

PROFESSIONAL SERVICES CONTRACT

BETWEEN

GREAT LAKES WATER AUTHORITY, A MICHIGAN MUNICIPAL AUTHORITY

AND

CONTRACT NO. _____

**GREAT LAKES WATER AUTHORITY
PROFESSIONAL SERVICES CONTRACT**

This Professional Services Contract No. _____ (“Contract”) is entered into by and between the Great Lakes Water Authority, a Michigan municipal authority and public body corporate organized pursuant to Public Act 233 of 1955, with its principal place of business located at 735 Randolph, Detroit, Michigan 48226 (“GLWA”), and _____, a _____ corporation, with its principal place of business located at _____ (“Contractor”).

Recitals

Whereas, the GLWA desires to engage the Contractor to render certain professional and/or technical services ("Services") as set forth in this Contract and its exhibits, which are incorporated fully by reference; and

Whereas, the Contractor represents that it is authorized and prepared to provide the qualified professional personnel with the necessary skills to perform the Services, in a manner which is responsive to the GLWA’s needs in all respects; and

Accordingly, in consideration of the mutual undertakings and benefits to accrue to the parties and the public, the parties agree as follows:

**Article 1.
Definitions**

1.01 The following words and expressions or pronouns used in their stead shall be construed as follows:

"Associates" shall mean the personnel, employees, consultants, subcontractors, agents, and parent company of the Contractor or of any subcontractor, now existing or subsequently created, and their agents and employees, and any entities associated, affiliated, or subsidiary to the Contractor or to any subcontractor, now existing or subsequently created, and their agents and employees.

“Board” shall mean the GLWA Board of Directors.

"Contract" shall mean each of the various provisions and parts of this document, including all attached Exhibits and all amendments, as approved in accordance with the GLWA Procurement Policy and signed by the GLWA Chief Executive Officer.

“Contractor” shall mean the party that contracts with the GLWA by way of this Contract, whether an individual, sole proprietorship, partnership, corporation, or other form of business organization, and its heirs, successors, personnel, agents, employees, representatives, executors, administrators and assigns.

"Records" shall mean all books, ledgers, journals, accounts, documents, and other collected data in which information is kept regarding the performance of this Contract.

"Services" shall mean all work that is expressly set forth in Exhibit A, the Scope of Services, and all work expressly or impliedly required to be performed by the Contractor in order to achieve the objectives of this Contract.

"Unauthorized Acts" shall mean any acts by a GLWA employee, agent or representative that are not set forth in this Contract and have not been approved as a part of this Contract.

"Work Product" shall mean the originals, or copies when originals are unavailable, of all materials prepared by the Contractor under this Contract or in anticipation of this Contract, including but not limited to Technology, data, studies, briefs, drawings, maps, models, photographs, files, records, computer printouts, estimates, memoranda, computations, papers, supplies, notes, recordings, and videotapes, whether such materials are reduced to writing, magnetically or optically stored, or kept in some other form.

Article 2. Engagement of Contractor

- 2.01 By this Contract, the GLWA engages the Contractor and the Contractor agrees to faithfully and diligently perform the Services set forth in Exhibit A, in accordance with the terms and conditions contained in this Contract.
- 2.02 The Contractor shall perform in a satisfactory manner as shall be determined within the sole and reasonable discretion of the GLWA. In the event that there shall be any dispute between the parties with regard to the extent, character and progress of the Services to be performed or the quality of performance under this Contract, the interpretation and determination of the GLWA shall govern.
- 2.03 The Contractor shall confer as necessary and cooperate with the GLWA in order that the Services may proceed in an efficient and satisfactory manner. The Services are deemed to include all conferences, consultations and public hearings or appearances deemed necessary by the GLWA to ensure that the Contractor will be able to properly and fully perform the objectives as set forth in this Contract.
- 2.04 All Services are subject to review and approval of the GLWA for completeness and fulfillment of the requirements of this Contract. Neither the GLWA's review, approval nor payment for any of the Services shall be construed to operate as a waiver of any rights under this Contract, and the Contractor shall be and will remain liable in accordance with

applicable law for all damages to the GLWA caused by the Contractor's negligent performance or nonperformance of any of the Services furnished under this Contract.

- 2.05 The Services shall be performed as set forth in Exhibit A, or at such other locations as are deemed appropriate by the GLWA and the Contractor for the proper performance of the Services.
- 2.06 The GLWA and the Contractor expressly acknowledge their mutual understanding and agreement that there are no third party beneficiaries to this Contract and that this Contract shall not be construed to benefit any persons other than the GLWA and the Contractor.
- 2.07 It is understood that this Contract is not an exclusive services contract, that during the term of this Contract the GLWA may contract with other firms, and that the Contractor is free to render the same or similar services to other clients, provided the rendering of such services does not affect the Contractor's obligations to the GLWA in any way.

Article 3.
Contractor's Representations and Warranties

- 3.01 To induce the GLWA to enter into this Contract, the Contractor represents and warrants that it is authorized to do business under the laws of the State of Michigan, is duly qualified to perform the Services as set forth in this Contract, and that the execution of this Contract is within the Contractor's authorized powers and is not in contravention of federal, state or local law. The Contractor further represents and warrants that this Contract has been duly authorized and executed by an individual authorized to bind the Contractor to its terms and conditions in accordance with the Contractor's requirements and procedures and constitutes a legal, valid and binding obligation of the Contractor.
- 3.02 The Contractor makes the following representations and warranties as to any and all computer-related components and systems, including but not limited to computer software, computer code, computer programs, computer hardware, embedded integrated circuits, computer memory and data storage systems, whether in the form of read-only memory chips, random access memory chips, CD-ROMs, floppy disks, magnetic tape, or some other form, and the data retained or stored in said computer memory and data storage systems (collectively "Technology") it may provide under this Contract:
 - (a) That all Technology provided to the GLWA under this Contract shall perform according to the specifications and representations set forth in Exhibit A and according to any other specifications and representations, including any manuals, provided by the Contractor to the GLWA;
 - (b) That the Contractor shall correct all errors in the Technology provided under this Contract so that such Technology will perform according to Contractor's published specifications;

