

**SERVICES AGREEMENT**

This Services Agreement (“Agreement”) is entered into as of August 21, 2014 by and between Veolia Water North America Operating Services, LLC (“Veolia”) and the City of Detroit, a Michigan municipal corporation (“City”).

1. **Scope of Services.** City hereby retains Veolia to provide due diligence services as described herein and in Attachment 1—Scope of Services, within the timeline defined herein (the “Diligence Services”) for the Detroit Water and Sewerage Disposal Systems (the “System”) for the Detroit Water and Sewerage Department (“DWSD”).
2. **Term and Termination.** This Agreement becomes effective on the date that both parties sign it and will continue to be in effect until the Due Diligence Report (as defined herein) has been delivered to City or until otherwise terminated in accordance with the terms herein.

If this Agreement is terminated by the City prior to delivery of the Due Diligence Report, Veolia shall be entitled to receive from the City (i) the proportion of the compensation set forth in Attachment 2—Payment Terms equivalent to the proportion of the Diligence Services performed by Veolia based on the number of hours performed as of the termination of this Agreement compared to the total number of hours budgeted for the Diligence Services by budgeted employee, (ii) reimbursement of direct expenses as of the date of termination for authorized services actually and properly performed as of that date, and (iii) payment of any non-cancelable commitments incurred prior to the date of termination.

3. **Compensation.** As full consideration for Veolia’s services, City shall pay and reimburse Veolia as provided in Attachment 2—Payment Terms. Veolia shall submit invoices to: City of Detroit, Accounts Payable, 8<sup>th</sup> Floor Coleman A Young Municipal Center, Detroit, MI 48226, Attn: Troy Hutcherson.
4. **Veolia’s Responsibilities.**
  - (a) Veolia shall perform due diligence activities for the purposes of completing the Diligence Services, the scope of which is outlined in this Section 4 of this Agreement and in Attachment 1.
  - (b) Veolia will determine the method, details, and means of performing the Diligence Services and may, at its own expense, employ agents or employees, which shall not be reimbursable as expenses pursuant to Attachment 2, except as otherwise agreed to and set forth in this Agreement. Veolia will consult and collaborate with City as part of its Diligence Services.
  - (c) Within eight weeks of the third business day following the effective date of this Agreement, Veolia will complete and deliver a report as further described herein setting forth its findings from its diligence review, including but not limited to

identification of efficiency improvements or initiatives and their associated cost savings if implemented (“Due Diligence Report”). The parties acknowledge that the Due Diligence Report will be based on and rely in part on the availability, accuracy, and completeness of information provided by City.

- (d) The Due Diligence Report shall set forth information in sufficient detail so as to permit City to make a decision on a reasonable basis whether or not to proceed with any of the improvements or initiatives identified. Without limiting the foregoing, the Due Diligence Report shall contain the following information:
  - i) Identification of potential annual savings, as well as the investment required and the timeframe to realize such savings, from City’s ongoing operational expenses, as described in DWSD’s current financial forecasts, as presented at the most recent Board of Water Commissioners meeting or bond issuance offering statements associated with DWSD’s August 2014 tender of outstanding revenue bond indebtedness.
  - ii) An assessment and possible recommendations for improvements or initiatives in the following areas, as well as any risks associated with such recommendations:
    - (1) A discussion of staffing, including any material differences between the recommendations and DWSD’s optimization plans provided to and reviewed by Veolia, certain specific position requirements, their allocations to operating functions and the anticipated timing of staffing actions
    - (2) Procurement
    - (3) Capital Plan and Implementation, which shall reference DWSD’s current five-year capital improvement plan, as amended
    - (4) Green Infrastructure
    - (5) Underground & Above Ground Asset Management
    - (6) Process Control Management (Energy & Chemical Efficiency, which recommendations shall be by plant and by equipment or process type)
    - (7) Subcontracted Services
    - (8) Customer Service (including metering, billing and collection)
  - iii) All recommendations described in paragraph 4(d)(ii) and in Attachment 1 shall (i) provide specific information, such that any estimates provided by Veolia are properly aligned against established DWSD baselines, (ii) define staffing impacts, business process, unit process and technology /

equipment changes, as applicable, such that the City has a general understanding of what steps would need to be taken to effectuate such changes, (iii) identify prioritization of recommended actions, (iv) estimate the investment requirements to achieve recommended improvements, and (v) summarize risks associated with each recommendation.

