

**AGREEMENT BETWEEN
Tetra Tech of Michigan, PC
AND THE CITY OF ANN ARBOR
FOR PROFESSIONAL SERVICES**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St., Ann Arbor, Michigan 48104 ("City"), and Tetra Tech of Michigan, PC ("Consultant") a(n) Michigan Corporation with its address at 710 Avis Drive, Ann Arbor, MI 48108 agree as follows on this 15 day of November, 2013.

The Consultant agrees to provide professional services to the City under the following terms and conditions:

I. DEFINITIONS

Administering Service Area/Unit means Water Treatment Services Unit.

Contract Administrator means Sr. Utilities Engineer, acting personally or through any assistants authorized by the Administrator/Manager of the Administering Service Area/Unit.

Deliverables means all Plans, Specifications, Reports, Recommendations, and other materials developed for or delivered to City by Consultant under this Agreement

Project means Technical Engineering Services, RFP No. 867.

Work Statement means a request for specific services or deliverables by the City, a proposal of Consultant, or another written instrument that meets the following requirements:

1. Includes substantially the following statement: "This is a Work Statement under Consultant Services Agreement Dated"
2. Is signed on behalf of both parties by their authorized representatives. The required signatures for the City are: (a) City Administrator; (b) Administrator of the Administering Service Area/Unit approved as to substance; and (c) City Attorney approved as to form and content.
3. Contains the following three mandatory items:
 - a. Description and/or specifications of the services to be performed and the Deliverables to be delivered to City
 - b. The amount of payment
 - c. The time schedule for performance and for delivery of the Deliverables

In addition, when applicable, the Work Statement may include such other terms and conditions as may be mutually agreeable between parties.

II. DURATION

This Agreement shall become effective on November 15, 2013, and shall remain in effect until June 30, 2016 unless terminated as provided for in this Agreement.

III. SERVICES

- A. The Consultant agrees to provide professional engineering (type of service) services ("Services") in connection with the Project as described in Exhibit A. Specific projects within the scope may be described from time to time by the City for performance within a Work Statement. Upon acceptance of the Work by Consultant, the Work Statement shall become part of this Agreement and shall be performed in accordance with its described scope. The City retains the right to make changes to the quantities of service within the general scope of the Agreement or within a Work Statement at any time by a written order. If the changes add to or deduct from the extent of the services, the contract sum shall be adjusted accordingly. All such changes shall be executed under the conditions of the original Agreement. The Consultant understands that there is no guarantee or implied promise of any nature that any Work Statements at all will be issued and that the City is under no obligation to issue or consent to any Work Statements.
- B. Quality of Services under this Agreement shall be of the level of professional quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.
- C. The Consultant shall perform its Services for the Project in compliance with all statutory, regulatory and contractual requirements now or hereafter in effect as may be applicable to the rights and obligations set forth in the Agreement.
- D. The Consultant may rely upon the accuracy of reports and surveys provided to it by the City except when defects should have been apparent to a reasonably competent professional or when it has actual notice of any defects in the reports and surveys.

IV. COMPENSATION OF CONSULTANT

- A. The Consultant shall be paid in the manner set forth in Exhibit B or the applicable Work Statement. Payment shall be made monthly, unless another payment term is specified in Exhibit B or applicable Work Statement, following receipt of invoices submitted by the Consultant, and approved by the Contract Administrator. Total compensation payable for all Services performed during the term of this Agreement shall not exceed two hundred and fifty thousand dollars (\$250,000).

- B. The Consultant will be compensated for Services performed in addition to the Services described in Section III, only when those additional Services have received prior written approval of the Contract Administrator. Compensation will be payable according to the fee schedule in Exhibit B, The Contract Administrator shall be the sole arbitrator of what shall be considered "reasonable" under this provision.
- C. The Consultant shall keep complete records of time spent and materials used on the Project so that the City may verify invoices submitted by the Consultant. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

V. INSURANCE/INDEMNIFICATION

- A. The Consultant shall procure and maintain during the life of this contract, such insurance policies, including those set forth in Exhibit C, as will protect itself and the City from all claims for bodily injuries, death or property damage which may arise under this contract; whether the acts were made by the Consultant or by any subcontractor or anyone employed by them directly or indirectly. In the case of all contracts involving on-site work, the Contractor shall provide to the City, before the commencement of any work under this contract, documentation demonstrating it has obtained the policies required by Exhibit C.
- B. Any insurance provider of Consultant shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the City.
- C. To the fullest extent permitted by law, the Consultant shall indemnify, defend and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses including attorney's fees resulting or alleged to result from any acts or omissions by the Consultant or its employees and agents occurring in the performance of or breach in this Agreement.

