



Long Creek Watershed Management District

Request for Proposals – Auditing Services

The Long Creek Watershed Management District (LCWMD) is seeking proposals from qualified parties to provide Audit Services under contract with the LCWMD.

All comments/questions on this Request for Proposals (RFP) must be emailed to cbrewer@cumberlandswcd.org by **5:00 PM on July 8, 2016** for inclusion. Addenda to the RFP shall be issued, if necessary, on or before the end of business on **July 12, 2016**. The Addenda shall be posted to the LCWMD website at www.restorelongcreek.org. Receipt of any and all Addenda (if issued) must be acknowledged in the first paragraph of the proposal statement narrative. Proposals not acknowledging receipt of any and all Addenda shall not be accepted and shall be returned.

Proposals must be received by Cumberland County Soil and Water Conservation District at its office listed below on or before **4:00 PM on July 21, 2016**. Proposals may be emailed to cbrewer@cumberlandswcd.org with the following Subject line “(Company Name) - Proposal for Auditing Services”, or mailed/delivered to:

Long Creek Watershed Management District
C/O Cumberland County SWCD
35 Main Street, Suite #3
Windham, ME 04062

Any late proposals shall not be accepted and shall be returned to the Proposer.

The LCWMD Governing Board (“LCWMD Board”) shall base its selection on its evaluation of the Proposer’s experience, qualifications, fees, and demonstrated ability to meet schedule as provided in Section 5. Emphasis should be on completeness and clarity of content. Scoring criteria are provided in Section 7.

The LCWMD shall not be responsible for any expenses incurred by Proposers in preparing, submitting or presenting the proposal.

The LCWMD reserves the right to waive any informalities in proposals, to accept or reject any or all proposals for any reason, to negotiate with any Proposer and to select a Proposer deemed to have submitted a proposal that in the judgment of the LCWMD Board is in the best interest of the LCWMD. Proposals may be held by the LCWMD for a period not to exceed sixty (60) days from the opening date for the purpose of reviewing and investigating the qualifications of the Proposers prior to the award of a contract.

SECTION 1 – LONG CREEK WATERSHED MANAGEMENT DISTRICT

The Long Creek Watershed Management District (LCWMD) is a quasi-municipal, special purpose district established as a separate legal entity and instrumentality and as a body corporate and politic under the laws of the State of Maine. The LCWMD was formed to provide the structure for the cooperative implementation of

the General Permit for Post Construction Discharge of Stormwater in Long Creek (General Permit), which includes implementation of the Long Creek Watershed Management Plan, the Monitoring Plan, and the Operation and Maintenance Plan. The General Permit implementation is overseen by LCWMD in cooperation with the Cumberland County Soil & Water Conservation District (CCSWCD) and the Maine Department of Environmental Protection (MDEP).

Long Creek is a freshwater stream that flows into Clark's Pond, eventually draining into the Fore River and Casco Bay. The Long Creek Watershed is approximately 3.45 square miles and is located in Portland, South Portland, Westbrook and Scarborough. The stream currently does not meet State water quality standards due to elevated concentrations of metals, chloride, phosphorus, nitrogen, polycyclic aromatic hydrocarbons, and reduced dissolved oxygen concentrations. Additional issues include altered hydrological conditions and increased water temperatures.

Development over the past several decades has converted the landscape from mostly forests and fields to commercial, light industrial, retail and transportation uses. One of the primary results of this conversion process has been the creation of impervious cover (IC) such as roads, driveways, parking lots, sidewalks, rooftops and any other impermeable surfaces of the built environment.

Due to the impacts of IC, the United States Environmental Protection Agency (EPA) made a final determination on November 9, 2009 to designate stormwater discharges from impervious areas equal to or greater than one acre in the Long Creek Watershed as requiring stormwater discharge permits. Owners of property within the watershed that meet the permitting threshold have two permitting options for discharging stormwater into Long Creek – a General Permit or an individual permit. The General Permit involves the collaborative implementation of the Long Creek Watershed Management Plan (the "Management Plan").

The Management Plan, as well as other supporting documentation, is available on the project website: www.restorelongcreek.org.

