
CONSULTANT SERVICES AGREEMENT

**TECHNICAL SUPPORT TO THE
SPOKANE RIVER REGIONAL TOXICS TASK FORCE (SRRTTF)**

Estimated Maximum Agreement Value: \$750,000
Maximum Compensation Approved for Phase 1a: \$71,377
Maximum Compensation Approved for Phase 1b: \$72,998
Estimated Completion Date: December 31, 2016
Agreement Type: Labor and Expense, Not To Exceed

CLIENT:
SRRTTF ADMINISTRATIVE AND CONTRACTING ENTITY (ACE)

Address

Spokane, WA 992

CLIENT Manager:,

Phone: (509)

Email:

CONSULTANT:

LimnoTech, Inc.

501 Avis Drive

Ann Arbor, MI 48108

Project Manager: David Dilks

Phone: (734) 332-1200

Email: ddilks@limno.com

WHEREAS, pursuant to chapter 24.03 of the Revised Code of Washington, the SRRTTF Administrative and Contracting Entity (ACE) has been incorporated as a non-profit corporation; and

WHEREAS, pursuant to the Request For Qualifications And Proposal issued by the Spokane River Regional Toxics Task Force (SRRTTF), Dated November 1, 2012, this Agreement is made by and between SRRTTF ACE, a non-profit corporation of the State of Washington hereinafter known as the "CLIENT" having offices for the transaction of business as listed above and LimnoTech Inc. hereinafter known as the "CONSULTANT", having offices for the transaction of business as listed above, jointly, hereinafter referred to as the "Parties".

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions set forth herein, the Parties mutually agree as follows:

ARTICLE 1. SUBJECT AND PURPOSE

Services will be provided and/or performed as outlined in Article 20 as set forth herein by reference.

ARTICLE 2. TERM

Services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Upon request from the CLIENT, and subject to the CLIENT's approval a schedule for the performance of the Services, which may be adjusted as the Project proceeds, shall be submitted for review and

approval. The schedule shall include allowances for periods of time required for review by the CLIENT and members of the SRRTTF, and for the receipt of submissions by authorities having jurisdiction over the project.

ARTICLE 3. COMPENSATION

The CLIENT agrees to make payment in the amount and manner stipulated in the Agreement. There will be no initial payment. Payments shall be made in monthly installments payable after review and authorization by the CLIENT Manager. Said authorization shall be conditioned upon the submittal of an invoice setting forth a breakdown of the services and costs performed in providing the services as set forth.

Payment shall be in arrears the later of 30 days from the date of receipt of a correct and proper invoice or date of receipt of acceptable goods/services (not from the postmark date or date shown on the invoice). All billing and correspondence shall be mailed to , Spokane, WA 99201.

The CONSULTANT will indicate “**TECHNICAL SUPPORT TO THE SPOKANE RIVER REGIONAL TOXICS TASK FORCE**” on all pay requests and documents associated with the Agreement. Pay requests will be numbered sequentially beginning with “Pay Request 1”. If the billing cannot be identified or the charges correlated with this agreement, it shall be returned without action.

Date of payment of an invoice shall be the date appearing on the warrant issued in payment of the invoice.

Moneys past due may bear a finance charge as stipulated by law. The current rate is 1% per month.

Identification of final invoice. In order for the Parties to close their books and records, the CONSULTANT will state "Final Invoice" or other words to that effect on its final or last billing to the CLIENT for the work of the Agreement. Since this Agreement will thereupon be closed and any budget balances deleted, the CONSULTANT agrees that any further charges not properly included on this or previous billings shall be waived in their entirety.

ARTICLE 4. APPROVAL OF DOCUMENTS

The CLIENT's approval of Documents resulting from the services provided by the CONSULTANT shall not relieve the CONSULTANT from its responsibility to comply with the standard of care for performance of its services set forth in this Agreement.

ARTICLE 5. INSTRUMENTS OF SERVICE

Drawings, specifications and other documents, including those in electronic form, prepared by the CONSULTANT and the CONSULTANT's subconsultants are Instruments of Service. The CLIENT shall own all rights, title and interest in all of the Instruments of Service and all of the other materials conceived or created by the CONSULTANT, or its employees or subconsultants, either individually or jointly with others and which arise out of the performance of this Agreement, including any inventions, reports, studies, designs, drawings, specifications, notes, documents, software and documentation, computer-based training modules, electronically, magnetically or digitally recorded material, and other work in whatever form (hereafter "Materials"). All finished or unfinished Materials prepared by the CONSULTANT under this Agreement shall be the property of the CLIENT whether or not the Project is completed or this Agreement is canceled prior to expiration.