VI. COMPLIANCE REQUIREMENTS

- A. Nondiscrimination. The Consultant agrees to comply, and to require its subcontractor(s) to comply, with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act (MCL 37.2209) The Contractor further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

- B. Living Wage. The Consultant is a “covered employer” as defined in Chapter 23 of the Ann Arbor City Code and agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. The Consultant agrees to pay those employees providing Services to the City under this Agreement a “living wage,” as defined in Section 1:815 of the Ann Arbor City Code, as adjusted in accordance with Section 1:815(3); to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this Agreement are working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment in order to pay the living wage required by Section 1:815; and otherwise to comply with the requirements of Chapter 23.

VII. WARRANTIES BY THE CONSULTANT

- A. The Consultant warrants that the quality of its Services under this Agreement shall conform to the level of professional quality performed by experts regularly rendering this type of service.
- B. The Consultant warrants that it has all the skills, experience, and professional licenses necessary to perform the Services specified in this Agreement.
- C. The Consultant warrants that it has available, or will engage, at its own expense, sufficient trained employees to provide the Services specified in this Agreement.
- D. The Consultant warrants that it is not, and shall not become overdue or in default to the City for any contract, debt, or any other obligation to the City including real and personal property taxes.

VIII. TERMINATION OF AGREEMENT

- A. If either party is in breach of this Agreement for a period of fifteen (15) days following receipt of notice from the non-breaching party with respect to a breach, the non-breaching party may pursue any remedies available to it against the breaching party under applicable law, including but not limited to, the right to terminate this Agreement without further notice.
- B. The City may terminate this Agreement, on at least thirty (30) days advance notice, for any reason, including convenience, without incurring any penalty, expense or liability to the Consultant except the obligation to pay for Services actually performed under the Agreement before the termination date.
- C. Consultant acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation of funds for this Project. If funds to enable the City to effect continued payment under this Agreement are not appropriated or otherwise made available, the City shall have the right to terminate this Agreement without penalty at the end of the last

period for which funds have been appropriated or otherwise made available by giving written notice of termination to the Consultant. The Contract Administrator shall give the Consultant written notice of such non-appropriation within thirty (30) days after it receives notice of such non-appropriation.

- D. The remedies provided in this Agreement will be cumulative, and the assertion by a party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.

IX. OBLIGATIONS OF THE CITY

- A. The City agrees to give the Consultant access to the Project area and other City-owned properties as required to perform the necessary Services under this Agreement.
- B. The City shall notify the Consultant of any defects in the Services of which the Contract Administrator has actual notice.

X. ASSIGNMENT

- A. The Consultant shall not subcontract or assign any portion of any right or obligation under this Agreement without prior written consent from the City. Notwithstanding any consent by the City to any assignment, Consultant shall at all times remain bound to all warranties, certifications, indemnifications, promises and performances, however described, as are required of it under the Agreement unless specifically released from the requirement, in writing, by the City.
- B. The Consultant shall retain the right to pledge payment(s) due and payable under this Agreement to third parties.

XI. NOTICE

All notices and submissions required under this Agreement shall be delivered to the respective party in the manner described herein to the address stated in this Agreement or such other address as either party may designate by prior written notice to the other.

Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If Notice is sent to the CONSULTANT, it shall be addressed and sent to:
Brian Rubel
Tetra Tech of Michigan, PC
710 Avis Drive
Ann Arbor, MI 48108

If Notice is sent to the CITY, it shall be addressed and sent to:
City of Ann Arbor
301 E. Huron St., POB 8647
Ann Arbor, Michigan 48107
Attn: Brian Steglitz

XII. CHOICE OF LAW

This Agreement will be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

XIII. OWNERSHIP OF DOCUMENTS

Upon completion or termination of this Agreement, all documents (i.e., deliverables) prepared by or obtained by the Consultant as provided under the terms of this Agreement shall be delivered to and become the property of the City. Original basic survey notes, sketches, charts, drawings, partially completed drawings, computations, quantities and other data shall remain in the possession of the Consultant as instruments of service unless specifically incorporated in a deliverable, but shall be made available, upon request, to the City without restriction or limitation on their use. The City acknowledges that the documents are prepared only for the Project. Prior to completion of the contracted Services the City shall have a recognized proprietary interest in the work product of the Consultant.

Unless otherwise stated in this Agreement, any intellectual property owned by Consultant prior to the effective date of this Agreement (i.e., preexisting information) shall remain the exclusive property of Consultant even if such Preexisting Information is embedded or otherwise incorporated in materials or products first produced as a result of this Agreement or used to develop Deliverables. The City's right under this provision shall not apply to any Preexisting Information or any component thereof regardless of form or media.

XIV. CONFLICT OF INTEREST

Consultant certifies it has no financial interest in the Services to be provided under this Agreement other than the compensation specified herein. Consultant further certifies that it presently has no personal or financial interest, and shall not acquire any such interest, direct or indirect, which would conflict in any manner with its performance of the Services under this Agreement.

XV. SEVERABILITY OF PROVISIONS

Whenever possible, each provision of this Agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this Agreement or the application of the provision to other parties and circumstances.

XVI. EXTENT OF AGREEMENT

This Agreement, together with any affixed exhibits, schedules or other documentation, constitutes the entire understanding between the City and the Consultant with respect to the subject matter of the Agreement and it supersedes, unless otherwise incorporated by reference herein, all prior representations, negotiations, agreements or understandings whether written or oral. Neither party has relied on any prior representations, of any kind or nature, in entering into this Agreement. This Agreement may be altered, amended or modified only by written amendment signed by the Consultant and the City.

FOR CONSULTANT

By _____
Type Name: _____
Its _____

FOR THE CITY OF ANN ARBOR

By _____
John Hieftje, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance

Steven D. Powers, City Administrator

Craig Hupy, Public Services Area
Administrator

Approved as to Form and Content

Stephen K. Postema, City Attorney

EXHIBIT A

SCOPE OF SERVICES

Per RFP No. 867, the Scope of Services will consist of tasks or projects defined in Work Statements as individual tasks or projects during the contract period. The tasks or projects may include a variety of engineering disciplines such as civil, mechanical, structural, electrical, hydraulics, pumps and pumping systems, etc.

The City may select Consultant to perform specific tasks or projects, or may select a different consultant based on staff availability, turnaround time for completion of the tasks or project, staff experience and other factors relevant to the tasks or project. For some tasks or projects, the City may request a letter proposal from available consultants that identify approach and cost associated with the tasks or project as the basis for the City's decision on assignment of the tasks or project. The City does not guarantee either a minimum volume of work or a specific volume of work under this Agreement.

EXHIBIT B

SCHEDULE OF FEES

The Fees for Services shall be determined for each Work Statement, per RFP No. 867 and based on the schedule of fees in the Consultant's September 26, 2013, proposal in response to RFP No. 867, a copy of which is attached.

The total amount of fees paid under this Agreement shall not exceed \$250,000.00.



TETRA TECH

September 26, 2013

City of Ann Arbor
Procurement Unit, 5th Floor
301 East Huron Street
P.O. Box 8647
Ann Arbor, Michigan 48107

**RE: Fee Proposal —
Technical Engineering Services for the City of Ann Arbor Water Treatment
Services Unit, RFP No. 867**

Dear Selection Committee Members:

Please find below Tetra Tech's proposed hourly rates for the professional staff assigned to work on the City of Ann Arbor's Water Treatment Services Unit As-Needed contract. Our competitive rates, we believe Tetra Tech provides value beyond an hourly fee such as:

- Breadth of technical skills
- No cost to travel due to our Ann Arbor office
- Immediate response for urgent needs
- Prior experience in all services that may be needed
- Local relationships with regulators and contractors

