

Lisa Hatfield  
Attorney  
City of Knoxville

Contract No. C-\_\_\_\_\_

## **CONSULTANT AGREEMENT**

This Agreement is made by and between the **City of Knoxville** (“City”), a municipal corporation organized and existing under the laws of the State of Tennessee, 400 Main Avenue, P.O. Box 1631, Knoxville, Tennessee 37901, and **CDM Smith, Inc.** (“Consultant”), a Massachusetts corporation licensed to do business in Tennessee, 1100 Marion Street, Suite 300, Knoxville, Tennessee 37921.

**WHEREAS**, the City is undertaking a Stormwater Asset Management Project (the “Project”); and

**WHEREAS**, the Project provides for a comprehensive assessment of all stormwater assets within the City rights-of-way and involves development of a stormwater map for the City based on in-field GPS data collection, stormwater asset mapping, and records research resulting in a detailed stormwater system Geographic Information System (GIS) database that will be used to support more effective stormwater asset management, maintenance, and planning; and

**WHEREAS**, the City previously contracted with Consultant for the Project; and

**WHEREAS**, once the Project was underway, it was evident that there were many more assets than originally accounted for on the Knoxville, Knox County, Knoxville Utilities Board Geographic Information System (KGIS); and

**WHEREAS**, the City desires to enter into Phase II of the Project to expand the data collection to the remaining unmapped areas of the City and include a database integration task that incorporates the City’s private drainage infrastructure layer into the citywide GIS dataset; and

**WHEREAS**, the result of this process will be a stormwater system mapping that will be used to support more effective stormwater asset management, maintenance, and planning; and

**WHEREAS**, given the work already completed by the Consultant on the Project, Consultant is uniquely qualified to perform Phase II of the Project; and

**WHEREAS**, after review of Consultant's scope of services and fee for Phase II, the City desires to enter into an Agreement with Consultant in an amount not to exceed Two Million Two Hundred Six Thousand and 00/100 Dollars (\$2,206,000.00); and

**WHEREAS**, City Council by Resolution No. \_\_\_\_\_ on February 4, 2025, authorized the Mayor of the City of Knoxville to execute this Agreement on behalf of the City of Knoxville.

**NOW, THEREFORE**, the City of Knoxville and Consultant for the mutual promises and considerations herein agree as follows:

**1. Scope of Professional Services.** Consultant shall provide professional services for Phase II of the Project as set forth in the contract documents.

**2. Contract Documents.** The executed Contract Documents will consist of the following:

- (a) This Agreement; and
- (b) City's Request for Qualifications issued February 7, 2022 (including ARPA federal funding requirements) and three addenda, attached as Exhibit A; and
- (c) Statement of Qualifications submitted by CDM Smith, Inc. dated February 28, 2022, attached as Exhibit B; and
- (d) Letter as to proposed scope and fee submitted by CDM Smith, Inc. dated June 16, 2022, attached as Exhibit C; and
- (e) Scope and Fee Proposal Letter for Phase II submitted by CDM Smith, Inc. dated August 9, 2024.

To the extent there is a conflict between the terms of any of the documents that constitute this Agreement, the terms that provide the greater benefit to the City and/or impose the greater obligation on Consultant shall control.

**3. Termination.** The City may terminate this Agreement at any time, with or without cause, by written notice of termination to Consultant. If the City terminates this Agreement, and such termination is not a result of a default by Consultant, Consultant shall be entitled to receive as its sole and exclusive remedy just compensation for all satisfactory, authorized services completed prior to the effective date.

**4. Term.** Consultant acknowledges that time is of the essence and that the services, as described herein, will commence as soon as practical upon receiving notice that this Agreement has been executed. Consultant shall perform the services with due and reasonable diligence and fully complete the services by March 1, 2026.

**5. Contract Price.**

- (a) The City shall pay to Consultant for the satisfactory performance of the engineering services under this Agreement according to the fee schedule attached as part of Exhibit D, provided, however, the total contract amount shall not exceed Two Million Two Hundred Six Thousand and 00/100 Dollars (\$2,206,000.00).
- (b) Consultant shall submit an invoice for engineering services performed for the City. The invoices shall be in a form approved by the City, shall indicate the time period during which the services were performed, and shall be signed to certify their accuracy.
- (c) The City will pay Consultant for the work satisfactorily performed within thirty (30) days of the receipt of an undisputed invoice. Payment for services rendered does not indicate the City's acceptance of such services as being fully in accord with all the provisions of this Agreement. The City

shall advise Consultant in writing if any portion is disputed and will not withhold payment on undisputed portions of any invoice.

