

CITY OF FLINT
CONTRACT WITH LOCKWOOD, ANDREWS, & NEWNAM INCORPORATED

The purpose of this agreement is to enter into a contract pertaining to the implementation of placing the City of Flint Water Plant into operation, the City of Flint (hereinafter "City") and Lockwood, Andrews, Newnam Inc., (hereinafter "Contractor").

Applicable Law: This contract shall be governed by and interpreted according to the laws of the State of Michigan pertaining to contracts made and to be performed in this state.

Arbitration: Contractor agrees to submit to arbitration all claims, counterclaims, disputes, and other matters in question arising out of or relating to this agreement, Contractor must request consent to arbitrate within 30 days from the date the Contractor knows or should have known the facts giving rise to the claim, dispute or question.

(a) Notice of demand for arbitration must be submitted to the City in writing within a reasonable time after the claim; dispute or other matter in question has arisen. A reasonable time is hereby determined to be 14 days from the date the party demanding the arbitration knows or should have known the facts giving rise to his claim, dispute or question. In no event may the demand for arbitration be made after the time when institution of legal or equitable proceedings based on such claim dispute or other matters in question would be barred by the applicable statute of limitation.

(b) Within 60 days from the date demand for arbitration is received by the City, each party shall inform Contractor whether it agrees to arbitrate. If the City does not consent, Contractor may proceed with an action in the appropriate court. If the City does consent, then within 30 days of the consent each party shall submit to the other the name of one person to serve as an arbitrator. The two arbitrators together shall then select a third person, the three together shall then serve as a panel in all proceedings. Any decision concurred in by a majority of the three shall be a final binding decision. The City's failure to respond to a timely, conforming request for arbitration is deemed consent to arbitration.

(c) The costs of the arbitration shall be split and borne equally between the parties and such costs are not subject to shifting by the arbitrator.

(d) The remedy for Contractor's failure to comply with this provision is dismissal of the action.

City Income Tax Withholding: Contractor and any subcontractor engaged in this contract shall withhold from each payment to his employees the City income tax on all of their compensation subject to tax, after giving effect to exemptions, as follows:

(a) Residents of the City:

At a rate equal to 1% of all compensation paid to the employee who is a resident of the City of Flint.

(b) Non-residents:

At a rate equal to 1/2% of the compensation paid to the employee for work done or services performed in the City of Flint.

These taxes shall be held in trust and paid over to the City of Flint in accordance with City ordinances and State law. Any failure to do so shall constitute a substantial and material breach of this contract.

Compensation: The City shall pay for such services as have been set forth herein, a contract price not to exceed \$ 171,000.00 upon submission of proper invoices, releases, affidavits, and the like. Contractor recognizes that the City does not guarantee it will require any set amount of services. Contractor's services will be utilized as needed and as determined solely by the City of Flint. Contractor expressly recognizes that it has no right to payment of any amount exceeding \$171,000.00. Contractor agrees that oral agreements by City officials to pay a greater amount are not binding.

1. Contractor shall submit itemized invoices for all services provided under this Agreement identifying:

- (a) The date of service
- (b) The name of person providing the service and a general description of the service provided.
- (c) The unit rate and the total amount due.

Invoices shall be submitted to:

City of Flint
Accounts Payable
P.O. Box 246
Flint, MI 48501-0246

City of Flint
Utilities Department
4500 North Dort Highway
Flint, Michigan 48505

It is solely within the discretion of the City as to whether Contractor has provided a proper invoice. The City may require additional information or waive requirements as it sees fit. The City will notify the Contractor of any errors or lack of sufficient documentation within 14 days of receipt of the invoice.

Contract Documents: The invitation for bids, instructions to bidders, proposal, affidavit, addenda (if any), statement of bidder's qualifications (when required), general conditions, special conditions, performance bond, labor and material payment bond,

insurance certificates, technical specifications, and drawings, together with this agreement, form the contract, and they are as fully a part of the contract as if attached hereto or repeated herein.

Disclaimer of Contractual Relationship With Subcontractors: Nothing contained in the Contract Documents shall create any contractual relationship between the City and any Subcontractor or Sub-subcontractor.

Effective Date: This contract shall be effective upon the date that it is executed by all parties and presented to the City of Flint Clerk. This contract shall not extend beyond fiscal year 2013.

