

Long Creek Watershed Management District

Request for Proposal for Audit Services

Inquiries and Proposals should be directed to:

Attn: Betty McInnes, CCSWCD District Manager
Long Creek Watershed Management District
c/o: Cumberland County Soil & Water Conservation District
35 Main Street, Suite 3, Windham, ME 04062
Phone: 207-892-4700 x 100

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General Information

A. Purpose

This Request for Proposal (RFP) is to contract for a financial audit for the Long Creek Watershed Management District (Long Creek) for the fiscal year ending June 30, 2010.

B. Who May Respond

Only licensed certified public accountants may respond to this RFP.

C. Bidder's Conference

A bidder's conference will be held on **Friday, June 4, 2010** at 2:00 pm at the Cumberland County Soil & Water Conservation District, 35 Main Street, Suite 3, Windham, ME 04062

To express your interest, notify Betty McInnes in writing or via email at betty-mcinnes@cumberlandswcd.org prior to June 4, 2010.

D. Instructions on Proposal Submission

1. Closing Submission Date
Proposals must be submitted and received no later than 4:00 p.m. on Wednesday, June 16, 2010
2. Inquiries
Inquiries concerning this RFP should be directed to Betty McInnes 207-892-4700 x 100 or betty-mcinnes@cumberlandswcd.org
3. Conditions of Proposal
All costs incurred in the preparation of a proposal responding to this RFP will be the responsibility of the Offeror and will not be reimbursed by Long Creek.
4. Instructions to Prospective Contractors
Your proposal should be addressed to the authorized representative as follows:

Name: Betty McInnes
Entity: Long Creek Watershed Management District c/o CCSWCD
Address: 35 Main Street, Suite 3, Windham, ME 04062

It is important that the Offeror's proposal be submitted in a sealed envelope clearly marked in the lower left-hand corner with the following information:

**Long Creek Watershed Management District
Request for Proposals
4:00 p.m., June 16, 2010
SEALED BID For Audit Services**

Failure to do so may result in premature disclosure of your proposal.

It is the responsibility of the Offeror to ensure that the proposal is received by Long Creek by the date and time specified above. Late proposals will not be considered. Faxed and emailed proposals will not be considered.

5. Right to Reject

Long Creek reserves the right to reject any and all proposals received in response to this RFP. A contract for the accepted proposal will be based upon the factors described in this RFP.

6. Notification of Award

It is expected that a decision selecting the successful audit firm will be made within three weeks of the closing date for the receipt of proposals. Upon conclusion of final negotiations with the successful audit firm, all Offerors submitting proposals in response to this RFP will be informed in writing of the name of the successful audit firm.

The successful Offeror shall enter into a fixed price contract in a form substantially similar to the Audit Services Agreement attached hereto as Appendix A.

7. Failure to Execute Contract

Failure of the Offeror of the successful proposal to execute a final contract within four weeks after the award will result in the disqualification of the Offeror.

E. Description of Entity and Records to be Audited

An Interlocal Agreement was entered into by the municipalities of Portland, South Portland, Scarborough and Westbrook to establish the Long Creek Watershed Management District in the summer of 2009. This Interlocal Agreement is considered an interlocal cooperation agreement pursuant to 30-A M.R.S.A., Sec. 2201 et. seq. for the purpose of establishing the Long Creek Watershed Management District to implement the Long Creek Watershed Management Plan, which includes but is not limited to construction, installation, operation and maintenance, and monitoring of public and private stormwater management structures, facilities and improvements to and along Long Creek and in the Long Creek Watershed; to monitor the effectiveness of the Plan and the condition of the Long Creek and the Long Creek Watershed; to make any changes to that Plan; to identify, apply for, accept and spend State, federal and other available funding sources from year-to-year; and to assess fees upon Participating Landowners for implementation, construction, installation, debt service repayment, operation and maintenance, monitoring and administrative costs. The name of the

formal entity formed under this Interlocal Agreement is the “Long Creek Watershed Management District.” Please refer to <http://restorelongcreek.org/> for further information on this effort.

The Cumberland County Soil and Water Conservation District (CCSWCD) has coordinated all activities to establish the legal and financial structure for the Long Creek Watershed Management District. Once the Long Creek Watershed Management District was incorporated in January 2010, the CCSWCD continued to serve as the fiscal agent providing fiscal oversight and assistance to the Long Creek Watershed Management District. During the time that the Long Creek Watershed Management District was being established, the CCSWCD also accepted American Recovery and Reinvestment Act (stimulus) funding to implement on-the-ground measures in the Long Creek Watershed.