- iv) The City may engage Veolia to perform such implementation work as further set forth in Section 6 below. Veolia shall not be conflicted out of performing such implementation work by reason of this Agreement or its delivery of the Due Diligence Report.
- (e) Veolia hereby grants to City a royalty-free, perpetual license to use the Due Diligence Report for purposes of initiating changes to its System or for any other purpose related to operating and maintain the System. Except as required by applicable law or written policy or procedure, City shall not use the Due Diligence Report (or any information contained therein) for any purpose other than as set forth herein without the express permission of Veolia. The Due Diligence Report and any other submissions made by Veolia shall remain the property of Veolia and shall be deemed confidential and proprietary, except as required by applicable law or written policy or procedure. It is understood that the City shall not use the Due Diligence Report in any manner competitive with or harmful to Veolia, provided the City may use the information provided in the Due Diligence Report in connection with operating and maintaining the System.
- (f) Veolia agrees that all oral or written information, computer programs, data, know-how, research, processes, designs, ideas, techniques, client lists, needs or specifications, financial statements, and documents which have been or will be disclosed directly or indirectly to it by or on behalf of City shall be maintained in confidence by Veolia and shall not be disclosed to anyone, without City's prior express written consent or as required by applicable law, except to the extent such information is or becomes publicly available through no act or omission of Veolia. It is understood that the disclosure of such items to Veolia shall not grant Veolia any express, implied or other license or rights to use such items, and, upon termination of this Agreement or upon request of the City, Veolia shall return such items to the City. The items furnished to Veolia hereunder shall be and remain the property of the City. It is understood that Veolia shall not use the materials provided by the City in any manner competitive with or harmful to the City.
- (g) Veolia shall use commercially reasonable efforts to not interfere with the City's use of the System.

## 5. **City's Responsibilities.**

- (a) Upon request by Veolia, City shall use commercially reasonable efforts to provide, in a timely manner, available information necessary for Veolia to perform the Diligence Services.

- (b) City shall provide access to sites used in connection with the System and facilitate access for Veolia personnel to such sites as necessary to provide for timely and efficient execution of the Diligence Services, provided that the City may limit such access to the extent reasonably necessary to avoid interference with ongoing work at such sites. Veolia's scope of Diligence Services and/or time to perform the Diligence Services shall be revised to the extent reasonably necessary to account for the impact of such limitation of access on Veolia's ability to perform its Diligence Services, provided that prior to such revisions, Veolia must provide the City a reasonably detailed description of how such limitations of access impacted Veolia's ability to perform its Diligence Services, including an explanation for the revision of the scope of Diligence Services and/or time to perform the Diligence Services within five (5) days after such limitation.
  - (c) City designates the following person as its authorized representative to act on behalf of City with respect to the Diligence Services: Gary Brown, Chief Operating Officer
  - (d) City shall use commercially reasonable efforts to review and respond to Veolia's communications, requests for information and submittals within the time specified by Veolia. Failure to respond within the timeframes stated shall extend the time by which Veolia shall complete its Diligence Services to the extent of the difference between the time specified to respond and the date of the actual response from the City, provided that, if the City does not have the information necessary to respond to Veolia's request, it shall not be deemed a failure to respond if the City provides Veolia notice of the lack of such information.
  - (e) City shall not interfere, and shall prevent its employees, consultants, agents, invitees, and representatives from interfering with Veolia's ability to perform its Diligence Services, provided that the limitations set forth in Section 5(b) and the City's normal operation of the System shall not be deemed to interfere with Veolia's performance of the Diligence Services. Any interference shall extend Veolia's time to perform the Diligence Services by the amount of time such interference prevented the performance of such Diligence Services following Veolia's notice to the City of such interference.
6. **Agreement to Proceed with Implementation.** If City agrees to engage Veolia, in accordance with the City's rules and regulations regarding procurement, to implement the recommendations or initiatives set forth in the Due Diligence Report, the parties shall (i) proceed promptly, using reasonable efforts, to negotiate a definitive agreement or agreements for such implementation including pricing structure; and (ii) timely submit the agreement for approval and signature by the required entities and individuals, in each case as applicable and as required.
7. **Confidentiality and Non-disclosure.** Subject to the requirements of applicable law, the terms and conditions of this Agreement, and all discussions between the parties regarding the Diligence Services or the System, are confidential.