Section 2 Background

The LCWMD desires to use the services of a qualified public accounting firm to provide audit services for the current fiscal year ending June 30, 2016. Only certified licensed certified public accountants are invited to respond to this RFP. Administration is provided through a Services Agreement with the Cumberland County Soil and Water Conservation District (CCSWCD).

A brief description of the accounting system is as follows:

- Accounting is performed by CCSWCD using QuickBooks Pro 2014 version. Annual receipts for the fiscal year ending June 30, 2016 will be approximately \$1,520,000. Expenditures for the same period will be approximately \$1,255,000.
- Revenue comes from permit service fees from approximately 100 landowners who are meeting their stormwater permit requirements by entering into a Participating Landowner Agreement with the LCWMD.
- Fiscal & Administration staff will be available to the audit staff to prepare schedules, reproduce documents and pull documents.
- Financial Policies and Internal Control Protocols have been established by the LCWMD Board. They are available to the audit team.

Section 3 – Scope of Services

The purpose of this RFP is to obtain the services of a public accounting firm whose principal officers are independent certified public accountants, certified or licensed by a regulatory authority of a state or other political subdivision of the United States, (hereinafter referred to as the "Proposer") to perform a financial and compliance audit of Long Creek Watershed Management District in accordance with Government Audit Standards and Standards for Internal Control in the Federal Government established by the Government Accountability Office (GAO).

The Long Creek Watershed related records shall be audited for the Fiscal Year ending on June 30, 2016. The selected firm shall be required to prepare audit reports in accordance with the GAO's Financial Audit Manual ("The Blue Book") The most current revision of this document shall be used to guide the audit.

Section 4 – Materials to Be Submitted

Proposer shall submit the following materials as part of its proposal:

1. Affirmation of ability to sign the attached Audit Services Agreement ("Agreement") with LCWMD (Attachment 1).
2. Affirmation of ability to provide the required insurance coverage and amounts, including required additional insureds identified in part 4 of the Audit Services Agreement (Attachment 1).
3. Acknowledgement of receipt of any and all Addenda.
4. Identification of staff (including any subcontractors if necessary) being proposed for this work.
5. Fee schedule as described in Section 6 of this RFP.

The Proposer, by submitting a proposal, represents and agrees: that it has carefully read and fully understands the information provided by LCWMD to serve as the basis for submission of its proposal to perform the Audit Services; that it has the capability to successfully undertake and complete the responsibilities and obligations of the submitted proposal; that it has completed attached forms and is submitting the same as part of its proposal; that the information contained within its proposal is true and correct to the best of its knowledge; that it did not, in any way, collude, conspire, or agree, either directly or indirectly, with any person, firm, corporation, or other proposer in regards to the amount, terms or conditions of its proposal; that by the submission of a proposal, it acknowledges that the LCWMD has its permission to make said inquiries; and that it shall provide LCWMD any and all requested documentation in a timely manner.

All records to be audited are available for review by the Proposer prior to submission of the proposal, by appointment only. Appointments can be made by contacting Chris Brewer at cbrewer@cumberlandswcd.org.

Section 5 – Project Schedule

The audit process will commence on or around August 1, 2016 with the following timeline:

1. The Proposer is to transmit one copy of the draft audit report to the LCWMD on or before September 30, 2016.
2. An exit conference with the LWCMD representatives and the Proposer will be held at the conclusion of field work. Observations and recommendations must be summarized in writing and discussed with the LCWMD.
3. The Proposer shall deliver 17 copies of the final audit reports to the LWCMD no later than October 31, 2016.

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4. If deemed necessary by the Proposer a separate Management Letter including comments and recommendations for management recommendations shall be provided.

Reports may be submitted earlier than the above schedule. However, if the Proposer fails to make delivery of the audit report within the time schedule specified herein, or if the Proposer delivers audit reports that do not conform to all of the provisions of this contract, LCWMD may extend this schedule upon request of the Proposer if the LCWMD Board determines that the Proposer has presented it with sufficient justification for extension.