CCSWCD is a quasi-municipal corporation created by an Act of the Maine Legislature. Established on February 27, 1946, the CCSWCD’s purpose is to carry out preventive and control measures and capital improvements for flood prevention, or the conservation, development, utilization and disposal of water within the District, on lands owned or controlled by the State of Maine, or any of its agencies, and on any other lands within the District upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands. It is governed by a five member volunteer Board of Supervisors. Administrative offices and all records are located at 35 Main Street, Suite 3, Windham, Maine 04062. Please refer to the CCSWCD website at <http://cumberlandsxcd.org/> for further information regarding the structure and philosophies of the work CCSWCD performs.

The audit will include all Long Creek Watershed-related records that exist on the CCSWCD books.

All records to be audited are available for review by the Offeror prior to submission of the proposal. This is the first audit of the organization.

A brief description of the accounting system is as follows:

Accounting is performed using QuickBooks nonprofit version. Annual receipts for the fiscal year ending June 30, 2010 will be approximately \$1,500,000. Expenditures for the same period will be approximately \$1,800,000.

Revenue comes from federal grants administered by the Maine Department of Environmental Protection; American Recovery and Reinvestment Act funding through a loan from the Maine Municipal Bond Bank and permit service fees from the approximately 100 landowners who are meeting their stormwater permit requirements by entering into a Participating Landowner Agreement with the Long Creek Watershed Management District. In future fiscal years, the organization may also receive federal and foundation grants.

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. They are available to the audit team.

Administration is provided through a Contract with the Cumberland County Soil and Water Conservation District. The Long Creek Watershed Management District currently has no employees.

Preliminary audit work prior to closing the accounts is welcomed during the month of June. The June 30, 2010 books will be closed as of August 1, 2010.

II. Specification Schedule

A. Scope of a Financial and Compliance Audit

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 "Offeror" to perform a financial and compliance audit of Long Creek Watershed Management District in accordance with Government Audit Standards and OMB Circular A-133.

Government Audit Standards - (most current revision), states on page 2-1 the following:

"Financial statement audits determine (1) whether the financial statements of an audited entity present fairly the financial position, results of operations and cash flows or changes in financial position in accordance with generally accepted accounting principles, and (2) whether the entity has complied with laws and regulations for those transactions and events that may have a material effect on the financial statements."

B. Description of Programs/Contracts/Grants

See attached documents for listing.

C. Performance

The Long Creek Watershed-related records shall be audited through June 30, 2010.

The Contractor is required to prepare audit reports in accordance with the Government Audit Standards (most current revision) and OMB Circular 1-133.

D. Delivery Schedule

Contractor is to transmit one copy of the draft audit report to Long Creek's Board of Directors, in care of CCSWCD. The draft audit report is due on September 30, 2010.

The Contractor shall deliver the following final audit reports to Long Creek's Board of Directors no later than October 31, 2010

State Compliance Audit Reports
Audited Financial Statements

Reports may be submitted earlier than the above schedule. However, if the Contractor fails to make delivery of the audit reports within the time schedule specified herein, or if the Offeror delivers audit reports which do not conform to all of the provisions of this contract, Long Creek may extend this schedule upon request of the Contractor with sufficient justification.

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 of October 31, 2010 shall be awarded to the LCWMD for delay in substantial completion not otherwise excused or permitted under this Agreement.

E. Price

The Offeror's proposed price shall be submitted separately. Include information indicating how the price was determined. For example, the Offeror shall indicate the estimated number of hours by staff level, hourly rates and total cost by staff level. Any out-of-pocket expenses should also be indicated. **The pricing information should be in a separate sealed envelope.**

F. Payment

Payment will be made when Long Creek has determined that the total work effort has been satisfactorily completed. Should Long Creek reject a report; their authorized representative will notify the Contractor in writing of such rejection giving the reason(s). The right to reject a report shall extend throughout the term of this contract and for ninety (90) days after the Offeror submits the final invoice for payment.

Progress payments will be allowed to the extent that Long Creek can determine that satisfactory progress is being made.