8. **Assignment.** No party may assign its rights or obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), provided that either party may assign to a wholly owned subsidiary without the prior consent of the other party.
9. **Indemnification.** Veolia shall indemnify City, its agents and affiliates against and hold them harmless from any and all third party claims, demands, causes of actions, liabilities, losses, damages, costs, attorneys' fees, and other expenses arising out of any negligent act or omission by Veolia or Veolia's agents or affiliates. To the maximum extent permitted by law, the City shall indemnify Veolia against and hold them harmless from any and all third party claims, demands, causes of actions, liabilities, losses, damages, costs, attorneys' fees and other expenses arising out of any negligent act by City or city's agents or affiliates. Notwithstanding anything to the contrary contained in this Agreement, the parties waive all claims against the other (including parent or affiliate entities) for any consequential, incidental, indirect, special, exemplary or punitive damages (including, but not limited to, loss of actual or anticipated profits, revenues or product; loss by reason of shutdown or non-operation; increased expense of manufacturing, operation, borrowing or financing; loss of use, productivity or shop space; or increased cost of capital), and regardless of whether any such claim arises out of breach of contract, guarantee or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory. Except for tort liability arising from Veolia's negligence or willful misconduct, in no event shall Veolia's liability in connection with this Agreement exceed the compensation set forth on Attachment 2.
10. Insurance.
  - (a) During the term of this Agreement, Veolia shall maintain the following insurance, at a minimum and at its expense:
    - i) Workers' compensation with amounts not less than the Michigan statutory minimum;
    - ii) Employers' liability with amounts of \$500,000 for each disease, \$500,000 for each person and \$500,000 for each accident;
    - iii) Commercial general liability insurance (ISO form CG 00 010 or its equivalent) with amounts of \$1,000,000 per occurrence and \$2,000,000 in the aggregate; and
    - iv) Automobile liability insurance (covering all owned, hired and non-owned vehicles, including residual liability insurance under Michigan no-fault insurance law) with amounts of \$1,000,000 combined single limit for bodily injury and property damage.
  - (b) The commercial general liability insurance policy shall include an endorsement naming the "City of Detroit" 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 Agreement. The commercial general liability policy shall state that Veolia's insurance is primary and not excess over any insurance already carried by the City and shall provide blanket contractual liability insurance (as found in ISO form CG 00 01 or its equivalent) for all written contracts.

- (c) Each such policy shall contain the following cross-liability wording: "In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder."
- (d) All insurance policies shall name Veolia as the insured and shall provide a commitment from the insurer that such policies shall not be canceled or reduced without at least thirty (30) days prior written notice to the City. Certificates of insurance evidencing the coverage required by this Article 10 shall, in a form acceptable to the City, be submitted to the City prior to the commencement of the Diligence Services and at least five (5) days prior to the expiration dates of expiring policies.
- (e) All insurance required by this Contract shall be written on an occurrence-based policy form, if the same is commercially available.

11. **Publicity.** No party may make, cause or allow any public announcement or statement or any press release concerning this Agreement without the prior written consent of the other party, such consent not to be unreasonably delayed or withheld.

12. **General Provisions**

- (a) The laws of Michigan applicable to contracts shall govern the validity, interpretation, and performance of this Agreement. Any action to enforce or interpret this Agreement shall be commenced or maintained only in and each party consents to the jurisdiction of a Michigan court of competent jurisdiction in Wayne County, Michigan or a federal court of competent jurisdiction in Detroit, Michigan, and each party waives any venue, convenient forum, removal, jurisdiction or other rights to the contrary.
- (b) This Agreement and its Attachments may be executed in counterparts and constitute the entire Agreement between the parties respecting the described services by Veolia and City. This Agreement supersedes any and all other prior or contemporaneous agreements, commitments, representations, writings, and discussions between Veolia and City, whether oral or written. This Agreement may be amended only by an instrument in writing executed by Veolia and City.
- (c) The neuter, masculine, or feminine gender and singular or plural number shall each include the other where the context reasonably so requires. If any provision hereof is unenforceable under applicable law, it shall be conformed to legal requirements or deleted and the remaining provisions shall continue in effect.

