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**Contract Between the Mississippi State Department of Health (MSDH), the Office of the State Auditor (OSA) and the Contractor**

**I. Contractual Agreement**

This document and any other attachments, including but not limited to Attachment A, Terms of Contract, and Attachment B, Conflicts of Interest, are made a part of this document and incorporated herein by reference, and constitute a contract for personal or professional services or goods between the Mississippi State Department of Health (hereinafter referred to as the Department), the Office of the State Auditor (herein referred to as OSA), and the Contractor as indicated below. In the space provided herein, provide a description of the purpose of this contract and/or services to be provided:

Perform three annual audits of financial records and review of other program compliance matters pertaining to the Drinking Water Systems Improvements Revolving Loan Fund (DWSRF) Program. These audits will include performing necessary procedures to ensure that subsequent events, which may require an adjustment to or disclosure in the group financial statements, are identified and documented between the date of the issued audit report for financial statements of the Department of Health's Drinking Water Systems Improvements Revolving Loan Fund Program and the issuance date of the State of Mississippi's Comprehensive Annual Financial Report (CAFR).

**II. Contractor's Required Information**

Contractor's Name: Windham & Lacey, PLLC – Certified Public Accounts

Contractor's Contact Person(s): Tom Windham, CPA

ID #: 64-0929901

Program: Public Water Supply-DWSRF

(SSN or EIN, as shown on attached IRS Form W-9)

Street: 2708 Old Brandon Road Telephone #: 601-939-8676 Fax#: 601-939-8761

City: Pearl State: MS Zip Code: 39208

**III. Contract Supplemental Information** (Note: If information below is not applicable, fill blank with "N/A")

Title of Contract or Service Provided: Audit of DWSRF State Fiscal Years 2015, 2016 & 2017

Total Contract Amount: \$26,040.00 Max. Contract Amount per year: \$8,680.00

(applicable only if contract is multi-year)

Fee or Retainer: \$ N/A Fee or Retainer Payment Basis: Hourly

(per line item, hour, day, month, quarter, year, etc.)

Beginning Date: July 1, 2015 Ending Date: June 30, 2018

Org.: 0360 Activity: I310 Project: 88000LI0

Cost Center: 1301040360 Reporting Category/Internal Order: 01ES/ 3000004673

Federal Grant: Yes ☐ No ☒ Stimulus Funds: Yes ☐ No ☒

Federal Grant Award #: N/A Federal Aid #: N/A CFDA #: N/A

Occupation: Certified Public Accountant

Specialty: Auditor

Program: Public Water Supply

Total Personnel Services: \$8,680.00/yr Total Travel/Subsistence: \$N/A

Max. Hours Authorized per Month: N/A Assigned Travel Base: N/A

Mileage/Meals Authorized:

None: ☒ Meals: \$N/A Mileage: \$N/A Lodging: \$N/A

Statewide: ☒ Central Office: ☒ District (specify): N/A

Hours (Daily or weekly, i.e., 8:00a-5:00p, 5 days per week): N/A

If in a District(s), list all counties (List in decreasing order for amount of time spent in each county):

N/A

Certification/Licensure (Fill in certificate/license number, date of certification/licensure, and type of certification/licensure, as applicable. If a physician, state whether the contractor is board-certified in area of use by Department, non-board certified, or resident.):

N/A

Contractor's Experience/Degrees Earned (Fill in this blank if Contractor is an individual; use additional sheet if necessary):

N/A

Does Contractor currently receive Mississippi State Retirement System benefits? Yes ☐ No ☒

Will the Contractor be classified as an "Independent Contractor"? Yes ☒ No ☐

## ATTACHMENT A: TERMS OF CONTRACT

1. Contracted Services. The Contractor agrees to provide the Department and OSA with an audit of the Drinking Water State Revolving Loan Fund Program for State Fiscal Years 2015, 2016 & 2017. No oral statements of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this contract. If other attachments or exhibits exist which are to be incorporated as part of this contract, the title of each document shall be listed here, as follows (use additional sheets, if necessary):

Attachment B – Conflicts of Interest

Attachment C - Special Terms and Conditions - None

Attachment D – Audit Services Schedule

Attachment E – MSDH-AUDIT RFP- 07012015

The Order of precedence of the attachments shall be: Attachment A, C, D, E and B

2. Statement of Work

A. Services:

For the consideration referred to in Paragraph 4A Consideration, the Contractor shall provide the Department and OSA with services as specified below. The Contractor shall conduct the audit with respect to each fiscal year in accordance with auditing standards specified herein, including the procedure and scheduling requirements set forth in Attachment D.