- (c) That the Contractor has the full right and power to grant the GLWA a license to use the Technology provided pursuant to this Contract;
- (d) That any Technology provided by Contractor under this Contract is free of any software, programs or routines, commonly known as "disabling code," that are designed to cause such Technology to be destroyed, damaged, or otherwise made inoperable in the course of the use of the Technology;
- (e) That any Technology containing computer code and provided under this Contract is free of any known or reasonably discoverable computer program, code or set of instructions, commonly known as a "computer virus," that is not designed to be a part of the Work Product and that, when inserted into the computer's memory: (i) duplicates all or part of itself without specific user instructions to do so, or (ii) erases, alters or renders unusable any Technology with or without specific user instructions to do so, or (iii) that provide unauthorized access to the Technology; and
- (f) That all Technology shall be delivered new and in original manufacturer's packaging and shall be fully warranted for repair or replacement during the term of this Contract as amended or extended.
- (g) That any Technology that it is provided to the GLWA shall:
 - (1) Accurately recognize and process all time and date data including, but not limited to, daylight savings time and leap year data, and
 - (2) Use accurate same-century, multi-century, and similar date value formulas in its calculations, and use date data interface values that accurately reflect the correct time, date and century.

Article 4.
Contract Effective Date and Time of Performance

- 4.01 The effective date of this Contract shall be the date upon which this Contract is duly authorized in accordance with the GLWA Procurement Policy.
- 4.02 Prior to the approval of the Contract as set forth in Section 4.01, the Contractor shall have no authority to begin work on this Contract, the GLWA shall not authorize any payments to the Contractor, nor shall the GLWA incur any liability to pay for any services rendered or to reimburse the Contractor for any expenditure.
- 4.03 The GLWA and the Contractor agree that the commencement and duration of the Contractor's performance under this Contract shall be as set forth in Exhibit A.

Article 5.
Data to Be Furnished Contractor

- 5.01 Copies of all information, reports, records, and data as are existing, available, and deemed necessary by the GLWA for the performance of the Services shall be furnished to the Contractor upon the Contractor's request. With the prior approval of the GLWA, the Contractor will be permitted access to GLWA offices during regular business hours to obtain any necessary data. In addition, the GLWA will schedule appropriate conferences at convenient times with administrative personnel of the GLWA or other individuals designated by the GLWA for the purpose of gathering such data.

Article 6.
Contractor Personnel and Contract Administration

- 6.01 The Contractor represents that, at its own expense, it has obtained or will obtain all personnel and equipment required to perform the Services. It warrants that all such personnel are qualified and possess the requisite licenses or other such legal qualifications to perform the services assigned. If requested, the Contractor shall supply a résumé of the managerial staff or consultants it proposes to assign to this Contract, as well as a dossier on the Contractor's professional activities and major undertakings.
- 6.02 The GLWA may interview the Contractor's managerial staff and other employees assigned to this Contract. The Contractor shall not use any managerial staff or other employees to whom the GLWA objects and shall replace in an expedient manner those rejected by the GLWA. The Contractor shall not replace any of the personnel working on this Contract with new personnel without the prior written consent of the GLWA.
- 6.03 When the GLWA deems it reasonable to do so, it may assign qualified GLWA employees or other representatives it designates to work with the Contractor to complete the Services. Nevertheless, it is expressly understood and agreed by the parties that the Contractor shall remain ultimately responsible for the proper completion of the Services.
- 6.04 The relationship of the Contractor to the GLWA is and shall continue to be that of an independent contractor and no liability or benefits, such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, or other rights or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to either party or either party's agent, subcontractor or employee as a result of the performance of this Contract. No relationship other than that of independent contractor shall be implied between the parties or between either party's agents, employees or subcontractors. The Contractor agrees to indemnify, defend, and hold the GLWA harmless against any claim based in whole or in part on an allegation that the Contractor or any of its Associates qualify as employees of the GLWA, and any related costs or expenses, including but not limited to legal fees and defense costs.

- 6.05 The Contractor warrants and represents that all persons assigned to the performance of this Contract shall be regular employees or independent contractors of the Contractor, unless otherwise authorized by the GLWA. The Contractor's employees' daily working hours while working in or about a GLWA facility shall be the same as those worked by GLWA employees working in the facility, unless otherwise directed by the GLWA.
- 6.06 The Contractor shall comply with and shall require its Associates to comply with all security regulations and procedures in effect on the GLWA's premises.
- 6.07 The Contractor hereby waives any claim against the GLWA and agrees not to hold the GLWA liable for any personal injury or property damage incurred by its Associates on this Contract which is not held in a court of competent jurisdiction to be attributable to the gross negligence of an employee of the GLWA acting within the scope of their employment and hereby agrees to hold the GLWA harmless from any such claim by the Contractor's Associates.
- 6.08 The Contractor shall designate a project manager ("Project Manager"), acceptable to the GLWA, to be responsible for all aspects of the Services. The duties of the Project Manager shall be:
- (a) The Project Manager will coordinate its Associates' work schedules and monitor performance goals. The Project Manager will supervise the day-to-day activities of its Associates. All Associates will report directly to the Project Manager concerning all matters related to this Contract.
 - (b) The Project Manager will act as liaison between the Contractor and the GLWA. Day-to-day services to be performed by the Contractor will be done in cooperation with the designated GLWA representative.
 - (c) The Project Manager shall submit a written report monthly describing progress on the work of the Contract ("Report"). The Report shall indicate which activities the Contractor performed and which were performed by subcontractors. As part of the Report, the Project Manager shall inform the GLWA as soon as the following types of conditions become known: (a) probable delays or adverse conditions which materially affect the ability to attain objectives or prevent meeting the time schedules, accompanied by a statement of any remedial actions taken or contemplated by the Contractor; and (b) favorable developments or events which enable attaining objectives or meeting time schedules sooner than anticipated. At regular intervals, the Contractor's supervisors, higher than the Project Manager (if any), will make checks and verifications on the Reports.
 - (d) The person designated as Project Manager may be changed by the Contractor upon written notice of such change being sent to the GLWA and upon the GLWA's approval thereof.