Because the CLIENT is a non-profit corporation, which includes public agencies of the State of Washington, all materials and documents prepared by the CONSULTANT under this Agreement will be considered as public documents and will be available to the SRRTTF.

The CONSULTANT hereby assigns to the CLIENT all rights, title and interest to the Materials. The CONSULTANT shall, upon request of the CLIENT, execute all papers and perform all other acts necessary to assist the CLIENT to obtain and register copyrights, patents or other forms of protection provided by law for the Materials such work being at additional expense to the CLIENT. The Materials created under this Agreement by the CONSULTANT, its employees or subconsultants, individually or jointly with others, shall be considered "works made for hire" as defined by the United States Copyright Act. All of the Materials, whether in paper,

electronic, or other form, shall be remitted to the CLIENT by the CONSULTANT, its employees and any subconsultants, and the CONSULTANT shall not copy, reproduce, allow or cause to have the Materials copied, reproduced or used for any purpose other than performance of the CONSULTANT's obligations under this Agreement without the prior written consent of the CLIENT's Manager except that the CONSULTANT may retain copies necessary for record keeping, documentation and other such business purposes related to the Agreement.

The foregoing shall not be construed to mean that the CLIENT shall acquire an exclusive possessory right, by copyright or otherwise, to the exclusion of the CONSULTANT, in standard elements found in the Materials (such as standard details) generated and authored by the CONSULTANT for its regular, repeated and ongoing use in designs, plans and drawings for its customers in the regular course of its business. The CLIENT further waives any claim it might have against the CONSULTANT for errors or omissions arising specifically from changes made by the CLIENT or others to the Materials after the completion of the work provided by this Agreement. This waiver does not extend to errors or omissions in the Materials unrelated to any such changes by the CLIENT or others.

The CONSULTANT represents and believes that Materials produced or used under this Agreement do not and will not infringe upon any intellectual property rights of another, including but not limited to patents, copyrights, trade secrets, trade names, and service marks and names. The CONSULTANT shall indemnify and defend the CLIENT at the CONSULTANT's expense from any action or claim brought against the CLIENT to the extent that it is based on a claim that all or part of the Materials infringe upon the intellectual property rights of another. The CONSULTANT shall be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages including, but not limited to, reasonable attorney fees arising out of this Agreement, amendments and supplements thereto, which are attributed to such claims or actions. This paragraph shall not apply to claims that arise from Materials specifically required by the CLIENT, or to portions of the Materials which the CLIENT directed the CONSULTANT to include within said Materials.

If such a claim or action arises, or in the CONSULTANT's or the CLIENT's opinion is likely to arise, the CONSULTANT shall, at the CLIENT's discretion, either procure for the CLIENT the right or license to continue using the Materials at issue or replace or modify the allegedly infringing Materials. This remedy shall be in addition to and shall not be exclusive to other remedies provided by law.

When applicable at the completion of the Agreement, upon request of the CLIENT, the CONSULTANT will furnish to the CLIENT, at no additional charge, two electronic copies on CD containing the final reports in Microsoft Word 2000 (PC based) or newer, all CAD drawing files in pdf format no older than one version previous to the current software version, and all data in a data base format acceptable to the CLIENT.

The CONSULTANT shall ensure that the substance of foregoing subsections is included in each subconsultant agreement for the Work under this Agreement.

ARTICLE 6. ENDORSEMENT OF PLANS

The CONSULTANT shall seal and sign all drawings prepared for the project as required or upon request of the CLIENT.

ARTICLE 7. NON-DISCRIMINATION

The CONSULTANT shall not discriminate against any employee who is employed in connection with the Work, or against any applicant for such employment, because of race, creed, color, sex, sexual orientation, national origin, marital status, or the presence of any sensory, mental or physical handicap.

ARTICLE 8. INSURANCE

The CONSULTANT shall maintain continuous coverage meeting the requirements as set forth in ATTACHMENT A for the duration of the Agreement.

ARTICLE 9. MAINTENANCE OF RECORDS

The CONSULTANT will maintain, for at least three (3) years after completion of this Agreement, all relevant records pertaining to the Agreement. The CONSULTANT shall make available to the CLIENT, Washington State Auditor, Federal Grantor Agency, Comptroller General of the United States or any of their duly authorized representatives, at any time during their normal operating hours, all records, books or pertinent information which the CONSULTANT shall have kept in conjunction with this Agreement and which the CLIENT may be required by law to include or make part of its auditing procedures, an audit trail or which may be required for the purpose of funding the services contracted for herein.