**6. Notices.** Any notice required or permitted under this Agreement will be directed to the following representatives or such other address as either party may designate by written notice to the other:

City of Knoxville:

Penny Owens, Purchasing Agent  
P.O. Box 1631  
Knoxville, TN 37901  
(865) 215-2070

Consultant:

Daniel Unger, PE, PMP  
Client Service Leader  
CDM Smith, Inc.  
1100 Marion Street, Suite 300  
Knoxville, TN 37921  
(865) 963-4300

cc: David McGinley, P.E., Stormwater Engineering Chief  
P. O. Box 1631  
Knoxville, TN 37901  
(865) 215-2148

Notices shall be in writing and shall be effective when actually delivered in person, received via facsimile transmission, or private carrier with signature confirmation, or when received in the U.S. Mail, certified with return receipt requested, postage pre-paid and addressed to the party as stated above.

**7. Indemnification.** Consultant shall defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, claims, liabilities, damages, losses, and expenses (including, but not limited to, court costs, reasonable attorney fees, and costs of claim processing, investigation, and litigation) for losses caused in whole or in part by the negligent acts, errors, or omissions of Consultant in performance of this Agreement or from Consultant's failure to perform this Agreement using a due and reasonable standard of professional

care and skill (“Indemnified Claim”), and except where such injury, damage, or loss was caused by the sole negligence of the City, its agents or employees. The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this section.

Consultant shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action involving an Indemnified Claim upon written notice and demand for same by the City. Consultant will have the right to defend the City with counsel of its choice that is satisfactory to the City, and the City will provide reasonable cooperation in the defense as Consultant may request. Consultant will not consent to the entry of any judgment or enter into any settlement with respect to an Indemnified Claim without the prior written consent of the City, such consent not to be unreasonably withheld or delayed. The City shall have the right to participate in the defense against an Indemnified Claim with counsel of its choice at its own expense.

Consultant shall save, indemnify and hold City harmless and pay judgments that shall be rendered in any such actions, suits, claims or demands against City with respect to any Indemnified Claim.

The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

**8. Insurance.** Consultant shall at its sole expense obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better.

- (a) Commercial General and Umbrella Liability Insurance; occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than \$2,000,000 each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than \$3,000,000.

Such insurance shall:

- (1) Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of Consultant including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording will be required.
- (2) For any claims related to this project, Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials, officers, employees, and volunteers shall be excess of Consultant's insurance and shall not contribute with it.

- (3) At the sole discretion of the City, dedicated limits of liability for this specific project may be required.
- (b) Professional Liability (including Errors & Omissions). Consultant shall maintain professional liability insurance covering claims arising from real or alleged negligent errors, omissions, or acts committed in the performance of professional services under this contract with limits of \$2,000,000. If the coverage is written on a claims-made form:
  - (1) The “Retro Date” must be shown and must be before the date of the contract or the beginning of contract work.
  - (2) Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work and acceptance by the City.
  - (3) If coverage is cancelled or non-renewed and not replaced with another claims-made policy form with a “Retro Date” prior to the contract effective date, Consultant must purchase “extended reporting” coverage for a minimum of three (3) years after completion of contract work.
  - (4) A copy of the claims reporting requirements must be submitted to the City for review.
- (c) Automobile Liability Insurance; including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading

hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Consultant.

(d) Workers' Compensation Insurance. Consultant shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than \$500,000. Consultant shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by consultant's workers' compensation insurance coverage.

(e) Other Insurance Requirements. Consultant shall:

(1) Prior to commencement of services, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the Law Director, City of Knoxville, P.O. Box 1631, Knoxville, Tennessee 37901. Proof of policy provisions regarding notice of cancellation will be required.

(2) Upon the City's request, provide certified copies of endorsements and policies in lieu of or in addition to certificates of insurance. Copies of policies will only be requested when contracts are deemed to be extremely or uniquely hazardous, include a dollar amount that



is significant to the overall budget of the City or a City Department, or the coverage(s) may not follow standard insurance forms. A policy will only be requested after the City's Risk Manager has reviewed the contract and proof of coverage has been provided. Should the certificate of insurance refer to specific coverage wording or endorsement(s), proof of such policy wording or endorsement(s) will be required.