B. Tasks:

The Contractor shall perform all procedures necessary to issue a report including an opinion on the financial statements of the Drinking Water SRF Loan Program managed by the Department for fiscal years 2015, 2016 & 2017.

With respect to each fiscal year, GAAP reporting packages and underlying records for the program will be examined for completeness and accuracy for inclusion in the State of Mississippi's *Comprehensive Annual Financial Report* and the *Single Audit Report*. Adjusting entries will be prepared to the trial balances generated by the Department of Finance and Administration (DFA). These adjusting entries will be prepared on DFA's adjusting entry standardized forms, signed by Department official's and submitted to OSA for review and processing no later than September 15<sup>th</sup> of each fiscal year. Any changes to the Schedule of Expenditures of Federal Awards will be made in accordance with written OSA instructions.

With respect to each fiscal year, three external reports are required for the program: (1) Financial statements for the state fiscal year (with appropriate notes), including an opinion report on the fair presentation of the financial statements in conformity with accounting principles generally accepted in the United States of America, (2) a report on compliance and internal controls over financial reporting based on an audit of financial statements performed in accordance with *Government Auditing Standards*, and (3) a report on compliance with requirements applicable to the Environmental Protection Agency's State Revolving Fund Program in accordance with *Government Auditing Standards*. In addition, the Contractor will be required to complete three memorandum provided by the OSA: (1) a conclusion memorandum on the fair presentation of the Schedule of Expenditures of Federal Awards, (2) a conclusion memorandum on compliance with requirements applicable to the program and internal control over compliance in accordance with OMB Circular A-133, and, (3) a conclusion memorandum on other audit findings which are not required to be reported in the Single Audit.

The Contractor will examine, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assess the accounting principles used and significant estimates made by the Department, and evaluate the overall financial statement presentation. As a part of the Contractor's audit, it will consider the Department's internal control over financial reporting in order to determine auditing procedures for the purpose of expressing an opinion on the financial statements of the program and not to provide assurance on the internal control over financial reporting. This consideration will not be sufficient to enable the Contractor to render separate opinions on the effectiveness of the internal control over financial reporting.

As a part of the Contractor's audit, it will audit the compliance of the Department with the types of compliance requirements described in the U.S. *Office of Management and Budget (OMB) Circular A-133 Compliance Supplement* that are applicable to this program and the requirements described in the *Environmental Protection Agency Drinking Water State Revolving Fund Audit Guide*. The Contractor will also consider the Department's internal control over compliance with requirements that could have a direct and material effect on a federal program in order to determine auditing procedures for the purpose of expressing a conclusion on compliance for the program and to conclude on the internal control over compliance in accordance with OMB Circular A-133.

As required by applicable auditing standards, the Contractor will make specific inquiries of management and others concerning representations embodied in the financial statements and the effectiveness of the Department's internal controls. Auditing standards generally accepted in the United States of America also require that the Contractor obtain representation letters covering the financial statements from certain members of the Department's management. The results of the audit tests, the responses to the Contractor's inquiries and the written representations comprise the evidential matter the Contractor will rely upon in forming an opinion on the financial statements of the program.

The Contractor shall communicate to the Department and the OSA any material instances of noncompliance and any significant deficiencies found during the audit. Significant deficiencies that are also material weaknesses shall be identified as such in the report. Deficiencies that were not considered significant enough to be communicated as significant deficiencies shall be reported in a separate letter to management, which shall be referred to in the report on internal controls. Noncompliance that is less than \$10,000 shall be reported in a separate letter to management, which shall be referred to in the report on compliance and internal control over compliance.

- C. Standards: The auditing services will be made in conformity with the following guidelines and regulations:
1. The standards for financial audits set forth in the U.S. Government Accountability Office's *Government Auditing Standards* which includes auditing standards generally accepted in the United States of America as set forth by the American Institute of Certified Public Accountants.
  2. Statements of financial accounting standards as prescribed by the Governmental Accounting Standards Board.
  3. Specific grant compliance matters in the U.S. Office of Management and Budget (OMB) Circular A-133 *Compliance Supplement*.
  4. The Single Audit Act Amendments of 1996, and Office of Management and Budget (OMB) Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.
  5. Compliance with applicable state laws.
  6. Specific grant compliance matters in the *Environmental Protection Agency Drinking Water State Revolving Fund Audit Guide*, as currently in effect.
  7. The Contractor shall have a certified public accountant (CPA) licensed to practice in the State of Mississippi as the certifying official of the final reports.