ARTICLE 10. COMPLIANCE WITH LAWS

The Parties hereto specifically agree to observe applicable federal, state and local laws, ordinances and regulations to the extent that they may have any bearing on either providing any money under the terms of this Agreement or the services actually provided under the terms of this Agreement.

ARTICLE 11. ASSIGNMENT

The CONSULTANT may not assign or transfer in whole or in part, its interest in this Agreement without the express written consent of the CLIENT.

ARTICLE 12. MODIFICATION

No modification or amendment to this Agreement shall be valid until the same is reduced to writing, in the form of a change order, and executed with the same formalities as this present Agreement.

ARTICLE 13. TERMINATION

This Agreement may be terminated by the CLIENT upon 30 days written notice. In the event of termination through no fault of the CONSULTANT, the CLIENT agrees to pay the CONSULTANT for all services performed to the date of termination based upon actual costs and expenses incurred according to this Agreement. Payment will be based upon an itemized breakdown and documentation by the CONSULTANT that services have been performed to the date of termination and acceptance of said documentation by the CLIENT.

ARTICLE 14. VENUE STIPULATION

This Agreement has and shall be construed as having been made and delivered in the State of Washington, and the laws of the State of Washington shall be applicable to its construction and enforcement of this Agreement or any provision hereto shall be instituted only in the courts of competent jurisdiction within Spokane County, Washington.

ARTICLE 15. WAIVER

No officer, employee, agent or otherwise of the CLIENT, has the power, right or authority to waive any of the conditions or provisions of this Agreement. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement or a law shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law. Failure of the CLIENT to enforce at any time any of the provisions of this Agreement or to require at any time performance by the CONSULTANT of any provision hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this Agreement or any part hereof, or the right of the CLIENT to hereafter enforce each and every such provision.

ARTICLE 16. INDEMNIFICATION

The CONSULTANT agrees to defend, indemnify and hold the CLIENT harmless from any and all claims, including but not limited to reasonable attorney fees, demands, losses and liabilities to or by third parties arising from, resulting from, an error, omission or negligent act of the CONSULTANT performed under this Agreement by the CONSULTANT, its agents or employees to the fullest extent permitted by law. The CONSULTANT's duty to indemnify the CLIENT shall not apply to liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the CLIENT, its agents or employees. The CONSULTANT's duty to indemnify the CLIENT for liability for damages arising out of bodily injury to persons

or damage to property caused by or resulting from the concurrent negligence or (a) the CLIENT, its agents or employees, and (b) CONSULTANT, its agents or employees shall apply only to the extent of negligence of the CONSULTANT or its agents or employees. CONSULTANT's duty to defend, indemnify and hold the CLIENT harmless shall include, as to all claims, demands, losses and liability to which it applies, the CLIENT's personnel-related costs, reasonable attorney's fees, court costs and all other claim-related expenses.

The CONSULTANT's indemnification shall specifically include all claims for loss liability because of wrongful payments under the Uniform Commercial Code, or other statutory or contractual liens or rights of third parties, including taxes, accrued or accruing as a result of this Agreement or work performed or materials furnished directly or indirectly because of this Agreement.

CONSULTANT further agrees that this duty to indemnify CLIENT applies regardless of any provisions in RCW Title 51 to the contrary, including but not limited to any immunity of CONSULTANT for liability for injuries to CONSULTANT's workers and employees, and CONSULTANT hereby waives any such immunity for the purpose of this duty to indemnify CLIENT.

ARTICLE 17. NOTICES

All notices or other communications given hereunder shall be deemed given on: (1) the day such notices or other communications are received when sent by personal delivery; or (2) the third day following the day on which the same have been mailed by first class delivery, postage prepaid.

ARTICLE 18. RELATIONSHIP OF THE PARTIES

The Parties intend that an independent consultant relationship will be created by this Agreement. The CLIENT is interested only in the results that could be achieved and the conduct and control of all services will be solely with the CONSULTANT. No agent, employee, servant or otherwise of the CONSULTANT shall be deemed to be an employee, agent, servant, or otherwise of the CLIENT for any purpose and the employees of the CONSULTANT are not entitled to any of the benefits that the CLIENT provides for CLIENT employees. The CONSULTANT will be solely and entirely responsible for its acts and the acts of its agents, employees, servants, subconsultants or otherwise, during the performance of work under this Agreement.

ARTICLE 19. HEADINGS

The Article headings in this Agreement have been inserted solely for the purpose of convenience and ready reference. In no way do they purport to, and shall not be deemed to, define, limit, or extend the scope or intent of the Articles to which they appertain.