- (3) Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
- (4) Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.
- (5) If Consultant cannot procure insurance through an insurer having an A.M. Best rating of A-VIII, Consultant may, in the alternative, place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A. Modification of this standard may be considered upon appeal to the City Law Director.
- (6) Require all subcontractors to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation / Employer's Liability insurance (unless subcontractor's employees

are covered by Consultant's insurance) in the same manner as specified for Consultant. Consultant shall furnish subcontractors' certificates of insurance to the City without expense immediately upon request.

- (7) Large Deductibles: Self-Insured Retentions. Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the City of Knoxville prior to the commencement of services. Use of large deductibles and/or self-insured retentions will require proof of financial ability as determined by the City.
- (8) Waiver of Subrogation Required. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by Consultant for the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.
- (9) Occurrence Basis Requirement. All general liability policies must be written on an occurrence basis unless the Risk Manager determines that a claims made basis is reasonable in the specific circumstance. Use of policies written on a claims made basis must be approved by the Risk Manager and retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed. Professional Liability and Environmental Liability (Pollution Coverage) are most commonly

written on a claims made basis and are generally acceptable in that form.

**9. Non-Discrimination.** Consultant:

- (a) will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, disability, familial status or national origin;
- (b) will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, disability or familial status or national origin;
- (c) will, in all solicitations or advertisements for employees placed by or on behalf of itself, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, disability, familial status or national origin; and
- (d) will include these provisions in every subcontract or sublease let by or for it.

**10. Ethical Standards.** Consultant hereby takes notice of and affirms that it is not in violation of, or has not participated, and will not participate, in the violation of any of the following ethical standards prescribed by the Knoxville City Code:

- (a) Sec. 2-1048. Conflict of Interest.

It shall be unlawful for any employee of the city to participate, directly or indirectly, through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering advice, investigation, auditing

or otherwise, in any proceeding or application, request for ruling or other determination, claim or controversy or other matter pertaining to any contract or subcontract and any solicitation or proposal therefore, where to the employee's knowledge there is a financial interest possessed by:

- (1) The employee or the employee's immediate family;
- (2) A business other than a public agency in which the employee or a member of the employee's immediate family serves as an officer, director, trustee, partner or employee; or
- (3) Any other person or business with whom the employee or a member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment.

- (b) Sec. 2-1049. Receipt of Benefits from City Contracts by Councilmembers, Employees and Officers of the City.

It shall be unlawful for any member of Council, member of the Board of Education, officer or employee of the City to have or hold any interest in the profits for emoluments of any contract, job, work or service, either by himself or by another, directly or indirectly. Any such contract for a job, work or service for the City in which any member of Council, member of the Board of Education, officer or employee has or holds any such interest is void.

- (c) Sec. 2-1050. Gratuities and Kickbacks Prohibited.

Gratuities. It is unlawful for any person to offer, give or agree to give to any person, while a city employee, or for any person, while a city

employee, to solicit, demand, accept or agree to accept from another person, anything of a pecuniary value for or because of:

- (1) An official action taken, or to be taken, or which could be taken;
- (2) A legal duty performed, or to be performed, or which could be performed; or
- (3) A legal duty violated, or to be violated, or which could be violated by such person while a city employee.

Anything of nominal value shall be presumed not to constitute a gratuity under this section.

Kickbacks. It is unlawful for any payment, gratuity or benefit to be made by or on behalf of a subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

- (d) Sec. 2-1051. Covenant Relating to Contingent Fees.
  - (a) Representation of Consultant. Every person, before being awarded a contract in excess of ten thousand dollars (\$10,000.00) with the city, shall represent that no other person has been retained to solicit or secure the contract with the city upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business.
  - (b) Intentional violation unlawful. The intentional violation of the representation specified in subsection (a) of this section is unlawful.

- (e) Sec. 2-1052. Restrictions on Employment of Present and Former City Employees.

Contemporaneous employment prohibited. It shall be unlawful for any city employee to become or be, while such employee, an employee of any party contracting with the particular department or agency in which the person is employed.

- (f) Remedies for Violations. For violations of the ethical standards outlined in the Knoxville City Code, the City has the following remedies:

- (1) Oral or written warnings or reprimands;
- (2) Cancellation of transactions; and
- (3) Suspension or debarment from being a contractor or subcontractor under city or city-funded contracts.