- (d) The prevailing party in any lawsuit, appeal, bankruptcy or other legal proceeding relating to this Agreement or its appendices shall be entitled to recover from the non-prevailing party all reasonable attorneys' fees, costs, and expenses incurred by the prevailing party, and in all efforts to collect any recovery by the prevailing party.
  - (e) Neither party shall be liable to the other for any loss or damage resulting from any delay or failure of a party to perform its obligations or otherwise to be considered to be in default hereunder due to an occurrence of a Force Majeure. Force Majeure means any one of the following conditions: war and other hostilities; flood, tempest, earthquake, hurricanes or typhoons or other natural disasters of overwhelming proportions (but not adverse weather conditions); strikes or other labor disruptions (other than those of Engineer's employees) acts or failures to act by any governmental authorities affecting the Project.
13. **Notices.** Any notice or other communication hereunder shall be in writing and shall be deemed given when personally delivered to any officer of City or to Veolia, as the case may be, or three business days after deposited in the United States mail with postage prepaid, addressed as provided by each party. A party may change its address by notice to the other party.
14. **Meetings.** The parties agree that at least once every two weeks during the term of this Agreement, Mark Sanderson and Denny Tulenson, as representatives of Veolia and Gary Brown (or his designee) and Dan Rainey (or his designee), as representatives of the City shall meet to discuss the progress of the Diligence Services and to discuss and resolve any issues with respect to information or access being provided by the City to Veolia. At such meetings, Veolia shall consult with the City on the scope and progress of the Diligence Services being performed and may share with the City any preliminary findings.

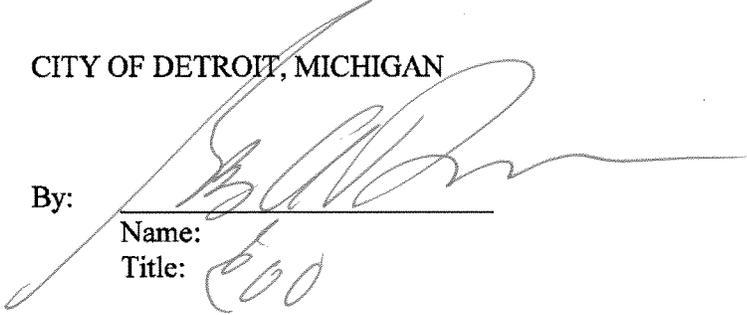
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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized officers and this Agreement shall take effect as of the effective date written above.

VEOLIA WATER NORTH AMERICA OPERATING SERVICES, LLC

By:   
Name: William DiCroce  
Title: Executive Vice President & Chief Operating Officer

CITY OF DETROIT, MICHIGAN

By:  8/21/14  
Name:  
Title: Coo

By:  8/21/14  
Chief Investment Officer

ATTACHMENT 1 – Scope of Services  
to Services Agreement Between  
Veolia Water North America Operating Services, LLC (“Veolia”) and  
Detroit Water and Sewerage Department (“City”) dated as of August 24, 2014<sup>1</sup>

Veolia’s Diligence Services shall include assessment of the following areas and shall incorporate all required information and detail specified in the Contract. The Report outline provided below may be modified by mutual agreement of the parties as information from the conduct of Due Diligence review is developed.

1. EXECUTIVE SUMMARY

- 1.1 *General Observations*
- 1.2 *Summary of Approach and Methodology*
- 1.3 *General Opportunities Identified*
- 1.4 *Specific Outsourcing Opportunities*
- 1.5 *Specific Insourcing Opportunities*
- 1.6 *Savings Estimates*
- 1.7 *Issues and Information Gaps to Resolve*
- 1.8 *Next Steps*

1.9 INTRODUCTION ASSIGNMENT UNDERSTANDING

- 1.10 Objectives
- 1.11 Schedule
- 1.12 Budget
- 1.13 Methodology

2. DWSD TODAY – OBSERVATIONS, OPPORTUNITIES & RECOMMENDATIONS

- 2.1 *DWSD Governance*
- 2.2 *Stakeholder Issues*
  - 2.2.1 DWSD
  - 2.2.2 City of Detroit
  - 2.2.3 Counties
- 2.3 *Water*
- 2.4 *Wastewater*
- 2.5 *Collections*
- 2.6 *Distribution*
- 2.7 *Asset Management*
- 2.8 *Capital & Engineering*

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<sup>1</sup> NTD – Subject to City confirmation.