All audit reports prepared under this contract will be reviewed by the LWMD and its funding sources to ensure compliance with GAO's Financial Audit Manual (The Blue Book) and other appropriate and applicable audit guidance including the State of Maine "MAAP Rules."

Section 6 – Fee Schedule

The LCWMD shall consider only time-and-materials proposals with a total “not-to-exceed cost” as part of this RFP. Fee Schedules must provide labor and expenses for all anticipated categories based on the Auditing Services summarized under the Scope of Services and in the format provided below. Fee Schedules must provide details for one to three years of services. If a one-year Fee Schedule is provided the “not-to-exceed costs” will remain the same if the Agreement is extended.

Itemized bills including the date, description of service, person providing service, number of hours (to the ¼ - hour), and the associated hourly rate shall be required to be submitted as part of the invoices. The Proposal must include hourly rates through the Term of the Auditing Services Agreement for staff and equipment expected to be involved in the Project, as well as the not-to-exceed total cost for the Auditing Services. The Fee Schedule must include all costs that may be billed to LCWMD under the contract.

Expenses and materials used in Project such as paper, telephone, printing, faxes, mileage, etc. must be billed at actual cost with no markup and must be supported with proper documentation prior to reimbursement.

Pricing Table

(Please use this format, include all pertinent information, notes column optional)

LABOR									
Project/ Task	Personnel	Rate 2016	Rate 2017	Rate 2018	Unit	Quantity	Total 2016	Total 2017	Total 2018
<i>Review Documents</i>	<i>John Doe</i>	<i>\$25</i>	<i>\$25</i>	<i>\$25</i>	<i>per hour</i>	<i>4</i>	<i>\$100</i>	<i>\$100</i>	<i>\$100</i>
Grand Total									

OTHER DIRECT COSTS									
Project/ Task	Cost Description	Rate 2016	Rate 2017	Rate 2018	Unit	Quantity	Total 2016	Total 2017	Total 2018
<i>Travel Expenses</i>	<i>Travel to and from Client's Office</i>	<i>\$.54</i>	<i>\$.54</i>	<i>\$.54</i>	<i>Miles</i>	<i>45</i>	<i>\$21.60</i>	<i>\$21.60</i>	<i>\$21.60</i>
Grand Total									

Section 7 - Evaluation

LCWMD Board shall evaluate of each proposal will be based on the following criteria:

Factors	Maximum Points
1. Prior experience auditing and/or designing and installing accounting systems.	
A. Prior experience in auditing non profit organizations	15
B. Prior experience auditing programs financed by the federal government	5
C. Prior experience auditing similar programs funded by the State of Maine.	10
D. Prior experience auditing similar county or local government activities.	5
2. Organizations, size and structure of Offeror's firm. (Considering size in relation to audits to be performed).	
A. Adequate size of the firm.	5
B. Minority/small business.	5
3. Qualifications of staff to be assigned to the audits to be performed. This will be determined from resumes submitted. Education, position in firm, years and types of experience, continuing professional education and state(s) in which licensed as a CPA, etc. will be considered.	
A. Audit team makeup.	5
B. Overall supervision to be exercised.	5
C. Prior experience of the individual audit team members.	10
4. Offeror's understanding of work to be performed.	
A. Adequate coverage.	10
B. Realistic time estimates of each audit step.	5
5. Fee	20
Maximum Points: 100	

The Proposer, in its proposal, shall, as a minimum, include the following:

1. **Prior Auditing Experience:** The Proposer shall describe its prior auditing experience including the names, addresses, contact person, and telephone numbers of prior organizations audited. Experience should include the following categories:
 - a. Prior experience auditing programs financed by the federal government.
 - b. Prior experience auditing similar programs funded by the State of Maine.
 - c. Prior experience auditing nonprofit organizations.
 - d. Prior experience auditing similar county or local government activities.
 - e. Prior experience designing and/or installing accounting systems in nonprofit organizations.
2. **Organization, Size and Structure:** The Proposer should describe its organization, size (in relation to audits to be performed) and structure. Indicate, if appropriate, that the firm is a small or minority-owned business. Proposer should include a copy of the most recent Peer Review report, if the Proposer has had a Peer Review.
3. **Staff Qualifications:** The Proposer should describe the qualifications of staff to be assigned to the audits. Descriptions should include the following. Only include resumes of staff to be assigned to the audits. Education, position in firm, years and types of experience, continuing professional education, and state(s) in which licensed as a CPA will be considered.
 - a. Audit team makeup.
 - b. Overall supervision to be exercised.
 - c. Prior experience of the individual audit team members.