Certification, Licensing, Debarment, Suspension and Other Responsibilities: Contractor warrants and certifies that Contractor and/or any of its principals are properly certified and licensed to perform the duties required by this contract in accord with laws, rules, and regulations, and it not presently debarred, suspended, proposed for debarment or declared ineligible for the award of Federal contracts by any Federal agency. Contractor may not continue to or be compensated for any work performed during any time period where the debarment, suspension or ineligibility described above exists or may arise in the course of Contractor contractual relationship with the City. Failure to comply with this section constitutes a material breach of this Contract. Should it be determined that contractor performed work under this contract while non-compliance with this provision, Contractor agrees to reimburse the City for any costs that the City must repay to any and all entities.

Force Majeure: Neither party shall be responsible for damages or delays caused by Force Majeure or other events beyond the control of the other party and which could not reasonably have been anticipated or prevented. For purposes of this Agreement, Force Majeure includes, but is not limited to, adverse weather conditions, floods, epidemics, war, riot, strikes, lockouts, and other industrial disturbances; unknown site conditions, accidents, sabotage, fire, and acts of God. Should Force Majeure occur, the parties shall mutually agree on the terms and conditions upon which the services may continue.

Good Standing: Contractor must remain current and not be in default of any obligations due the City of Flint, including the payment of taxes, fines, penalties, licenses, or other monies due the City of Flint. Violations of this clause shall constitute a substantial and material breach of this contract. Such breach shall constitute good cause for the termination of this contract should the City of Flint decide to terminate on such basis.

Indemnification: To the fullest extent permitted by law, Contractor agrees to defend, pay on behalf of, indemnify, and hold harmless the City of Flint, its elected and appointed officials, employees and volunteers and other working on behalf of the City of Flint, including the Project Manager, against any and all claims, demands, suits, or losses, including all costs connected therewith, and for any damages which may be asserted, claimed, or recovered against or from the City of Flint, its elected and appointed officials,

employees, volunteers or others working on behalf of the City of Flint, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, which may arise as a result of Contractor's acts, omissions, faults, and negligence or that of any of his employees, agents, and representatives in connection with the performance of this contract. Should the Contractor fail to indemnify the City in the above-mentioned circumstances, the City may exercise its option to deduct the cost that it incurs from the contract price forthwith.

Independent Contractor: No provision of this contract shall be construed as creating an employer-employee relationship. It is hereby expressly understood and agreed that Contractor is an "independent contractor" as that phrase has been defined and interpreted by the courts of the State of Michigan and, as such, Contractor is not entitled to any benefits not otherwise specified herein.

Insurance/Worker's Compensation: Contractor shall not commence work under this contract until he has procured and provided evidence of the insurance required under this section. All coverage shall be obtained from insurance companies licensed and authorized to do business in the State of Michigan unless otherwise approved by the City's Risk Manager. Policies shall be reviewed by the City's Risk Manager for completeness and limits of coverage. All coverage shall be with insurance carriers acceptable to the City of Flint. Contractor shall maintain the following insurance coverage for the duration of the contract.

(a) Commercial General Liability coverage of not less than one million dollars (\$1,000,000) combined single limit with the City of Flint, and including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers, named as "Additional Insureds." This coverage shall be written on an ISO occurrence basis form and shall include: Bodily Injury, Personal Injury, Property Damage, Contractual Liability, Products and Completed Operations, Independent Contractors; Broad Form Commercial General Liability Endorsement, (XCU) Exclusions deleted and a per contract aggregate coverage. This coverage shall be primary to the Additional Insureds, and not contributing with any other insurance or similar protection available to the Additional Insureds, whether said other available coverage be primary, contributing, or excess.

(b) Workers Compensation Insurance in accordance with Michigan statutory requirements, including Employers Liability coverage.

(c) Commercial Automobile Insurance in the amount of not less than \$1,000,000 combined single limit per accident with the City of Flint, and including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees and volunteers, named as "Additional Insureds." This coverage shall be written on ISO business auto forms covering Automobile Liability, code "any auto."

(d) Professional Liability - Errors and Omissions. All projects involving the use of Architects, civil engineers, landscape design specialists, and other professional services must provide the City of Flint with evidence of Professional Liability coverage in an amount not less than one million dollars (\$1,000,000). Evidence of this coverage must be provided for a minimum of three years after project completion. Any deductibles or self-insured retention must be declared to and approved by the City. In addition, the total dollar value of all claims paid out on the policy shall be declared. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retention with respect to the City, its officials, employees, agents and volunteers; or Contractor shall procure a bond guaranteeing payment of losses and related investigation, claim, administration, and defense expenses.