- 6.09 In the absence of circumstances beyond its control, the Contractor agrees not to remove an Associate who is acceptable to the GLWA from work hereunder until this Contract is terminated. Immediately upon receipt of written notification, the Contractor shall replace any Associate, including the Project Manager, who, in the GLWA's sole opinion, unsatisfactorily performs the Services hereunder, or who is unsatisfactory for the performance of the Services hereunder, irrespective of any prior GLWA approval.
- 6.10 In all cases in which an Associate must be replaced for any reason, the Contractor shall supply an acceptable replacement as soon as possible, and agrees not to substitute a lower classified or less qualified Associate to perform the Services without obtaining prior GLWA approval in writing. The Contractor will furnish such replacement on a no-charge basis for that period of time necessary for any retraining or job orientation.
- 6.11 The Contractor agrees that neither it nor its employees will endeavor to influence the GLWA's employees to seek employment with the Contractor within the duration of this Contract and shall not for a period of one (1) year thereafter employ any of the GLWA's employees without prior written approval from the GLWA. Proof of such activity as determined by the GLWA may cause immediate termination of this Contract.

Article 7. Compensation

- 7.01 The GLWA agrees to pay the Contractor for the complete and proper performance of the Services an amount not to exceed the sum of _____ Thousand and 00/100 Dollars (\$0.00), inclusive of any reimbursable expenses, in the manner and at the rates set forth in Exhibit B. If reimbursable expenses are to be provided, they shall be delineated in Exhibit B. Unless this Contract is amended pursuant to Article 17, this amount shall be the entire compensation to which the Contractor is entitled for the performance of Services under this Contract.
- 7.02 The GLWA agrees to reimburse the Contractor for the reimbursable expenses identified in Exhibit B that are actually incurred in connection with the proper performance of the Services. Expenses outside the categories enumerated in Exhibit B shall not increase the amount payable stated in Section 7.01, and shall not be reimbursed by the GLWA unless such charges are reasonable and are incurred *after* written approval is given by the GLWA.
- 7.03 Payment for the proper performance of the Services shall be contingent upon receipt by the GLWA of accurate, complete and timely invoices from the Contractor and shall be made within forty-five (45) days after receipt of a proper invoice which conforms to the requirements of this Article 7.
- 7.04 Each invoice shall itemize, provide and confirm:
- (a) The cost of all Services for the subject billing period;
 - (b) The total cost of the Services rendered to date;

- (c) The date of each Service performed;
- (d) The name of the person who performed the Service (each item should refer to only one person);
- (e) A brief description of the Service performed;
- (f) The amount of time expended on performing the Service;
- (g) Each expenditure or charge for which reimbursement is sought; and
- (h) Copies of receipts for any Reimbursable Expenses for which payment or reimbursement is being requested.

7.05 Invoices shall be submitted electronically each month and must be received by the GLWA not more than thirty (30) days after the close of the immediately preceding calendar month. Invoices shall be submitted by E-mail to: accountspayable@glwater.org

7.06 The GLWA employee responsible for accepting performance under this Contract is:

Email:

Article 8.
Maintenance and Audit of Records

8.01 The Contractor shall maintain full and complete Records reflecting all of its operations related to this Contract. The Records shall be kept in accordance with generally accepted accounting principles and maintained for a minimum of three (3) years after the Contract completion date.

8.02 The GLWA and any government-grantor agency providing funding under this Contract shall have the right at any time without notice to examine and audit all Records and other supporting data of the Contractor as the GLWA or any agency deems necessary.

- (a) The Contractor shall make all Records available for examination during normal business hours at its Detroit offices, if any, or alternatively at its facility nearest Detroit. The GLWA and any government-grantor agency providing funds for the Contract shall have this right of inspection. The Contractor shall provide copies of all Records to the GLWA or to any such government-grantor agency upon request.
- (b) If in the course of such inspection the representative of the GLWA or of another government-grantor agency should note any deficiencies in the performance of the Contractor's agreed upon performance or record-keeping practices, such deficiencies will be reported to the Contractor in writing. The Contractor agrees to

promptly remedy and correct any such reported deficiencies within ten (10) days of notification.

- (c) Any costs disallowed as a result of an audit of the Records shall be repaid to the GLWA by the Contractor within thirty (30) days of notification or may be set off by the GLWA against any funds due and owing the Contractor, provided, however, that the Contractor shall remain liable for any disallowed costs exceeding the amount of the setoff.
- (d) Each party shall pay its own audit costs. However, if the dollar amount of the total disallowed costs, if any, exceeds three percent (3%) of the dollar amount of this Contract, the Contractor shall pay the GLWA's audit costs.

8.03 The Contractor agrees to include the covenants contained in Sections 8.01 and 8.02 in any contract it has with any subcontractor, consultant or agent whose services will be charged directly or indirectly to the GLWA for Services performed pursuant to this Contract.

Article 9. Indemnity

9.01 The Contractor agrees to indemnify, defend, and hold the GLWA harmless against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, fees and expenses for attorneys, expert witnesses and other consultants) that may be imposed upon, incurred by, or asserted against the GLWA or its officers, employees, agents or representatives by reason of any of the following occurring during the term of this Contract:

- (a) Any negligent or tortious act, error, or omission attributable in whole or in part to the Contractor or any of its Associates; and
- (b) Any failure by the Contractor or any of its Associates to perform their obligations, either express or implied, under this Contract; and
- (c) Any and all injury to the person or property of an employee of the GLWA where such injury arises out of the Contractor's or any of its Associates performance of this Contract.

9.02 The Contractor shall examine all places where it will perform the Services in order to determine whether such places are safe for the performance of the Services. The Contractor undertakes and assumes all risk of dangerous conditions when not performing Services inside GLWA offices. The Contractor also agrees to waive and release any claim or liability against the GLWA for personal injury or property damage sustained by it or its Associates while performing under this Contract on premises that are not owned by the GLWA.