ARTICLE 20. STATEMENT OF WORK AND FEE FOR SERVICES

A. STATEMENT OF WORK: The CONSULTANT will provide consulting services as described in Attachment B, attached hereto and incorporated herein by reference. The Agreement will be administered by the CLIENT Manager.

B. BASIS OF COMPENSATION: Fee not to exceed the Maximum Compensation Approved without a written change order. There will be no initial payments. Compensation will not include fees, licenses, permits, and change orders caused by the CONSULTANT's errors or omissions.

Compensation for labor will be on a per diem basis, as listed in the Per Diem Rates Schedule on Attachment C. Compensation for direct expenses will be based on actual cost.

C. BASIC SERVICES: The following items are budget estimates of CONSULTANT prices represented by Item, fee and approximate percentage of the total work. Billing will be for work completed and will be in the form of a percent of completion of the applicable item. The budgeted amounts may be reallocated between items as the scope and work dictates.

Item	Description	Amount	Percent
1		\$	
2		\$	
3		\$	
4		\$	
5		\$	
TOTAL: =		\$	100%

ARTICLE 21. AGREEMENT DOCUMENTS

The Agreement Documents consist of this Agreement and the other documents listed below and all modifications and Amendments issued subsequent thereto. These form an Agreement and all are as fully a part of the Agreement as if attached to this Agreement or repeated herein. In the event of any inconsistency between the provisions of this Agreement and the documents listed below, the provisions of this Agreement will control and the order of precedence will be in the order listed. An enumeration of the Agreement documents is set forth below:

1. Amendments; and
2. This Agreement with attachments; and
3. Scope of work and fee per Attachment "B" (? pages); and
4. Request for Qualifications and Proposals; and
5. CONSULTANT response to Request for Qualifications dated November 27, 2012

ARTICLE 22. OTHER EMPLOYMENT—CONFLICT OF INTEREST

Agreements resulting from this RFQ are not exclusive services Agreements. The CONSULTANT may take on other professional assignments while completing work under this RFQ. However, before agreeing to perform any new professional assignments related to water quality or water quality modeling for the Spokane River from Lake Coeur d'Alene to Lake Roosevelt, CONSULTANT shall provide a description of the proposed scope of services for said assignment to the CLIENT Manager, and shall receive written notification from the CLIENT Manager confirming that the assignment is not a conflict of interest with the work under this Agreement

ARTICLE 23. PAYMENT OF TAXES

This Agreement is for the employment of the CONSULTANT as an independent consultant. The CONSULTANT holds that they are an independent consultant doing business as listed above and is solely responsible for paying any and all taxes associated with the work of this Agreement including but not necessarily limited to income and social security taxes.

ARTICLE 24. RECOVERY OF FUNDS

Whenever, under the Agreement, any sum of money shall be recoverable from or payable by the CONSULTANT to CLIENT, the same amount may be deducted from any sum due to the CONSULTANT under the Agreement or under any other agreement between the CONSULTANT and CLIENT including reasonable attorney fees and or any other collection costs. The rights of CLIENT are in addition and without prejudice to any other right CLIENT may have to claim the amount of any loss or damage suffered by CLIENT on account of the acts or omissions of the CONSULTANT.

ARTICLE 25. SEVERABILITY

In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this Agreement, which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this Agreement are declared severable.

ARTICLE 26. SPECIAL PROVISION

The CLIENT's failure to insist upon the strict performance of any provision of this Agreement or to exercise any right based upon breach thereof or the acceptance of any performance during such breach, shall not constitute a waiver of any right under this Agreement.

ARTICLE 27. ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs, and all expenses (including taxes) even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

ARTICLE 28. ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the Parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the Parties hereto. The CONSULTANT has read and understands all of this Agreement, and now states that no representation, promise, or Agreement not expressed in this Agreement has been made to induce the CONSULTANT to execute the same.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year set forth herein above.

SRRTTF CONTRACTING AND ADMINISTRATIVE ENTITY

, Chair

, Vice-Chair

Director

LimnoTech, Inc.

By: _____

(print name)

Title: _____

NOTARY

STATE OF _____)

) ss.

COUNTY OF _____)

I certify that I know or have satisfactory evidence that the above _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged as the authorized agent for the CONSULTANT to be the free and voluntary act of CONSULTANT for the uses and purposes mentioned in this instrument.

DATED this ___ day of _____, 20__.

Notary Signature

Notary Public In And For The State Of _____

residing at _____.