4. Understanding of Work to be Performed: The Proposer should describe its understanding of work to be performed, including audit procedures, estimated hours and other pertinent information.
5. Fee Schedules with provided labor and expenses for all anticipated categories based on the Auditing Services summarized under the Scope of Services and in the format provided above and Proposer's "not-to-exceed cost".
6. Certifications: The Proposer must sign and include as an attachment to its proposal the Certifications in Section 10 of this RFP. The publications listed in the Certifications will not be provided to potential Proposer by LCWMD, because LCWMD desires to contract only with a Proposer who is already familiar with these publications.

LCWMD may at its discretion, request presentations by, or meetings with any or all Proposers, to clarify or negotiate modifications to the proposals and may call and investigate references. However, LCWMD reserves the right to make an award without further discussion of proposals submitted. Therefore, proposals should be submitted initially on the most favorable terms, from both technical and fee standpoints. LCWMD contemplates award of the contract to the responsible Proposer with the highest total points; however, a contract shall be awarded by the LCWMD Board to the responsible Proposer whose proposal conforms to the request for proposals (is responsive), will be the most advantageous to the LCWMD, and is in the best interests of the public.

Proposals may be removed from consideration if any of the following occur:

1. The proposal is not received or is not received in a timely manner in accordance with the terms of the RFP.
2. The proposal does not follow the specified format.
3. The proposal does not include the Certifications.
4. The proposal is not adequate to form a judgment by the reviewers that the proposed Audit would comply with the Government Accountability Office's (GAO) Financial Audit Manual (The Blue Book).

Section 8 – Contract for Services

The LCWMD Board shall select a Proposer to perform the Audit Services outlined in this RFP. Contract award is expected to occur in July of 2016. The selected Proposer shall be required to sign the Auditing Services Agreement in Attachment 1 of this RFP within ten days of notification of the LCWMD Board's acceptance of its proposal. This Auditing Services Agreement is non-negotiable. If the selected Proposer is unable to sign the Auditing Services Agreement as written, the Proposer shall be excluded and an alternate Proposer shall be selected.

Section 9 – Term of Agreement

The duration of the Auditing Services Agreement shall be for one year from the date of execution, unless sooner terminated (the "Term of the Auditing Services Agreement"). The LCWMD Board reserves the right to negotiate two additional one year renewals for similarly-scoped projects with the selected consultant(s). The LCWMD shall announce its intention prior to the end of the initial and of each renewal contract period.

The Proposer agrees to keep the information related to all contracts in strict confidence. Other than the reports submitted to LCWMD, the Proposer agrees not to publish, reproduce or otherwise divulge such information in whole or in part, in any manner or form or authorize or permit others to do so, taking such reasonable measures as are necessary to restrict access to the information while in the Proposer's possession to those employees on the Proposer's staff who must have the information on a "need-to-know" basis. The

Proposer agrees to immediately notify, in writing, LCWMD’s authorized representative in the event the Proposer determines or has reason to suspect a breach of this requirement.

Upon request, the Proposer will provide a copy of the work papers pertaining to any questioned costs determined in the audit. The work papers must be concise and provide the basis for the questioned costs, as well as the analysis of the problem. The work papers will be retained for at least three (3) years from the end of the audit period. The work papers will be available for examination by authorized representatives of the cognizant federal or state audit agency, Government Accountability Office and LCWMD.