- 9.03 In the event any action shall be brought against the GLWA by reason of any claim covered under this Article 9, the Contractor, upon notice from the GLWA, shall at its sole cost and expense defend the same.
- 9.04 The Contractor agrees that it is the Contractor's responsibility and not the responsibility of the GLWA to safeguard the property that the Contractor or its Associates use while performing this Contract. Further, the Contractor agrees to hold the GLWA harmless for any loss of such property used by any such person pursuant to the Contractor's performance under this Contract.
- 9.05 The indemnification obligation under this Article 9 shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts or other employee benefit acts.
- 9.06 The Contractor agrees that this Article 9 shall apply to all claims, whether litigated or not, that may occur or arise between the Contractor or its Associates and the GLWA and agrees to indemnify, defend and hold the GLWA harmless against any such claims.

**Article 10.
Insurance**

- 10.01 During the term of this Contract, the Contractor shall maintain the following insurance, at a minimum and at its expense:

<u>TYPE</u>	<u>AMOUNT NOT LESS THAN</u>
(a) Workers' Compensation	Statutory limits mandated by law
(b) Employers' Liability	\$500,000 minimum each disease \$500,000 minimum each person \$500,000 minimum each accident
(c) Commercial General Liability (Broad Form Comprehensive)	\$1,000,000 each occurrence \$1,000,000 personal/advertising injury \$2,000,000 general aggregate \$2,000,000 products/completed ops
(d) Automobile Liability (Covering all owned, hired and non-owned vehicles with personal and property protection insurance, including residual liability insurance under Michigan no fault insurance law)	\$1,000,000 combined single limit for bodily injury and property damage

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|-----|---|--|
| (e) | Umbrella/Excess Liability | \$4,000,000 each occurrence
\$4,000,000 aggregate |
| (f) | Professional Liability
(Errors and Omissions) | \$3,000,000 each occurrence
\$3,000,000 aggregate |
| (g) | Commercial Crime
(Covering property including
money and securities) | \$5,000,000 each occurrence
\$5,000,000 general aggregate |

10.02 The commercial general liability policy shall include an endorsement naming the "Great Lakes Water Authority" as an additional insured. The additional insured endorsement shall provide coverage to the additional insured with respect to liability arising out of the named insured's ongoing work or operations performed for the additional insured under the terms of this Contract.

10.03 The commercial general liability and the umbrella/excess liability policies shall provide/be endorsed to provide that Contractor's insurance is primary and non-contributory to any insurance already carried by the GLWA.

10.04 The workers' compensation, commercial general liability and automobile liability policies shall be endorsed with a waiver of subrogation on either a blanket basis or in favor of the GLWA.

10.05 All insurance required by this Contract shall:

- (a) Name the Contractor as the insured;
- (b) Be written on an occurrence-based policy form if the same is commercially available; and
- (c) Be affected at Contractor's expense, under valid and enforceable policies, issued by insurers either authorized to conduct business in Michigan or which have an A.M. Best's rating of A-/VIII or better, and which are otherwise acceptable to the GLWA.

10.06 If during the term of this Contract changed conditions or other pertinent factors should, in the reasonable judgment of the GLWA, render inadequate the foregoing insurance limits, the Contractor shall furnish on demand such additional coverage or types of coverage as may reasonably be required under the circumstances. Within thirty (30) calendar days of such a demand, the Contractor shall obtain the additional coverage and furnish evidence of such coverage to the GLWA.

10.07 Certificates of insurance evidencing the coverage required by this Article 10 shall, in a form acceptable to the GLWA (ACORD 25 form preferred), be submitted to the GLWA at

least ten (10) days prior to the commencement of the Services and at least fifteen (15) days prior to the expiration dates of expiring policies.

- 10.08 The Contractor shall provide to GLWA thirty (30) days' written notice of cancellation of any policy required by this Contract and ten (10) days' written notice of cancellation due to non-payment of premium.
- 10.09 If any work is subcontracted in connection with this Contract, the Contractor shall require each subcontractor to effect and maintain the types and limits of insurance set forth in this Article 10 and shall require documentation of same, copies of which documentation shall be promptly furnished the GLWA.
- 10.10 The Contractor shall be responsible for payment of all deductibles contained in any insurance required under this Contract. The provisions requiring the Contractor to carry the insurance required under this Article 10 shall not be construed in any manner as waiving or restricting the liability of the Contractor under this Contract.
- 10.11 Failure to comply with any term or condition of this Article 10 constitutes a material breach of this Contract.

Article 11.
Default and Termination

- 11.01 This Contract shall remain in full force and effect until the end of its term unless otherwise terminated for cause or convenience according to the provisions of this Article 11.
- 11.02 The GLWA reserves the right to terminate this Contract for cause. Cause is an event of default.
 - (a) An event of default shall occur if there is a material breach of this Contract, and shall include the following:
 - (1) The Contractor fails to begin work in accordance with the terms of this Contract; or
 - (2) The Contractor, in the judgment of the GLWA, is unnecessarily, unreasonably, or willfully delaying the performance and completion of the Work Product or Services; or
 - (3) The Contractor ceases to perform under the Contract; or
 - (4) The GLWA is of the opinion that the Services cannot be completed within the time provided and that the delay is attributable to conditions within the Contractor's control; or