Upon delivery of the 12 copies of the final reports to Long Creek and their acceptance and approval, the Offeror may submit a bill for the balance due on the contract for the audit.

G. Audit Review

All audit reports prepared under this contract will be reviewed by Long Creek and its funding sources to ensure compliance with General Accounting Office's (GAO) Government Audit Standards and other appropriate and applicable audit guidance including OMB Circular A-133 and the State of Maine "MAAP Rules."

H. Exit Conference

An exit conference with Long Creek's representatives and the Contractor's representatives will be held at the conclusion of the fieldwork. Observations and recommendations must be summarized in writing and discussed with Long Creek. It should include control and program compliance observations and recommendations.

I. Work Papers

1. Upon request, the Contractor 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.
2. The work papers will be retained for at least three (3) years from the end of the audit period.

3. The work papers will be available for examination by authorized representatives of the cognizant federal or state audit agency, General Accounting Office and Long Creek.

J. Confidentiality

The Contractor agrees to keep the information related to all contracts in strict confidence. Other than the reports submitted to Long Creek, the Contractor 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 Contractor's possession to those employees on the Contractor's staff who must have the information on a "need-to-know" basis. The Contractor agrees to immediately notify, in writing, Long Creek's authorized representative in the event the Contractor determines or has reason to suspect a breach of this requirement.

K. AICPA Professional Standards

The AICPA Professional Standards state the following:

"Ethics Interpretation 501-3-Failure to Follow Standards and/or Procedures or Other Requirements in Governmental Audits.

Engagement for audits of government grants, governmental units or other recipients of government monies typically require that such audits be in compliance with government audit standards, guides, procedures, statutes, rules and regulations, in addition to generally accepted auditing standards. If a member has accepted such an engagement and undertakes an obligation to follow specified government audit standards, guides, procedures, statutes, rules and regulations, in addition to generally accepted auditing standards, she/he is obligated to follow such requirements. Failure to do so is an act discreditable to the profession in violation of Rule 501, unless the member discloses in his/her report the fact that such requirements were not followed and the reasons therefore."

- L. If deemed necessary by the Contractor, a separate report of comments and recommendations that shall contain management recommendations will be provided.

Offeror's Technical Qualifications

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

A. Prior Auditing Experience

The Offeror 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:

1. Prior experience auditing programs financed by the federal government.
2. Prior experience auditing similar programs funded by the State of Maine.
3. Prior experience auditing nonprofit organizations.
4. Prior experience auditing similar county or local government activities.
5. Prior experience designing and/or installing accounting systems in nonprofit organizations.

B. Organization, Size and Structure

The Offeror 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. Offeror should include a copy of the most recent Peer Review report, if the Offeror has had a Peer Review.

C. Staff Qualifications

The Offeror should describe the qualifications of staff to be assigned to the audits. Descriptions should include the following:

1. Audit team makeup.
2. Overall supervision to be exercised.
3. Prior experience of the individual audit team members.

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.

D. Understanding of Work to be Performed

The Offeror should describe its understanding of work to be performed, including audit procedures, estimated hours and other pertinent information.

E. Certifications

The Offeror must sign and include as an attachment to its proposal the Certifications enclosed with this RFP. The publications listed in the Certifications will not be provided to potential Offerors by Long Creek, because Long Creek desires to contract only with an Offeror who is already familiar with these publications.

II. Proposal Evaluation

A. Submission of Proposals

All proposals shall include two (2) copies of the Offeror's technical qualifications, two (2) copies of the pricing information (in a separate sealed envelope), and two (2) copies of the signed Certifications. These documents will become part of the contract.

B. Non-responsive Proposals

Proposals may be judged non-responsive and removed from further 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 undertaking would comply with the Government Audit Standards of the U.S. Comptroller General (Most Recent Revision).

C. Evaluation

Evaluation of each proposal will be based on the following criteria:

Factors	Point Range
1. Prior experience auditing and/or designing and installing accounting systems.	
A. Prior experience in auditing non profit organizations	0-15
B. Prior experience auditing programs financed by the federal government	0-5
C. Prior experience auditing similar programs funded by the State of Maine.	0- 10
D. Prior experience auditing similar county or local government activities.	0 - 3
E. Prior experience designing and/or installing accounting systems in nonprofit organizations.	0 - 2
2. Organizations, size and structure of Offeror's firm. (Considering size in relation to audits to be performed).	
A. Adequate size of the firm.	0- 5
B. Minority/small business.	0 - 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.	0 - 5
B. Overall supervision to be exercised.	0 - 5
C. Prior experience of the individual audit team members.	0 - 10
4. Offeror's understanding of work to be performed.	
A. Adequate coverage.	0 - 10
B. Realistic time estimates of each audit step.	0 - 5
5. Price	0 - 20
Maximum Points: 100	

D. Review Process

Long Creek may, at its discretion, request presentations by, or meetings with any or all Offerors, to clarify or negotiate modifications to the Offerors' proposals.