Contractor shall furnish the City with two certificates of insurance for all coverage requested with original endorsements for those policies requiring the Additional Insureds. All certificates of insurance must provide the City of Flint with not less than 30 days advance written notice in the event of cancellation, non-payment of premium, non-renewal, or any material change in policy coverage. In addition, the wording "Endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" must be removed from the standard ACORD cancellation statement. These certificates must identify the City of Flint, Risk Management Division, as the "Certificate Holder." Contractor must provide, upon request, certified copies of all insurance policies. If any of the above policies are due to expire during the term of this contract, Contractor shall deliver renewal certificates and copies of the new policies to the City of Flint at least ten days prior to the expiration date. Contractor shall ensure that all subcontractors utilized obtain and maintain all insurance coverage required by this provision.

Laws and Ordinances: Contractor shall obey and abide by all of the laws, rules and regulations of the Federal Government, State of Michigan, Genesee County and the City of Flint, applicable to the performance of this agreement, including, but not limited to, labor laws, and laws regulating or applying to public improvements.

Modifications: Any modifications to this contract must be in writing and signed by the parties or the authorized employee, officer, board or council representative of the parties authorized to make such contractual modifications under State law and local ordinances.

No Third-Party Beneficiary: No contractor, subcontractor, mechanic, materialman, laborer, vendor, or other person dealing with the principal Contractor shall be, nor shall any of them be deemed to be, third-party beneficiaries of this contract, but each such person shall be deemed to have agreed (a) that they shall look to the principal Contractor as their sole source of recovery if not paid, and (b) except as otherwise agreed to by the principal Contractor and any such person in writing, they may not enter any claim or bring any such action against the City under any circumstances. Except as provided by law, or as otherwise agreed to in writing between the City and such person, each such

person shall be deemed to have waived in writing all rights to seek redress from the City under any circumstances whatsoever.

Non-Assignability: Contractor shall not assign or transfer any interest in this contract without the prior written consent of the City provided, however, that claims for money due or to become due to Contractor from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the City.

Non-Disclosure/Confidentiality: Contractor agrees that the documents identified herein as the contract documents are confidential information intended for the sole use of the City and that Contractor will not disclose any such information, or in any other way make such documents public, without the express written approval of the City or the order of the court of appropriate jurisdiction or as required by the laws of the State of Michigan.

Non-Discrimination: Contractor shall not discriminate against any employee or applicant for employment with respect to hiring or tenure; terms, conditions, or privileges of employment; or any matter directly or indirectly related to employment, because of race, color, creed, religion, ancestry, national origin, age, sex, height, weight, disability or other physical impairment, marital status, or status with respect to public assistance.

Notices: Notices to the City of Flint shall be deemed sufficient if in writing and mailed, postage prepaid, addressed to Brent Wright, Water Plant Supervisor, 4500 North Dort Highway, Flint, Michigan 48505 and Inez Brown, City Clerk, City of Flint, 1101 S. Saginaw Street, Flint, Michigan 48502, or to such other address as may be designated in writing by the City from time to time. Notices to Contractor shall be deemed sufficient if in writing and mailed, postage prepaid, addressed to 1 Oakbrook Terrace Suite 207, Oakbrook Terrace, Illinois 60181, or to such other address as may be designated in writing by Contractor from time to time.

R-12 Prevailing Wages: Contractor is aware of City of Flint Resolution #R-12 dated April 8, 1991, which is hereby incorporated by reference, and agrees to abide by all of the applicable covenants and requirements set forth in said resolution.

Records Property of City: All documents, information, reports and the like prepared or generated by Contractor as a result of this contract shall become the sole property of the City of Flint.

Scope of Services: Contractor shall provide all of the materials, labor, equipment, supplies, machinery, tools, superintendence, insurance and other accessories and services necessary to complete the project in accordance with the proposals submitted on June 2013. Contractor shall perform the work in accordance with the Standard General Conditions and any Special Conditions provided for in this contract and warrants to the City that all materials and equipment furnished under this contract will be new unless otherwise specified, and that all work will be of good quality, free from faults and defects and in conformance with the contract documents. All work not conforming to these

requirements, including substitutions not properly approved and authorized, may be considered defective. In addition to any other remedies the City may have, if, within one year of the date of substantial completion of work, or within one year after acceptance by the City, or within such longer period of time as may be prescribed by law, any of the work is found to be defective or not in accord with the contract documents, Contractor shall correct promptly after receipt of a written notice from the City to do so, unless the City has previously given Contractor a written acceptance of such condition.