Job Titles	Hourly Billable Rates
Admin Assistant I	\$65.00
Admin Assistant II	\$70.00
Technician I	\$60.00
Technician II	\$70.00
Technician III	\$90.00
Designer I	\$110.00
Designer II	\$120.00
Construction Project Representative I	\$75.00
Construction Project Representative II	\$90.00
Sr. Construction Project Representative I	\$140.00
Engineer I	\$85.00
Engineer II	\$110.00
Engineer III	\$125.00
Project Manager	\$160.00
Engineer VI/Senior Project Manager	\$195.00
Scientist I	\$80.00
Scientist II	\$95.00

Tetra Tech

710 Avis Drive, Ann Arbor, MI 48108
Tel 734.213.4063 Fax 734.213.3003 www.tetratech.com



TETRA TECH

Scientist III.....	\$100.00
Scientist IV.....	\$105.00
Survey Manager.....	\$155.00
Survey Party Chief.....	\$95.00
Survey Technician II.....	\$70.00
Technician I.....	\$55.00
Technician II.....	\$70.00
Technician III.....	\$90.00
Word Processing.....	\$65.00

Tetra Tech assumes the contract will allow for reimbursement for other direct costs and reimbursable expenses. Included in these items are survey equipment and employee mileage from our Ann Arbor office (at prevailing IRS rate).

Hourly rates include salary, overhead and profit. Tetra Tech's current overhead rate is approximately 171%. We respectfully request the City of Ann Arbor consider a cost of living adjustment in rates in future fiscal years.

CERTIFICATION STATEMENT

As requested in the RFP, Tetra Tech agrees to the following statement:

As an awarded contract, the respondent agrees to provide the scope of work in this Request for Proposals, including all terms and conditions, instruction to respondents, special provisions, specifications, addenda, questions and corresponding answers, and the RFP as set forth in these Contract Documents. The parties intend for this to constitute the final and complete agreement between City of Ann Arbor and the respondent.

We would be happy to further discuss our rate structure should you have any questions.

Sincerely,

Brian M. Rubel, PE, PMP
Senior Project Manager

EXHIBIT C

INSURANCE REQUIREMENTS

Effective the date of this Agreement, and continuing without interruption during the term of this Agreement, Contractor shall provide certificates of insurance to the City on behalf of itself, and when requested any subcontractor(s).

A. The certificates of insurance shall meet the following minimum requirements.

1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$500,000 each accident
Bodily Injury by Disease - \$500,000 each employee
Bodily Injury by Disease - \$500,000 each policy limit

2. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground Coverage or Pollution. Further, the following minimum limits of liability are required:

\$1,000,000 Each occurrence as respect Bodily Injury Liability or
Property Damage Liability, or both combined
\$2,000,000 Per Job General Aggregate
\$1,000,000 Personal and Advertising Injury

3. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97 or current equivalent. The City of Ann Arbor shall be an additional insured. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further, the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.
4. Umbrella/Excess Liability Insurance shall be provided to apply in excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$1,000,000.

B. Insurance required under V.A 2 and V.A.3 of this contract shall be considered primary as respects any other valid or collectible insurance that the City may

possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the Contractor agrees to waive any right of recovery by its insurer against the City.

- C. Documentation must provide and demonstrate an unconditional 30 day written notice of cancellation in favor of the City of Ann Arbor. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the City, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Contractor supplies a copy of the endorsements required on the policies. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the City. If any of the above coverages expire by their terms during the term of this contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Service Area/Unit at least ten days prior to the expiration date.

APPENDIX A

NON-DISCLOSURE AGREEMENT BETWEEN Tetra Tech of Michigan, PC AND THE CITY OF ANN ARBOR

Whereas, the City of Ann Arbor, with municipal offices at 100 N. Fifth Avenue, Ann Arbor 48107 ("City") is the owner of certain confidential information relating to its water system and components thereof, which is or may be classified as exempt or restricted information under the Michigan Freedom of Information Act and federal bioterrorism and homeland security laws (collectively referred to as "Confidential Information").

Whereas, Tetra Tech of Michigan, PC (referred to as "Receiver") is desirous of receiving, reviewing, and/or evaluating the Confidential Information for the sole and exclusive purpose of providing Technical Engineering Services, RFP No. 867..