However, Long Creek 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 price standpoints, which the Offeror can propose.

Long Creek contemplates award of the contract to the responsible Offeror with the highest total points.

V. Certifications

- A. The individual signing certifies that he/she is authorized to contract on behalf of the Offeror.
- B. The individual signing certifies that the Offeror 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 Offeror.
- C. 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.
- D. The individual signing certifies that the prices quoted on this proposal have not been knowingly disclosed by the Offeror prior to an award to any other Offeror or potential Offeror.
- E. The individual signing certifies that there has been on attempt by the Offeror to discourage any potential Offeror from submitting a proposal.
- F. The individual signing certifies that the Offeror is a properly licensed certified public accountant.
- G. The individual signing certifies that the Offeror meets the independence standards of the **Government Audit Standards (Most Recent Revision)**.
- H. 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.
- I. 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.
- J. The individual signing certifies that he/she has read and understands the following publications relative to the proposed audits:
 - 1. Government Audit Standards (Most Recent Revision) (The Federal Yellow Book).
 - 2. OMB Circular A-133 "Audits of Institutions of Higher Education and Other Non-Profit Institutions (Most Recent Revision).
 - 3. "Guidelines for Financial and Compliance Audits of Federally Assisted Programs (Most Recent Revision) (The Federal Red Book).
 - 4. "Compliance Supplement for Single Audits of State and Local Governments (Most Recent Revision) (The Federal Green Book).
 - 5. OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations" (Most Recent Revision).
 - 6. OMB Circular A-122, "Cost Principles for Non-Profit Organizations" (Most Recent Revision).

7. 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).
 8. "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (The new "Common Rule") (Most Recent Revision).
 9. OMB Circular A-87, "Cost Principles for State and Local Governments" (Most Recent Revision).
 10. "Audits of Certain Nonprofit Organization" (AICPA Audit Guide).
 11. Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) (Most Recent Revision).
 12. AICPA Statement of Position 92-9, "Audits of Not-for-Profit Organizations Receiving Federal Awards."
 13. "Compliance Supplement for Audits of Institutions of Higher Education and Other Nonprofit Institutions (Most Recent Revision).
- K. 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.
- L. The individual signing certifies that the Offeror, 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 Offeror 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).
- M. The individual signing certifies that the Offeror does carry professional malpractice insurance (Please attach a certificate of insurance).

Dated this _____ day of _____, 20____

 (Offeror's Firm Name)

 (Signature of Offeror's Representative)

 (Printed Name and Title of Individual Signing)

AUDIT SERVICES AGREEMENT

THIS Audit 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 Audit Services. In return for payment made as provided in Section 2 of this Agreement, Contractor agrees to furnish audit services for LCWMD to provide an audit of Cumberland County Soil & Water Conservation District's (CCSWCD) financial accounts, books and records related to the Long Creek Watershed for the fiscal year ending June 30, 2010, 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, both of which are attached hereto and hereby are incorporated into this Agreement (together, the "**Audit Services**").

1.2 Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all analyses, reports, and other Audit Services furnished by Contractor under this Agreement. Contractor shall, without additional compensation, correct or revise any errors or deficiencies in its analysis, reports, and other Audit Services. Deficiencies are defined as willful or negligent acts that distort or falsify the state of the art of the Audit 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 Audit Services furnished hereunder shall not in any way relieve Contractor of responsibility for the technical adequacy of the work. Neither LCWMD's review, approval or acceptance of, nor payment for, any of the Audit 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 Contractor shall remain liable in accordance with applicable law for all damages to LCWMD caused by Contractor's willfully negligent performance of any of the Audit Services furnished under this Agreement.

1.4 Contractor Obligations. 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 Audit Services required by this Agreement.

B. That it is financially solvent, is experienced in and competent to perform the Audit 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 Audit Services.