- (5) The Contractor, without just cause, reduces its work force on this Contract to a number that would be insufficient, in the judgment of the GLWA, to complete the Services within a reasonable time, and the Contractor fails to sufficiently increase such work force when directed to do so by the GLWA; or
 - (6) The Contractor assigns, transfers, conveys or otherwise disposes of this Contract in whole or in part without prior approval of the GLWA; or
 - (7) Any GLWA officer or employee acquires an interest in this Contract so as to create a conflict of interest; or
 - (8) The Contractor violates any of the provisions of this Contract, or disregards applicable laws, ordinances, permits, licenses, instructions or orders of the GLWA; or
 - (9) The performance of the Contract, in the sole judgment of the GLWA, is substandard, unprofessional, or faulty and not adequate to the demands of the task to be performed; or
 - (10) The Contractor fails in any of the agreements set forth in this Contract; or
 - (11) The Contractor ceases to conduct business in the normal course; or
 - (12) The Contractor admits its inability to pay its debts generally as they become due.
- (b) If the GLWA finds an event of default has occurred, the GLWA may issue a Notice of Termination for Cause setting forth the grounds for terminating the Contract. Upon receiving a Notice of Termination for Cause, the Contractor shall have ten (10) calendar days within which to cure such default. If the default is cured within said ten (10) day period, the right of termination for such default shall cease. If the default is not cured to the satisfaction of the GLWA, this Contract shall terminate on the thirtieth calendar day after the Contractor's receipt of the Notice of Termination for Cause, unless the GLWA, in writing, gives the Contractor additional time to cure the default. If the default is not cured to the satisfaction of the GLWA within the additional time allowed for cure, this Contract shall terminate for cause at the end of the extended cure period.
- (c) If, after issuing a Notice of Termination for Cause, the GLWA determines that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued as a Notice of Termination for Convenience. Alternatively, in the GLWA's discretion, the Notice of Termination for Cause may be withdrawn and the Contract, if terminated, may be reinstated.

- (d) The Contractor shall be liable to the GLWA for any damages it sustains by virtue of the Contractor's breach or any reasonable costs the GLWA might incur in enforcing or attempting to enforce this Contract. Such costs shall include reasonable fees and expenses for attorneys, expert witnesses and other consultants. However, if the Contractor makes a written offer prior to the initiation of litigation or arbitration, then the GLWA shall not be entitled to such attorney fees unless the GLWA declines the offer and obtains a verdict or judgment for an amount more than ten percent (10%) above the amount of the Contractor's last written offer prior to the initiation of litigation or arbitration. The GLWA may withhold any payment(s) to the Contractor, in an amount not to exceed the amount claimed in good faith by the GLWA to represent its damages, for the purpose of setoff until such time as the exact amount of damages due to the GLWA from the Contractor is determined. It is expressly understood that the Contractor shall remain liable for any damages the GLWA sustains in excess of any setoff.
- (e) The GLWA's remedies outlined in this Article 11 shall be in addition to any and all other legal or equitable remedies permissible.

11.03 The GLWA shall have the right to terminate this Contract at any time at its convenience by giving the Contractor five (5) business days written Notice of Termination for Convenience. As of the effective date of the termination, the GLWA will be obligated to pay the Contractor the following: (a) the fees or commissions for Services completed and accepted in accordance with Exhibit A in the amounts provided for in Exhibit B; (b) the fees for Services performed but not completed prior to the date of termination in accordance with Exhibit A in the amounts set forth in the Contractor's rate schedule as provided in Exhibit B; and (c) the Contractor's costs and expenses incurred prior to the date of the termination for items that are identified in Exhibit B. The amount due to the Contractor shall be reduced by payments already paid to the Contractor by the GLWA. In no event shall the GLWA pay the Contractor more than maximum price, if one is stated, of this Contract.

11.04 After receiving a Notice of Termination for Cause or Convenience, and except as otherwise directed by the GLWA, the Contractor shall:

- (a) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;
- (b) Obligate no additional Contract funds for payroll costs and other costs beyond such date as the GLWA shall specify, and place no further orders on subcontracts for material, services, or facilities, except as may be necessary for completion of such portion of the Services under this Contract as is not terminated;
- (c) Terminate all orders and subcontracts to the extent that they relate to the portion of the Services terminated pursuant to the Notice of Termination;

- (d) Preserve all Records and submit to the GLWA such Records and reports as the GLWA shall specify, and furnish to the GLWA an inventory of all furnishings, equipment, and other property purchased for the Contract, if any, and carry out such directives as the GLWA may issue concerning the safeguarding or disposition of files and property; and
 - (e) Submit within thirty (30) days a final report of receipts and expenditures of funds relating to this Contract, and a list of all creditors, subcontractors, lessors and other parties, if any, to whom the Contractor has become financially obligated pursuant to this Contract.
- 11.05 After termination of the Contract, each party shall have the duty to assist the other party in the orderly termination of this Contract and the transfer of all rights and duties arising under the Contract, as may be necessary for the orderly, un-disrupted continuation of the business of each party.

**Article 12.
Assignment**

- 12.01 The Contractor shall not assign, transfer, convey or otherwise dispose of any interest whatsoever in this Contract without the prior written consent of the GLWA; however, claims for money due or to become due to the Contractor may be assigned to a financial institution without such approval. Notice of any assignment to a financial institution or transfer of such claims of money due or to become due shall be furnished promptly to the GLWA. If the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause stating that the right of the assignee to any monies due or to become due shall be subject to prior liens of all persons, firms, and corporations for Services rendered or materials supplied for the performance of the Services called for in this Contract.
- 12.02 The GLWA shall be permitted to assign this Contract to any successor in interest without the prior consent of the Contractor. Thereafter, and as soon as practicable, the GLWA shall provide written notice to Contractor of the assignment.

**Article 13.
Subcontracting**

- 13.01 None of the Services covered by this Contract shall be subcontracted without the prior written approval of the GLWA and, if required, any grantor agency. The GLWA reserves the right to withhold approval of subcontracting such portions of the Services where the GLWA determines that such subcontracting is not in the GLWA's best interests.
- 13.02 Each subcontract entered into shall provide that the provisions of this Contract shall apply to the subcontractor and its Associates in all respects. The Contractor agrees to bind each

subcontractor and each subcontractor shall agree to be bound by the terms of the Contract insofar as applicable to the work or services performed by that subcontractor.