Section 10 - Certifications

- 1) The individual signing certifies that he/she is authorized to contract on behalf of the Proposer.
- 2) The individual signing certifies that the Proposer is not involved in any agreement to pay money or other consideration for the execution of this Agreement, other than to an employee of the Proposer.
- 3) The individual signing certifies that the prices quoted in this proposal have been arrived at independently, without consultation, communication or agreement for the purpose of restricting competition.
- 4) The individual signing certifies that the prices quoted on this proposal have not been knowingly disclosed by the Proposer prior to an award to any other Proposer or potential Proposer.
- 5) The individual signing certifies that there has been no attempt by the Proposer to discourage any potential Proposer from submitting a proposal.
- 6) The individual signing certifies that the Proposer is a properly licensed Certified Public Accountant.
- 7) The individual signing certifies that the Offeror meets the independence standards of the Government Audit Standards (Yellow Book).
- 8) The individual signing certifies that he/she is aware of - and, all individuals to be assigned to the audit have met - the GAO Continuing Education Requirement of 80 hours of continuing education every two (2) years; and that 24 hours of this education have been in subjects directly related to the auditing of government grants by individuals.
- 9) The individual signing certifies that he/she has read and understands the GAO requirements of an external quality control (peer) review at least once every three years.
- 10) The individual signing certifies that he/she has read and understands the following publications relative to the proposed audits:
 - a) “Government Audit Standards” (Most Recent Revision) (The Federal Yellow Book).
 - b) 2 CFR Title 2 Chapter II Part 200 Grants and Agreements.
 - c) “The Financial Audit Manual” (Most Recent Revision) (The Federal Blue Book).
 - d) "Principles of Federal Appropriations Law" (Most Recent Revision) (The Federal Red Book).
 - e) "Standards for Internal Control" (Most Recent Revision) (The Federal Green Book).
 - f) A Guide for Nonprofit Organizations: Cost Principles and Procedures for Establishing Indirect Cost and Other Rates for Grants and Contracts with the Department of Health and Human Services" OASMB-5 (Most Recent Revision).
 - g) "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (The new "Common Rule") (Most Recent Revision).
 - h) "Audits of Certain Nonprofit Organizations" (AICPA Audit Guide).
 - i) Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) (Most Recent Revision).
 - j) AICPA Statement of Position 92-9, "Audits of Not-for-Profit Organizations Receiving Federal Awards."

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- k) "Compliance Supplement for Audits of Institutions of Higher Education and Other Nonprofit Institutions" (Most Recent Revision).
 - 11) The individual signing certifies that he/she has read and understands all of the information in this RFP, including the information on the programs/grants/contracts to be audited.
 - 12) The individual signing certifies that the Proposer, and any individuals to be assigned to the audits, does not have a record of substandard audit work and has not been debarred or suspended from doing work with any federal, state or local government (If the Proposer or any individual to be assigned to the audits has been found in violation of any state or AICPA professional standards, this information must be disclosed).

Dated this _____ day of _____, 20____

(Offeror's Firm Name)

(Signature of Offeror's Representative)

(Printed Name and Title of Individual Signing)

Attachments:

Auditing Services Agreement

AUDITING SERVICES AGREEMENT

THIS Auditing Services Agreement (the “Agreement”) is entered into this _____ day of _____, 20_____, by and between _____, a sole proprietorship/partnership/corporation/limited liability company (choose one) duly organized and existing under the laws of the State of _____ whose mailing address is _____, _____ (the “Contractor”) and the **Long Creek Watershed Management District**, a quasi-municipal, special purpose district established as a separate legal entity and instrumentality and as a body corporate and politic under the laws of the State of Maine (“LCWMD”). The foregoing also are referred to herein collectively as the “Parties” or singly as “Party.”

WITNESSETH:

For and in consideration of the covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. CONTRACTOR’S RESPONSIBILITIES.

1.1 Auditing Services. In return for payment made as provided in Section 2 of this Agreement, Contractor agrees to furnish auditing services for LCWMD to provide annual auditing of the LCWMD’s financial accounts, books and records, all as described in the Request for Proposals attached as Exhibit A to this Agreement, and Contractor’s Proposal attached as Exhibit B to this Agreement, all of which are attached hereto and hereby are incorporated into this Agreement (together, the “Auditing Services”).