- 2.9 *Fleet & Heavy Equipment*
- 2.10 *Customer Service, Billing & Collection*
- 2.11 *Laboratory & Water Quality*
- 2.12 *IPP*
- 2.13 *Green Infrastructure*
- 2.14 *Administration*
  - 2.14.1 Finance
  - 2.14.2 HR
  - 2.14.3 Legal
  - 2.14.4 IT & Data Management
  - 2.14.5 Public Affairs
  - 2.14.6 Procurement
  - 2.14.7 Subcontracted Services
  - 2.14.8 Health/Safety & Security
  - 2.14.9 Training
  - 2.14.10 Communications

For sections 2.3 – 2.14, the Report will be structured to provide discussions of findings, risks, recommendations, implementation requirements, and savings estimates by facility and/or functional area

### 3. CONCLUSIONS & KEY RECOMMENDATIONS

- 3.1 *Overall Conclusions from Work So Far*
- 3.2 *Gaps in Analyses that Cause Concern*
- 3.3 *Major Issues & Opportunities*

### 4. MOVING FORWARD

- 4.1 *Key Stakeholder Issues*
- 4.2 *Pathway to Implementation*

ATTACHMENT 2 – COMPENSATION  
to Services Agreement Between  
Veolia Water North America Operating Services, LLC (“Veolia”)  
the City of Detroit, Michigan (the “City”)  
dated as of August 21, 2014

The City shall pay Veolia as follows: \$709,177, payable within 30 days of the submission of Veolia’s Due Diligence Report to the City. The parties acknowledge that such amount includes the costs of certain subcontractors, for which the City shall not be directly responsible. Reasonable direct expenses (including travel, hotels, meals, rental cars and other expenses directly related to the delivery of the Diligence Services) will be reimbursed in addition, as per below.

Direct Expenses

Reasonable direct out-of-pocket expenses shall be reimbursed at Veolia’s cost with no markup. These direct expenses may include photocopies, express delivery charges and reasonable travel, lodging and other specified expenses, provided that Veolia will not be entitled to reimbursement of any individual charge over \$500 without receiving the City’s prior, written approval.

**Ericka Crawford - Expenses Approval for Veolia Contract-Agreement with City of Detroit**

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**From:** Dan Rainey <rainey@dwsd.org>  
**To:** Boysie Jackson <jacksonbo@detroitmi.gov>, Gary Brown <BrownGary@detroitm...>  
**Date:** 9/19/14 8:42 PM  
**Subject:** Expenses Approval for Veolia Contract-Agreement with City of Detroit  
**CC:** "Nicolette N. Bateson" <bateson@dwsd.org>, Mark Sanderson <mark.sanderso...>  
**Attachments:** Direct Epenses Approved #1.pdf; Pre-Approval Expenses #1 Part 1.pdf; Pre-Approval Expenses #1 Part 2.pdf; Pre-Approval Expenses #2.pdf; Pre-Approval Expenses #3.pdf; Pre-Approval Expenses #4.pdf

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Good evening Boysie and Gary,

Attached you will find the following expense approvals related to the Veolia Peer Review:

1: Approved Direct Expenses for Weeks 7/21 - 8/22. These are the expenses incurred by Veolia before we had an agreement between DWSD and the CIty on how we would process these expense approvals.

I have approved that document.

2. Pre-Approved Direct Expenses for 8/25-8/29; 9/1 - 9/5; 9/8 - 9/12; 9/15 - 9/19 and 9/22 - 9/26. The pre-approval expense documents have two parts to them (beginning with the document titled Pre-Approval Expenses #2) - the planned expenses for the current week and the actual expenses for the previous week.

I have reviewed and approved these documents through the pre-approval of next week's planned expenses.

Here's how things look:

Total Expenses Estimated (thru 9/19): \$144,503.33

Total Expenses Committed (thru 9/19): \$143,495.33

There is an Estimated Expense for WE 9/26 of: \$9,800

If you have any questions please let me know,

Dan Rainey  
Director of Information Technology Services  
City of Detroit, Water & Sewerage Department  
735 Randolph Street  
Detroit, MI 48226  
(313) 999-4133 (Cell)  
(313) 964-9917 (Office)  
Rainey@DWSD.org

Michael E. Duggan, Mayor  
[www.detroitmi.gov](http://www.detroitmi.gov)  
[www.dwsd.org](http://www.dwsd.org)