D. That it has carefully examined the Request for Proposals 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 Audit Services and all conditions which may in any way affect the performance of the Audit Services.

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

2. TIME FOR PERFORMANCE OF AUDIT SERVICES, COMPLETION, PAYMENT.

2.1 Time for Performance of Audit Services, Completion. Contractor shall commence performance of the Audit Services hereunder on the date of execution of this Agreement by LCWMD, and Contractor shall substantially complete the Audit Services to the reasonable satisfaction of LCWMD on or by October 31, 2010. 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 LCWMD for delay in substantial completion not otherwise excused or permitted under this Agreement.

2.2 Payment.

A. LCWMD shall pay Contractor for the performance of Audit Services under this Agreement the sum of \$ _____ (_____ Dollars).

B. No later than the 10th day of each month, Contractor shall submit for LCWMD's approval an invoice for payment for the Auditing Services performed by Contractor hereunder during the previous month. LCWMD shall pay Contractor approved amounts within thirty (30) days of receipt of the invoice. Payments due and unpaid under this Agreement shall bear interest from the date payment is due at the maximum rate permitted under Maine law at the time of the delinquency for unpaid municipal taxes.

3. TERMINATION.

3.1 Without prejudice to any other right or remedy, LCWMD may terminate this Agreement for cause by providing Contractor with seven (7) days' written notice of termination.

For purposes of this Agreement, cause includes, but is not limited to: the adjudication of Contractor as a bankrupt; the making of a general assignment by Contractor for the benefit of its creditors; the appointment of a receiver because of Contractor's insolvency; 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 Audit Services; Contractor's persistent disregard of federal, state or local statutes, laws, codes, rules, regulations, orders or ordinances; and 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 Contractor shall not be entitled to receive any further payment until the Audit Services are finished. If the unpaid balance of the Agreement price shall exceed the expense of finishing the Audit 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, Contractor shall pay the difference to the LCWMD. Further, LCWMD may terminate this Agreement for convenience upon thirty (30) days' written notice to Contractor, in which case LCWMD shall pay Contractor for all Audit Services satisfactorily performed and materials purchased up to the date of receipt of such notice by 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, 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 Audit Services under this Agreement, at no expense to LCWMD, the following insurance coverages:

A. Public Liability Insurance in the amount of not less than Four Hundred Thousand Dollars (\$400,000) 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 Audit Services under this Agreement, and LCWMD from claims and damages that may arise out of, be caused by or result from the performance of Audit Services under this Agreement, whether 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 Four Hundred Thousand Dollars (\$400,000) 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 Contractor, any subcontractor performing Audit Services under this Agreement, and LCWMD from claims and damages that may arise out of, be caused by or result from the performance of Audit Services under this Agreement, whether 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 Contractor, any subcontractor performing Auditing Services under this Agreement and LCWMD from claims and damages that may arise out of, be caused by or result from the errors, omissions or negligence of the Contractor or its subcontractors, if any, in the performance of Audit 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. Contractor, prior to commencement of Audit Services under this Agreement, and any of its subcontractors, prior to commencement of Audit Services under any subcontract, shall deliver to LCWMD certificates satisfactory to LCWMD evidencing such insurance coverages, which certificates shall state that 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. Contractor shall not commence Audit 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 Contractor allow any of its subcontractors to commence Audit 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 Contractor's commencement of Audit Services hereunder.

4.2. Indemnification. Contractor agrees to defend, indemnify, and hold harmless LCWMD and 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 Audit 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 Contractor or of a subcontractor. In claims against any person or entity indemnified under this Section by an employee of 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 Contractor or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. 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: Executive Director

5.2 Entire Agreement, Modifications. This Agreement and the Exhibits A and B 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 section 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 section, 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 sections, 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 section, 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. 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 Audit Services under this Agreement.

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

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 Ownership of Documents. Drawings, notes, documents, plans, reports and specifications or other material to be developed under this Agreement shall become the property of LCWMD and be promptly delivered to LCWMD upon the completion of Audit Services under this Agreement or sooner upon LCWMD's request or the termination of this Agreement. Contractor shall be responsible for the protection and/or replacement of any work or materials in its possession, including work or materials provided to Contractor by LCWMD.

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 Audit 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)

k/Long Creek Watershed Management District/Corporate Matters/AUDIT SERVICES AGREEMENT