My commission expires _____

ATTACHMENT A - INSURANCE REQUIREMENTS

The CONSULTANT shall furnish and maintain all insurance as required herein and comply with all limits, terms and conditions stipulated therein, at their expense, for the duration of the Agreement. Following is a list of requirements for this Agreement. Any exclusions must be pre-approved by the SRRTTF ACE CLIENT Manager. Work under this contract shall not commence until evidence of all required insurance and bonding is provided to the CLIENT. The CONSULTANT's insurer shall have a minimum A.M. Best's rating of A- and shall be licensed to do business in the State of Washington. Evidence of such insurance shall consist of a completed copy of the certificate of insurance, signed by the insurance agent for the CONSULTANT and returned to the CLIENT Manager. The insurance policy or policies will not be canceled, materially changed or altered without forty-five (45) days prior notice submitted to the department with whom the contract is executed. The policy shall be endorsed and the certificate shall reflect that the SRRTTF Administrative and Contracting Entity is named as an additional insured on the CONSULTANT's general liability policy with respect to activities under the Agreement. The policy shall provide and the certificate shall reflect that the insurance afforded applies separately to each insured against whom claim is made or suit is brought except with respect to the limits of the company's liability.

The policy shall be endorsed and the certificate shall reflect that the insurance afforded therein shall be primary insurance for the CONSULTANT. Any insurance or self-insurance carried by the CLIENT shall be excess and not contributory insurance to that provided by the CONSULTANT.

The CONSULTANT shall not commence work, nor shall the CONSULTANT allow any subconsultant to commence work on any subcontract until a Certificate of Insurance, meeting the requirements set forth herein, has been approved by CLIENT Manager. Upon request, the CONSULTANT shall forward to the CLIENT Manager the original policy, or endorsement obtained, to the CONSULTANT's policy currently in force.

Failure of the CONSULTANT to fully comply with the insurance requirements set forth herein, during the term of the Agreement, shall be considered a material breach of contract and cause for immediate termination of the Agreement at the CLIENT's discretion.

Providing coverage in the amounts listed shall not be construed to relieve the CONSULTANT from liability in excess of such amounts.

REQUIRED COVERAGE: The insurance shall provide the minimum coverage as set forth below, all coverage \$1,000,000.00 per occurrence.

GENERAL LIABILITY INSURANCE: The CONSULTANT shall have Commercial General Liability with limits of \$1,000,000.00 per occurrence, which includes general aggregate, products, completed operation, personal injury, fire damage and \$5,000.00 medical expense.

ADDITIONAL INSURED ENDORSEMENT: General Liability Insurance must state that SRRTTF Administrative and Contracting Entity, its officers, agents and employees, and any other entity specifically required by the provisions of this Agreement will be specifically named additional insured(s) for all coverage provided by this policy of insurance and shall be fully and completely protected by this policy from all claims. Language such as the following should be used **"SRRTTF Administrative and Contracting Entity, Its Officers, Agents, and Employees Are Named As Additional Insureds With Respect To The Agreement for Technical Support To The Spokane River Regional Toxics Task Force"**.

PROOF OF AUTOMOBILE INSURANCE: The Contractor shall carry, for the duration of this Agreement, comprehensive automobile liability coverage of \$100,000/\$300,000 and property damage coverage of \$50,000 or \$300,000 combined single limit for any vehicle used in conjunction with the provision of services under the terms of this Contract. Said policy shall provide that it shall not be canceled, materially changed, or renewed without forty five (45) days written notice prior thereto to CLIENT.

WORKERS COMPENSATION: When the CONSULTANT has employees of the company, the CONSULTANT shall show proof of Worker's Compensation coverage by providing its State Industrial Account Identification Number. Provision of this number will be the CONSULTANT's assurance that coverage is in effect.

PROFESSIONAL LIABILITY INSURANCE: The CONSULTANT shall carry Professional Liability insurance coverage in the minimum amount of \$1,000,000.00, with not more than a \$50,000 deductible.

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Attachment C
Per Diem Rates Schedule for 2013

Compensation and billing will be at LimnoTech per diem labor billing rates for 2013. For the key staff proposed for this work, the billing rate for David Dilks and John Wolfe are \$190/hour, Joseph Depinto is \$225/ hour, Cathy Whiting and Todd Redder are \$170/hour, and Tim Towey and Penelope Moskus are \$125/hour. Billing rates for additional staff are as follows:

<u>Category</u>	<u>Rate \$/hour</u>
Principal/Sr. Scientist	225
Principal / Officer/Sr. Scientist	190
Senior Engineer/Scientist	170
Project Engineer/Scientist III	125
Project Engineer/Scientist II	115
Project Engineer/Scientist I	110
Engineer/Scientist	85
Environmental Specialist	100
Field Supervisor	95
Clerical/Assistant to Project Mgr	70

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