1.2 The Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all analyses, reports, and other Auditing Services furnished by the Contractor under this Agreement. The Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its analysis, reports, and other Auditing Services. Deficiencies are defined as willful or negligent acts that distort or falsify the state of the art of the products and Services developed and provided hereunder, or willful or negligent nonassignment of personnel or assignment of unqualified personnel to perform the duties hereunder.

1.3 Approval by LCWMD of analyses, reports, and other Auditing Services furnished hereunder shall not in any way relieve the Contractor of responsibility for the technical adequacy of the work. Neither LCWMD’s review, approval or acceptance of, nor payment for, any of the Auditing Services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Contractor shall remain liable in accordance with applicable law for all damages to LCWMD caused by the Contractor's willfully negligent performance of any of the Auditing Services furnished under this Agreement.

1.4 Contractor Obligations. The Contractor warrants:

A. That it will furnish all vehicles, materials, personnel, tools and equipment, except as otherwise specified herein, and do everything necessary and proper to satisfactorily perform the Auditing Services required by this Agreement.

B. That it is financially solvent, is experienced in and competent to perform the Auditing Services and is able to furnish the vehicles, materials, personnel, tools and equipment to be furnished by it.

C. That it is familiar with all federal, State and local statutes, laws, rules, regulations, ordinances and orders which may in any way affect the Auditing Services.

D. That it has carefully examined the Request for Proposals, the Specifications, and this Agreement and has conducted its own investigation of the nature and location of the Auditing Services, the character of equipment and personnel needed to perform the Auditing Services and all conditions which may in any way affect the performance of the Auditing Services.

E. That any increase in Contractor's costs during the term of this Agreement shall be the sole responsibility of the Contractor.

2. TIME FOR PERFORMANCE OF AUDITING SERVICES, COMPLETION; TERM; PAYMENT.

2.1 Time for Performance of Auditing Services, Completion. Contractor shall commence the performance of Auditing Services hereunder on the date of execution of this Agreement by LCWMD and, unless this Agreement is sooner terminated as provided in Section 3 of this Agreement or is not renewed under Section 2.2 of this Agreement, Contractor shall substantially complete the Auditing Services to the reasonable satisfaction of LCWMD on or by October 31 of each Term and Renewal Term under this Agreement. Due to the difficulty of calculating damages for late completion, liquidated damages in the amount of \$ 100 per day for late completion after the date for substantial completion shall be awarded to the LCWMD for delay in substantial completion not otherwise excused or permitted under this Agreement.

2.2 Term of Agreement for Auditing Services. The term of this Agreement ("Term") for Auditing Services hereunder shall commence upon the date of execution of this Agreement by LCWMD and, unless this Agreement is sooner terminated as provided in Section 3 of this Agreement, shall be for one (1) year from the date of execution, provided, however, that this Agreement shall renew and extend automatically for up to two (2) successive one (1)-year Renewal Terms, each subject to sooner termination as provided in Section 3 of this Agreement and subject to all of the terms and conditions of this Agreement, unless LCWMD provides 90 days' prior written notice of nonrenewal by LCWMD to Contractor before commencement of a Renewal Term.

2.3 Payment. LCWMD shall pay Contractor for the performance of Auditing Services under this Agreement monthly on a time and materials basis, as stated in Exhibit B hereto, for the Auditing Services satisfactorily provided in the prior month, payable within 30 days of receipt of an itemized

invoice from the Contractor, and the aggregate of all such monthly payments for each Term and Renewal Term shall not exceed the sum of \$ _____ (_____ Dollars). Further, within ninety (90) days of the Contractor's submittal of a final audit report under this Agreement, LCWMD may reject that final audit report; LCWMD or its authorized representative will notify the Contractor in writing of that rejection and the reason(s) therefor, and Contractor shall correct the final audit at its own cost and expense and shall resubmit the corrected final audit report to LCWMD within thirty (30) days from the date of LCWMD's rejection.

