: Field Maintenance, Data Editing, PRISM Hosting and Wireless Services.
4. Field Maintenance includes spare and/or replacement parts as needed under normal operating conditions.
5. Pricing includes three (3) manual field confirmations per year at each flow monitoring site.
6. Data editing services and corresponding final data will be uploaded to PRISM monthly.
7. Pricing includes a subscription/access to the ADS PRISM cloud-based software platform for all sites.