- 13.03 The Contractor and the subcontractor jointly and severally agree that no approval by the GLWA of any proposed subcontractor, nor any subcontract, nor anything in the Contract, shall create or be deemed to create any rights in favor of a subcontractor and against the GLWA, nor shall it be deemed or construed to impose upon the GLWA any obligation, liability or duty to a subcontractor, or to create any contractual relation whatsoever between a subcontractor and the GLWA.
- 13.04 The provisions contained in this Article 13 shall apply to subcontracting by a subcontractor of any portion of the work or services included in an approved subcontract.
- 13.05 The Contractor agrees to indemnify, defend, and hold the GLWA harmless against any claims initiated against the GLWA pursuant to any subcontracts the Contractor enters into in performance of this Contract. The GLWA's approval of any subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Contract. The Contractor shall be solely responsible to the GLWA for the acts or defaults of its subcontractors and of each subcontractor's Associates, each of whom shall for this purpose be deemed to be the agent or employee of the Contractor.

Article 14. Conflict of Interest

- 14.01 The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of the Services under this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed by it.
- 14.02 The Contractor further covenants that no officer, agent, or employee of the GLWA and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or performance of this Contract has any personal or financial interest, direct or indirect, in this Contract or in its proceeds, whether such interest arises by way of a corporate entity, partnership, or otherwise.
- 14.03 The Contractor warrants (a) that it has not employed and will not employ any person to solicit or secure this Contract upon any agreement or arrangement for payment of a commission, percentage, brokerage fee, or contingent fee, other than bona fide employees working solely for the Contractor either directly or indirectly, and (b) that if this warranty is breached, the GLWA may, at its option, terminate this Contract without penalty, liability or obligation, or may, at its option, deduct from any amounts owed to the Contractor under this Contract any portion of any such commission, percentage, brokerage, or contingent fee.

- 14.04 The Contractor covenants not to employ an employee of the GLWA for a period of one (1) year after the date of termination of this Contract without written GLWA approval.

Article 15.
Confidential Information

- 15.01 In order that the Contractor may effectively fulfill its covenants and obligations under this Contract, it may be necessary or desirable for the GLWA to disclose confidential and proprietary information to the Contractor or its Associates pertaining to the GLWA's past, present and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the Contractor shall regard, and shall instruct its Associates to regard, all information gained as confidential and such information shall not be disclosed to any organization or individual without the prior consent of the GLWA. The above obligation shall not apply to information already in the public domain or information required to be disclosed by a court order.
- 15.02 The Contractor agrees to take appropriate action with respect to its Associates to ensure that the foregoing obligations of non-use and non-disclosure of confidential information shall be fully satisfied.

Article 16.
Compliance With Laws

- 16.01 The Contractor shall comply with and shall require its Associates to comply with all applicable federal, state and local laws.
- 16.02 The Contractor shall hold the GLWA harmless with respect to any damages arising from any violation of law by it or its Associates. The Contractor shall commit no trespass on any public or private property in performing any of the Services encompassed by this Contract. The Contractor shall require as part of any subcontract that the subcontractor comply with all applicable laws and regulations.

Article 17.
Amendments

- 17.01 The GLWA may consider it in its best interest to change, modify or extend a covenant, term or condition of this Contract or require the Contractor to perform additional Services that are not contained within the Scope of Services as set forth in Exhibit A. Any such change, addition, deletion, extension or modification of Services may require that the compensation paid to the Contractor by the GLWA be proportionately adjusted, either increased or decreased, to reflect such modification. If the GLWA and the Contractor mutually agree to any changes or modification of this Contract, the modification shall be incorporated into this Contract by written amendment.
- 17.02 Compensation shall not be modified unless there is a corresponding modification in the Services sufficient to justify such an adjustment. If there is any dispute as to compensation,

the Contractor shall continue to perform the Services under this Contract until the dispute is resolved.

- 17.03 No amendment to this Contract shall be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing, is signed and acknowledged by duly authorized representatives of both parties, and is approved by the GLWA as set forth in Section 4.01.
- 17.04 The GLWA shall not be bound by Unauthorized Acts of its employees, agents, or representatives with regard to any dealings with the Contractor and any of its Associates.

**Article 18.
Fair Employment Practices**

- 18.01 The Contractor shall comply with, and shall require any subcontractor to comply with, all federal, state and local laws governing fair employment practices and equal employment opportunities.
- 18.02 The Contractor agrees that it shall, at the point in time it solicits any subcontract, notify the potential subcontractor of their joint obligations relative to non-discrimination under this Contract, and shall include the provisions of this Article 18 in any subcontract, as well as provide the GLWA a copy of any subcontract upon request.
- 18.03 Breach of the terms and conditions of this Article 18 shall constitute a material breach of this Contract and may be governed by the provisions of Article 11, "Default and Termination."

**Article 19.
Notices**

- 19.01 All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Contract shall be given in writing, mailed by postage prepaid, certified or registered first-class mail, return receipt requested, and addressed as follows:

If to the GLWA:

Great Lakes Water Authority
735 Randolph Street, _____
Detroit, Michigan 48226
Attention: _____

If to the Contractor:

Attention: _____

- 19.02 All Notices shall be deemed given on the day of mailing. Either party to this Contract may change its address for the receipt of Notices at any time by giving notice of the address change to the other party. Any Notice given by a party to this Contract must be signed by an authorized representative of such party.
- 19.03 The Contractor agrees that service of process at the address and in the manner specified in this Article 19 shall be sufficient to put the Contractor on notice of such action and waives any and all claims relative to such notice.