It is hereby agreed:

That, the City shall, in its sole discretion, disclose to Receiver some or all of the Confidential Information, based on Receiver's request for the Water Supply, Dam, and Hydroelectric Generator Systems:

- Plans
- Drawings
- Instrumentation or System Control Programs
- Studies
- Other items identified by the City as confidential when delivered to the Receiver

It is understood that Receiver will secure at its sole cost any and all licenses, authorizations or other intellectual property rights necessary for the transfer of Confidential Information in the format requested by Receiver. Receiver will be required to provide documentation of it has all necessary licenses, authorizations or rights prior to transfer of the Confidential Information in the requested format.

That, Receiver shall hold and use Confidential Information only for the above-stated purpose of this Agreement and shall restrict disclosure of such Confidential Information to its employees with a need to know. Each employee of Receiver identified as "need to know" in connection with the receipt, review or evaluation of the Confidential Information shall be required to execute a Non-disclosure Agreement under the same terms as stated herein. The City shall be provided with a copy of the executed employee Non-disclosure Agreements and a master list of the employees, their respective jobs, and the reason for their classification as "need to know."

That, Receiver will hold the Confidential Information or any part thereof in strict confidence and will not permit any disclosure thereof to any person or persons outside its organization and not use or derive any direct or indirect benefit from the Confidential Information or any part thereof

without the prior written consent of the City. Receiver agrees that it will not disseminate in any manner any part of the Confidential Information.

That, Receiver will not make or authorize to be made any copies of any reports, plans, drawings or electronic data files supplied by the City and showing or describing or embodying the Confidential Information unless authorized by the City in writing. At any time and for any reason, prior to the completion of the work performed by the Receiver, the City may request and Receiver agrees it will return all of the said reports, plans, drawings or electronic data files together with any reports, drawings or electronic data files, including any independent notations of the Confidential Information, made by Receiver showing or describing or embodying the Confidential Information or any part thereof to the City immediately. After completion of the work, the Receiver shall return to the City any drawings, extracts, reproductions, or other documentation comprising the Confidential Information, in whatever format or media, including any independent notations of the Confidential Information made by Receiver showing or describing or embodying the Confidential Information or any part thereof. In addition, access shall be controlled by the Receiver to all Confidential Information generated as part of the work performed by the Receiver. Although the Receiver is permitted to maintain copies of their work, dissemination of this Confidential Information is not permitted without written authorization from the City.

That, the restrictions on the use or disclosure of Confidential Information by Receiver shall not include any information which:

1. at the time of disclosure to Receiver was known to Receiver free of restriction and such previous knowledge is evidenced by documentation in the possession of Receiver. A copy of which documentation will be provided to the City if requested by the City; or
2. is publicly known or later made publicly known by the City; or
3. is evidenced by documentation in the possession of Receiver as being received from a third party to this Agreement who: (a) has the legal right to so furnish such information to Receiver, and (b) is not obligated to the City to keep such information confidential; or
4. is approved for release in writing by the City.

That, nothing in this Agreement shall be construed as conferring to Receiver any right of ownership in the Confidential Information or license to use any, patents, industrial designs, copyrights or other intellectual property rights owned or licensed by the City.

That, nothing in this Agreement shall be construed as restricting the City's right to restrain use or dissemination of the Confidential Information in accordance with applicable federal, state or local law and regulation or at common law.

Receiver acknowledges that a breach by him/her of the provisions of this Agreement will cause the City irreparable damage for which the City cannot be reasonably or adequately compensated in damages. The City shall therefore be entitled, in addition to all other remedies available to it including, but not limited to, attorney fees and costs, to injunctive and/or other

equitable relief to prevent a breach of this Agreement, or any part of it, and to secure its enforcement.

This Agreement shall be construed in accordance with the laws of the State of Michigan.

This Agreement and any amendments hereto may be executed by facsimile signature and in any number of counterparts, all of which taken together shall constitute one and the same instrument.

CITY OF ANN ARBOR

(Consultant)

By: _____
Steven D. Powers Date
Its: City Administrator

By: _____
Date
Print Name: _____
Its: _____

Approved as to substance:

Craig Hupy
Public Services Area Administrator

Approved as to form:

Stephen K. Postema
City Attorney