3. TERMINATION.

3.1 Without prejudice to any other right or remedy, LCWMD may terminate this Agreement for cause by providing the Contractor with seven (7) days' written notice of termination. For purposes of this Agreement, cause includes, but is not limited to: the adjudication of the Contractor as a bankrupt; the making of a general assignment by the Contractor for the benefit of its creditors; the appointment of a receiver because of the Contractor's insolvency; the Contractor's persistent or repeated refusal or failure, except for cases in which extension of time is provided, to supply enough properly-skilled workers or proper materials to perform the Auditing Services; the Contractor's persistent disregard of federal, state or local statutes, laws, codes, rules, regulations, orders or ordinances; and the Contractor's substantial violation of any provisions of this Agreement. In the event of a termination for cause, LCWMD may take possession of all materials and finish the Auditing Services by whatever method it may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Auditing Services are finished. If the unpaid balance of the Agreement price shall exceed the expense of finishing the Auditing Services, including compensation for additional architectural, managerial and administrative services, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the LCWMD. Further, LCWMD may terminate this Agreement for convenience upon thirty (30) days' written notice to the Contractor, in which case LCWMD shall pay the Contractor for all Auditing Services satisfactorily performed and materials purchased up to the date of receipt of such notice by the Contractor. In the event that LCWMD terminates this Agreement for cause and it subsequently is determined that cause did not exist, such termination shall be deemed to be for convenience

4. INSURANCE AND INDEMNIFICATION.

4.1 Insurance. Except as otherwise provided by this Agreement, the Contractor and its subcontractors and consultants, if any, shall obtain and maintain, throughout the term of this Agreement and for a period of at least two years following the completion of Auditing Services under this Agreement, at no expense to LCWMD, the following insurance coverages:

A. **Public Liability Insurance** in the amount of not less than One Million Dollars (\$1,000,000) or such other amount as is established by the Maine Tort Claims Act (14 M.R.S.A. §8101 et seq.) as amended from time to time, combined single limit, to protect the Contractor, any subcontractor performing Auditing Services under this Agreement, and LCWMD from claims and damages that may

arise from operations under this Agreement, whether such operations be by Contractor or by a subcontractor or by anyone directly or indirectly employed by them

B. Automobile Liability Insurance in the amount of not less than One Million Dollars (\$1,000,000) or such other amount as is established by the Maine Tort Claims Act (14 M.R.S.A. §8101 et seq.) as amended from time to time, combined single limit, to protect the Contractor, any subcontractor performing work covered by this Agreement, and LCWMD from claims and damages that may arise from operations under this Agreement, whether such operations be by Contractor or by a subcontractor or by anyone directly or indirectly employed by them

C. Workers' Compensation Insurance in amounts required by Maine law and **Employer's Liability Insurance**, as necessary, as required by Maine law.

D. Professional Liability Insurance in the amount of One Million Dollars (\$1,000,000) to protect the Contractor, any subcontractor performing Auditing Services under this Agreement and LCWMD from claims and damages that may arise from the errors, omissions or negligence of the Contractor or its subcontractors, if any, in the performance of Auditing Services under this Agreement. The deductible for such insurance shall not exceed Five Thousand Dollars (\$5,000) without LCWMD's prior written consent.

E. All such insurance policies shall name LCWMD and its officers, agents and employees as additional insureds, except for workers' compensation insurance. The Contractor, prior to commencement of Auditing Services under this Agreement, and any of its subcontractors, prior to commencement of Auditing Services under any subcontract, shall deliver to LCWMD certificates satisfactory to the OWNER evidencing such insurance coverages, which certificates shall state that the Contractor and its subcontractors must provide written notice to LCWMD at least thirty (30) days prior to cancellation, non-renewal, material modification or expiration of any policies, evidenced by return receipt of United States Certified Mail. Replacement certificates shall be delivered to LCWMD prior to the effective date of cancellation, termination, material modification or expiration of any such insurance policy. The Contractor shall not commence Auditing Services under this Agreement until it has obtained all insurance coverages required under this subparagraph and such insurance policies have been approved by LCWMD, nor shall the Contractor allow any of its subcontractors to commence Auditing Services on any subcontract until all such insurance policies have been obtained by the subcontractor and approved by LCWMD. All such insurance policies shall have a retroactive date which is the earlier of the date of this Agreement between the parties or the Contractor's commencement of Auditing Services hereunder.