Article 20.
Proprietary Rights and Indemnity

- 20.01 The Contractor shall not relinquish any proprietary rights in its intellectual property (copyright, patent, and trademark), trade secrets or confidential information as a result of the Services provided under this Contract. Any Work Product provided to the GLWA under this Contract shall not include the Contractor’s proprietary rights, except to the extent licensed to the GLWA.
- 20.02 The GLWA shall not relinquish any of its proprietary rights, including, but not limited to, its data, privileged or confidential information, or methods and procedures, as a result of the Services provided under this Contract.
- 20.03 The parties acknowledge that should the performance of this Contract result in the development of new proprietary and secret concepts, methods, techniques, processes, adaptations, discoveries, improvements and ideas ("Discoveries"), and to the extent said Discoveries do not include modifications, enhancements, configurations, translations, derivative works, and interfaces from the Contractor’s intellectual property, trade secrets or confidential information, said Discoveries shall be deemed “Work(s) for Hire” and shall be promptly reported to the GLWA and shall belong solely and exclusively to the GLWA without regard to their origin, and the Contractor shall not, other than in the performance of this Contract, make use of or disclose said Discoveries to anyone. At the GLWA's request, the Contractor shall execute all documents and papers and shall furnish all reasonable assistance requested in order to establish in the GLWA all right, title and interest in said Discoveries or to enable the GLWA to apply for United States patents or copyrights for said Discoveries, if the GLWA elects to do so.
- 20.04 Any Work Product provided by the Contractor to the GLWA under this Contract shall not be disclosed, published, copyrighted or patented, in whole or in part, by the Contractor.

The right to the copyright or patent in such Work Product shall rest exclusively in the GLWA. Further, the GLWA shall have unrestricted and exclusive authority to publish, disclose, distribute and otherwise use, in whole or in part, any of the Work Product. If Work Product is prepared for publication, it shall carry the following notation on the front cover or title page: "This document was prepared for, and is the exclusive property of, the Great Lakes Water Authority."

- 20.05 The Contractor warrants that the performance of this Contract shall not infringe upon or violate any patent, copyright, trademark, trade secret or proprietary right of any third party. In the event of any legal action related to the above obligations of the Contractor filed by a third party against the GLWA, the Contractor shall, at its sole expense, indemnify, defend and hold the GLWA harmless against any loss, cost, expense or liability arising out of such claim, whether or not such claim is successful.
- 20.06 The making of payments, including partial payments by the GLWA to the Contractor, shall vest in the GLWA title to, and the right to take possession of, all Work Product produced by the Contractor up to the time of such payments, and the GLWA shall have the right to use said Work Product for public purposes without further compensation to the Contractor or to any other person.
- 20.07 Upon the completion or other termination of this Contract, all finished or unfinished Work Product prepared by the Contractor shall, at the option of the GLWA, become the GLWA's sole and exclusive property whether or not in the Contractor's possession. Such Work Product shall be free from any claim or retention of rights on the part of the Contractor and shall promptly be delivered to the GLWA upon the GLWA's request. The GLWA shall return all of the Contractor's property to it. The Contractor acknowledges that any intentional failure or unreasonable delay on its part to deliver the Work Product to the GLWA will cause irreparable harm to the GLWA not adequately compensable in damages and for which the GLWA has no adequate remedy at law. The Contractor accordingly agrees that the GLWA may in such event seek and obtain injunctive relief in a court of competent jurisdiction to compel delivery of the Work Product, to which injunctive relief the Contractor consents, as well as seek and obtain all applicable damages and costs. The GLWA shall have full and unrestricted use of the Work Product for the purpose of completing the Services.

Article 21.
Force Majeure

- 21.01 No failure or delay in performance of this Contract, by either party, shall be deemed to be a breach thereof when such failure or delay is caused by a force majeure event including, but not limited to, any Act of God, strikes, lockouts, wars, acts of terrorism, riots, epidemics, explosions, sabotage, breakage or accident to equipment, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise, not within the control of a party. In the event of a dispute

between the parties with regard to what constitutes a force majeure event, the GLWA's reasonable determination shall be controlling.

**Article 22.
Waiver**

- 22.01 The GLWA shall not be deemed to have waived any of its rights under this Contract unless such waiver is in writing and signed by the GLWA.
- 22.02 No delay or omission on the part of the GLWA in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one (1) occasion shall not be construed as a waiver of any right on any future occasion.
- 22.03 No failure by the GLWA to insist upon the strict performance of any covenant, agreement, term or condition of this Contract or to exercise any right, term or remedy consequent upon its breach shall constitute a waiver of such covenant, agreement, term, condition, or breach.

**Article 23.
Miscellaneous**

- 23.01 If any provision of this Contract or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.
- 23.02 This Contract contains the entire agreement between the parties and all prior negotiations and agreements are merged into this Contract. Neither the GLWA nor the GLWA's agents have made any representations except those expressly set forth in this Contract, and no rights or remedies are, or shall be, acquired by the Contractor by implication or otherwise unless expressly set forth in this Contract. The Contractor waives any defense it may have to the validity of the execution of this Contract.
- 23.03 Unless the context otherwise expressly requires, the words "herein," "hereof," and "hereunder," and other words of similar import, refer to this Contract as a whole and not to any particular section or subdivision.
- 23.04 The headings of the sections of this Contract are for convenience only and shall not be used to construe or interpret the scope or intent of this Contract or in any way affect the same.
- 23.05 This Contract and all actions arising under it shall be governed by, subject to, and construed according to the law of the State of Michigan. The Contractor consents and submits to the exclusive personal jurisdiction of any state or federal court of competent jurisdiction in Wayne County, Michigan, for any action arising out of this Contract. The Contractor also agrees that it shall not commence any action against the GLWA because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and

enforcement of this Contract in any state or federal court of competent jurisdiction other than one in Wayne County, Michigan.

- 23.06 If any Associate of the Contractor shall take any action that, if done by a party, would constitute a breach of this Contract, the same shall be deemed a breach by the Contractor.
- 23.07 The rights and remedies set forth in this Contract are not exclusive and are in addition to any of the rights or remedies provided by law or equity.
- 23.08 For purpose of the hold harmless and indemnity provisions contained in this Contract, the term "GLWA" shall be deemed to include the Great Lakes Water Authority and all other associated, affiliated, allied or subsidiary entities or commissions, now existing or subsequently created, and their officers, agents, representatives, and employees.
- 23.09 The Contractor covenants that it is not, and shall not become, in arrears to the GLWA upon any contract, debt, or other obligation to the GLWA including, without limitation, water and sewage bills.
- 23.10 This Contract may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Contract. Promptly after the execution of this Contract, the GLWA shall provide a copy to the Contractor.
- 23.11 As used in this Contract, the singular shall include the plural, the plural shall include the singular, and a reference to either gender shall be applicable to both.
- 23.12 The rights and benefits under this Contract shall inure to the GLWA and its agents, successors, and assigns.
- 23.13 The GLWA shall have the right to recover by setoff from any payment owed to the Contractor any amounts owed to the GLWA by the Contractor under this Contract or other contracts, and any other debt owed to the GLWA by the Contractor.