Severability: In the event that any provision contained herein shall be determined by a court or administrative tribunal to be contrary to a provision of state or federal law or to be unenforceable for any reason, then, to the extent necessary and possible to render the remainder of this Agreement enforceable, such provision may be modified or severed by such court or administrative tribunal so as to, as nearly as possible, carry out the intention of the parties hereto, considering the purpose of the entire Agreement in relation to such provision. The invalidation of one or more terms of this contract shall not affect the validity of the remaining terms.

Standards of Performance: Contractor agrees to exercise independent judgment and to perform its duties under this contract in accordance with sound professional practices. The City is relying upon the professional reputation, experience, certification, and ability of Contractor. Contractor agrees that all of the obligations required by him under this Contract shall be performed by him or by others employed by him and working under his direction and control. The continued effectiveness of this contract during its term or any renewal term shall be contingent upon Contractor maintaining his certification in accordance with the requirements of State law.

Subcontracting: No subcontract work, if permitted by the City, shall be started prior to the written approval of the subcontractor by the City. The City reserves the right to accept or reject any subcontractor.

Termination: This contract may be terminated by either party hereto by submitting a notice of termination to the other party. Such notice shall be in writing and shall be effective 30 days from the date it is submitted unless otherwise agreed to by the parties hereto. Contractor, upon receiving such notice and prorated payment upon termination of this contract shall give to the City all pertinent records, data, and information created up to the date of termination to which the City, under the terms of this contract, is entitled.

Time of Performance: Contractor's services shall commence immediately upon receipt of the notice to proceed and shall be carried out forthwith and without reasonable delay.

Union Compliance: Contractor agrees to comply with all regulations and requirements of any national or local union(s) that may have jurisdiction over any of the materials, facilities, services, or personnel to be furnished by the City.

Waiver: Failure of the City to insist upon strict compliance with any of the terms, covenants, or conditions of this Agreement shall not be deemed a waiver of any term,

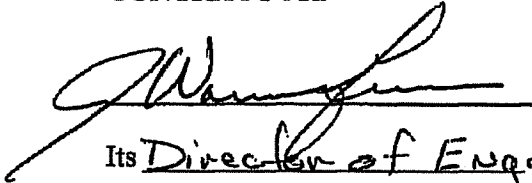
covenant, or condition. Any waiver or relinquishment of any right or power hereunder at any one or more times shall not be deemed a waiver or relinquishment of that right or power at any other time.

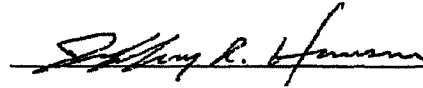
Whole Agreement: This written agreement and the documents cited herein embody the entire agreement between the parties. Any additions, deletions or modifications hereto must be in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have executed this contract this (day) of July, 2013.

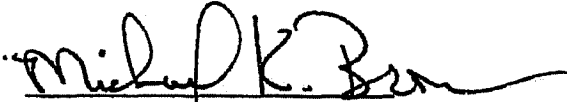
CONTRACTOR:

WITNESS(ES):



Its Director of Engineering



CITY OF FLINT, a Michigan Municipal Corp.:


Michael K. Brown
Emergency Manager

APPROVED AS TO FORM:


Peter M. Bade
Chief Legal Officer

EM SUBMISSION NO.: 2013 Em140

PRESENTED: 6-21-13

ADOPTED: 6-26-13

BY THE EMERGENCY MANAGER:

Resolution Authorizing Approval to Enter into a Professional Engineering Services Contract for the Implementation of Placing the Flint Water Plant into Operation

The City of Flint requires professional engineering services for assistance in placing the Flint Water Plant into operation using the Flint River as a primary drinking water source for approximately two years and then converting to KWA delivered lake water when available at a cost of \$171,000.00; and

The City of Flint is seeking to enter into a sole source contract with Lockwood, Andrews & Newnam, Inc., with funding coming from the Utilities Administration FY14 account in 591-536.100-801.000; and

IT RESOLVED, That appropriate City Officials are authorized to enter into a Professional Engineering Services contract with Lockwood, Andrews & Newnam, Inc., for the administration of placing the Flint Water Plant into operation using the Flint River as a primary drinking water source at a cost of \$171,000.00. Funding will come from the Utilities Administration FY14 account 591-536.100-801.000

APPROVED AS TO FORM:

APPROVED AS TO FINANCE:

for


Peter M. Bade, Chief Legal Officer



Jerry Ambrose, Finance Director

EM DISPOSITION:

ENACT

FAIL

DATED 6-26-13



Edward J. Kurtz, Emergency Manager