4.2 Indemnification. Contractor agrees to defend, indemnify, and hold harmless LCWMD, its officers, agents, and employees against any and all liabilities, causes of action, judgments, claims or demands, including attorney's fees and costs, for personal injury (including death) or property damage arising out of or caused by the performance of Auditing Services under this Agreement by Contractor, its subcontractors, agents or employees. The foregoing indemnity expressly extends to claims of injury, death, or damage to employees of the Contractor or a subcontractor. In claims against any person or entity indemnified under this

Section by an employee of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. The Contractor expressly waives immunity under workers' compensation laws for the purposes of this indemnity provision.

5. MISCELLANEOUS PROVISIONS

5.1 Notices. All notices, demands or other communications made pursuant to this Agreement shall be in writing and shall be sent by (i) registered or certified United States mail, postage prepaid, (ii) by overnight courier, or (iii) by facsimile. Such notice shall be deemed effective upon delivery addressed as follows:

To CONTRACTOR:

To LCWMD:

Long Creek Watershed Management District
c/o Cumberland County Soil & Water Conservation District
35 Main Street, Suite 3
Windham, Maine 04062
Attention: Christopher Brewer, Program Administrator

5.2 Entire Agreement, Modifications. This Agreement and the Exhibits A, B and C attached hereto and hereby incorporated constitute the entire agreement of the Parties, and neither Party shall be bound by any statement or representation not contained herein. The failure of any Party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any Party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law. This Agreement cannot be changed, amended or modified, except by another agreement in writing signed by all Parties hereto or by their respective successors in interest.

5.3 Headings. The paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or interest of any provisions of this Agreement.

5.4 Severability. If any term, covenant, or condition of this Agreement or the application thereto to any person or circumstances shall, to any extent be illegal, invalid or unenforceable because of judicial construction, the remaining terms, covenants, and conditions of this Agreement, or the application of such term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by Law.

5.5 Governing Law, Remedies. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. Except as otherwise agreed by the Parties in writing, all disputes, claims, counterclaims and other matters in question between LCWMD and Contractor arising out of or relating to this Agreement shall be decided by a Maine court of competent jurisdiction. This Agreement is made and shall be construed under the laws of the State of Maine. Except as otherwise expressly agreed by the parties in writing, exclusive venue for any such civil action shall be in Maine.

5.6 Compliance with Applicable Laws. The Contractor agrees that it and its subcontractors, if any, shall comply with all applicable federal, State and local statutes, laws, rules, regulations, codes, ordinances, orders and resolutions in the performance of Auditing Services under this Agreement.

5.7 Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, delayed or withheld.

5.8 Subcontracts. The Contractor shall not sublet any part of this Agreement without the prior written permission of LCWMD. The Contractor agrees that it is fully responsible to LCWMD for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

5.9 Successors and Assigns; This Agreement shall benefit and be binding upon the Parties hereto and their respective permitted successors and assigns.

5.10 Force Majeure. Provided such party gives written notice to the other of such event, a party shall not be liable for its failure to perform its respective obligations under this Agreement, if prevented from so doing by any cause beyond the reasonable control of such party such as, but not limited to, strikes, lockouts, or failure of supply or inability by the exercise of reasonable diligence, to obtain supplies, parts, or employees necessary to perform such obligations, or because of war or other emergency. The time within which such obligations shall be performed shall be extended for a period of time equivalent to the delay from such cause.

5.11 Non-Waiver. Except as expressly provided in this Agreement, the failure or waiver, or successive failures or waivers on the part of either party hereto, in the enforcement of any paragraph or provision of this Agreement shall not render the same invalid nor impair the right of either party hereto, its successors or permitted assigns, to enforce the same in the event of any subsequent breach thereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Auditing Services Agreement to be executed by their duly authorized representatives as of the date first set forth above.

CONTRACTOR

By: _____

Signature

Print Name

Its: _____ (Title)

LONG CREEK WATERSHED MANAGEMENT DISTRICT

By: _____

Signature

Print Name

Its: _____ (Title)