(Signatures appear on next page)

The GLWA and the Contractor, by and through their duly authorized officers and representatives, have executed this Contract as follows:

_____ :

By: _____
Signature

Print Name

Its: _____
Title

Great Lakes Water Authority:

By: _____
(Signature)

(Print Name)

Its: _____
(Title)

Dated: _____

APPROVED BY GLWA
BOARD OF DIRECTORS ON:

Date

APPROVED AS TO FORM BY:

GLWA General Counsel Date

EXHIBIT A

SCOPE OF SERVICES

I. Contract Term

CHOOSE ONE:

FIXED TERM:

The term of this Contract shall begin on _____ and shall terminate on _____. The Contractor shall commence performance of this Contract upon receipt of a written "Notice to Proceed" from the GLWA and in the manner specified in the Notice to Proceed.

OR

RENEWAL OPTION:

a. The term of this Contract shall be for _____ (the "Initial Term"). The GLWA shall have _____ options to renew this Contract (collectively, the "Renewals") at the GLWA's sole discretion and at the terms and conditions specified in this Contract. The Contractor shall commence performance of this Contract upon receipt of a written "Notice to Proceed" from the GLWA and in the manner specified in the Notice to Proceed.

b. The Initial Term shall begin on _____ and terminate on _____ and compensation therefor shall be as set forth in Exhibit B.

c. If so exercised by the GLWA, the first optional term shall begin on _____ and terminate on _____ (the "First Renewal Term") and compensation therefor shall be as set forth in Exhibit B.

d. If so exercised by the GLWA, the second optional term shall begin on _____ and terminate on _____ (the "Second Renewal Term") and compensation therefor shall be as set forth in Exhibit B.

e. The GLWA may authorize the exercise of the Renewals in the discretion of the GLWA.

II. Services to be Performed

(End Exhibit A)

EXHIBIT B

FEE SCHEDULE

I. General

CHOOSE ONE:

FIXED TERM:

The Contractor shall be paid for those Services performed pursuant to this Contract, inclusive of all reimbursable expenses, an amount not to exceed the sum of _____ and 00/100 Dollars (\$0.00) in accordance with the terms and conditions of this Contract.

OR

RENEWAL OPTION:

The Contractor shall be paid for those Services performed pursuant to this Contract, inclusive of all reimbursable expenses, as set forth below:

- a. For the Initial Term, an amount not to exceed the sum of _____ and 00/100 Dollars (\$0.00); and
- b. For the First Renewal Term if any, an amount not to exceed the sum of _____ and 00/100 Dollars (\$0.00); and
- c. For the Second Renewal Term if any, an amount not to exceed the sum of _____ and 00/100 Dollars (\$0.00).

II. Fee Schedule

The fee schedule below states the maximum hourly billable rate the Contractor may charge the GLWA for performance under this Contract.

NAME

BILLABLE HOURLY RATE

III. Reimbursable Expenses

CHOOSE ONE:

There are no reimbursable expenses provided for in this Contract.

OR

a. The Contractor shall be paid for its reimbursable expenses which shall be the actual cost incurred by the Contractor for expenses advanced on behalf of the GLWA in connection with the Services performed by the Contractor.

b. In addition, reimbursement is allowable for travel and sustenance for travel in excess of fifty (50) miles outside the corporate limits of the City of Detroit.

c. The following services shall be invoiced at the rates which represent the actual costs of the Contractor: parking, necessary local deliveries, toll or long distance telephone charges, transcript costs, postage, express mail services, outside printing and photocopying, filing, notary, expert witness fees, and miscellaneous like expenses directly related and necessary for rendering the Services. Outside printing rates shall be ascertained by contacting at least three (3) commercial agencies and selecting the lowest minimum charge.

d. Charges related to in-house printing and photocopying and electronic (online) data research are not reimbursable. The GLWA will not pay any charges relating to the preparation or processing of this Contract or of invoices by the Contractor.

e. In order to obtain reimbursement for costs or expenses not enumerated herein, the Contractor shall submit to the GLWA _____ (insert relevant title) a written request for approval of such costs or expenses *prior* to incurring them.

OR

Reasonable costs incurred by Contractor for travel-related expenses, including airfare, taxi, hotel/meals/incidentals (if overnight stay is required), mileage, parking and tolls will be invoiced with supporting receipts. Reimbursement rates follow the U.S. General Services Administration (GSA) approved rates for 2016.

a. The following expenses will be reimbursed at the following per user per diem not to exceed rate:

1. Lodging (excluding taxes) \$115.00. Receipts required. Taxes on lodging will be reimbursed as a miscellaneous expense.

2. Meals at the rates set forth below. Receipts not required. Rates include taxes and tips and Contractor will not be reimbursed separately for these items. Any meal provided as a part of a lodging package or otherwise provided at no additional cost to the Contractor shall not be reimbursed.
 - a. Breakfast \$12.00
 - b. Lunch \$13.00
 - c. Dinner \$24.00
 - d. Reimbursement on first and last day of travel \$40.50
3. Incidentals (e.g. fees and tips given to porters, baggage carriers and hotel staff) \$5.00. Receipts not required.
 - b. Mileage shall be reimbursed at the GSA approved rate. The GSA mileage reimbursement rate effective January 1, 2016 is \$0.54 per mile. Gas costs are not reimbursable.
 - c. All other miscellaneous reimbursable expenses (e.g. parking, tolls, lodging taxes and public transportation) will be charged at cost with receipts.
 - d. Reimbursable expenses shall not exceed \$_____.00.

(End Exhibit B)