The value of anything transferred in violation of these ethical standards shall be recoverable by the City from such person. All procedures under this section shall be in accord with due process requirements, included but not limited to a right to notice and hearing prior to imposition of any cancellation, suspension or debarment from being a contractor or subcontractor under a city contract.

**11. ADA Compliance.** With regard to the services performed under this Agreement, Consultant will comply with all applicable requirements of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq., (“ADA”). Consultant agrees that it will defend, indemnify and hold the City harmless against any and all claims, demands, suits or causes of action which arise out of any negligent and/or intentional act or omission by Consultant, its employees, agents or

representatives which violates the ADA. Consultant agrees that the City will not be responsible for any costs or expenses arising from Consultant's failure to comply with the ADA.

**12. Independent Contractor.** Consultant and its agents and employees will perform all work and render all services as an independent contractor; neither it nor its employees shall be considered employees, partners or agents of the City, nor shall it or its employees be entitled to any benefits, insurance, pension, or workers' compensation as an employee of the City.

**13. Assignment.** The Consultant shall not assign or transfer any interest in this Agreement without obtaining the prior written approval of the City.

**14. Subcontractors.** Consultant shall not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the City.

**15. Written Amendments.** This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of this Agreement.

**16. Required Approvals.** Neither Consultant nor the City is bound by this Agreement until it is approved by the appropriate officials shown on the signature page of this Agreement.

**17. Article Captions.** The captions appearing in this Agreement are for convenience only and are not a part of this Agreement; they do not in any way limit or amplify the provisions of this Agreement.

**18. Severability.** If any provision of this Agreement is determined to be unenforceable or invalid, such determination will not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this Agreement at any time.

**19. Federal, State and Local Requirements.** Contractor is responsible for full compliance with all applicable federal, state, and local laws, rules and regulations.

**20. No Benefit for Third Parties.** The services to be performed by the Consultant pursuant to this agreement with the City are intended solely for the benefit of the City, and no benefit is conferred hereby, nor is any contractual relationship established herewith, upon or with any person or entity not a party to this Agreement. No such person or entity shall be entitled to rely on the Consultant's performance of its services hereunder, and no right to assert a claim against the City or the Consultant, its officers, employees, agents or contractors shall accrue to the Consultant or to any subcontractors, independently retained professional consultant, supplier, fabricator, manufacturer, lender, tenant, insurer, surety or any other third party as a result of this Agreement or the performance or non-performance of the Consultant's services hereunder.

**21. Non-Reliance of Parties.** Parties explicitly agree that they have **not** relied upon any earlier or outside representations other than what has been included in this Agreement. Furthermore, neither party has been induced to enter into this Agreement by anything other than the specific written terms set forth herein.

**22. Force Majeure.** Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times shall be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies;



orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

**23. EEO/AA.** The City of Knoxville is an EEO/AA/Title VI/Section 504/ADA/ADEA Employer.

**24. Boycott of Israel.** The Consultant certifies that it is not engaged in, and will not for the duration of this Agreement engage in, a boycott of Israel.

**25. Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of Tennessee. Any action for breach of this Agreement or to enforce or nullify any provision of this Agreement shall be instituted only in a court of appropriate jurisdiction in Knox County, Tennessee.

**26. Entire Agreement.** This Agreement forms the entire Agreement between the City and Consultant. Any prior representations, promises, agreements, oral or otherwise, between the parties, which are not embodied in this writing, will be of no force or effect.

**IN WITNESS WHEREOF,** the City and Consultant have executed this Agreement in two (2) copies as of the below-written date.

**APPROVED AS TO FORM:**

**CITY OF KNOXVILLE**

\_\_\_\_\_  
**CHARLES W. SWANSON**  
**LAW DIRECTOR**

**BY:** \_\_\_\_\_  
**INDYA KINCANNON**  
**MAYOR**

**DATE:** \_\_\_\_\_

**FUNDS CERTIFIED:**

**CDM SMITH, INC.**

\_\_\_\_\_  
**BOYCE H. EVANS**  
**FINANCE DIRECTOR**

**BY:** \_\_\_\_\_

\_\_\_\_\_  
**Printed Name**

**TITLE:** \_\_\_\_\_

**Required Documents:**

Certificate of Insurance \_\_\_\_\_  
Certificate of Professional Liability Insurance \_\_\_\_\_