D. Timely Completion:

The Contractor shall provide two draft copies of the audit report for the program to OSA and one draft copy to the Department by October 10<sup>th</sup> of the reporting year. Upon acceptance of the drafts by OSA, the Contractor shall deliver two original reports for the program to OSA, five originals of the Drinking Water SRF Loan Program shall also be delivered to the Department, one original shall be submitted to EPA Region IV, and one original shall be submitted to the Region IV Office of the Inspector General, Divisional Office for Audit, by October 15<sup>th</sup> of the reporting year.

The Contractor shall provide draft copies of the report on compliance and internal controls over financial reporting based on an audit of financial statements performed in accordance with *Government Auditing Standards*, the report on compliance with the requirements applicable to the State Revolving Fund Program in accordance with *Government Auditing Standards*, the management letter for the program, and the conclusion memorandum provided by the OSA no later than October 15<sup>th</sup> of the reporting year.

The Contractor acknowledges that the Department and OSA are relying on the timely completion of this contract in its scheduling and budgeting and that time is of the essence. If the Contractor fails to meet the completion date prescribed herein, the Department may reduce the agreed compensation by an amount not to exceed ten percent (10%) of the total contract amount as liquidated damages for the failure to complete the contract by the completion date and the Department may seek such other legal remedies for default herein as may be available under applicable law.

3. Period of Performance.

The Contractor agrees and acknowledges that the ending date of this contract shall extend beyond the delivery of the completed reports and letters described herein with respect to each fiscal year.

4. Consideration and Payment.

A. Consideration:

As consideration for the performance of this contract, the Department agrees to pay the Contractor for the described auditing services an annual amount not to exceed the Maximum Contract Amount as set forth in Section III of this contract on Page 1.

B. Payment:

The Department, as applicable, shall pay, or make payments on, the above mentioned consideration in accordance with the following schedule or procedure:

The Contractor shall submit a monthly invoice to the Department with supporting documentation of costs incurred. The invoice shall outline the work performed and number of hours worked. The Department shall pay ninety percent (90%) of each invoice and will retain the remaining ten percent (10%) until final payment is made for the fiscal year under audit. The Department will pay such invoices in accordance with the law related to timely payment for purchases by public bodies (Miss Code Ann. Section 31-7-301 et seq., Rev. 2008). The final payment, including retained amounts, shall be made after completion and acceptance of the auditing services for each audited fiscal year. In no instance will a payment be made in excess of the contract amount. In accordance with this payment schedule, the Contractor shall submit to the Department in such form and reasonable detail as the Department may require, invoice(s) with supporting documentation of costs incurred for the performance of this contract. All requests for payments related to this contract shall be submitted by September 30 immediately following the audited fiscal year.

C. E-payment/E-invoice:

The Department requires the Contractor to submit invoices electronically throughout the term of the contract. Vendor invoices shall be submitted to the Department using the processes and procedures identified by the Department. Payments by the Department using the Statewide Automated Accounting System (SAAS) shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the Contractor's choice. Contractor understands and agrees that the Department is exempt from the payment of taxes. All payments shall be in United States currency.

5. Employment Status.

During the entire term of this contract, the Contractor shall be construed to be an independent contractor. Nothing in this contract is intended to, nor shall be construed to, create an employer-employee relationship, or a joint venture relationship. The Contractor represents that it is qualified to perform the duties to be performed under this contract and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of the Department or OSA. Any person assigned by the Contractor to perform the services hereunder shall be the employee of the Contractor, who shall have the sole right to hire and discharge its employee. The Contractor shall pay when due, all salaries and wages of its employees and accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. Neither the Contractor nor employees of the Contractor are entitled to state retirement or leave benefits.

6. Ownership of Documents and Work Products.

The working papers prepared in conjunction with the services under this contract are the property of the Contractor, constitute confidential information and will be retained by the Contractor for a period no less than five (5) years after the conclusion of each audit. The Contractor may retain copies of all records required for record keeping purposes or for compliance with applicable professional standards. The Department and OSA will retain the right to access the work papers as necessary during its review of the draft report.

Audit working papers shall also be made available upon request to the cognizant agency or oversight agency for audit or its designee, a Federal agency providing direct or indirect funding or GAO at the completion of the audit, as part of a quality review, to resolve audit findings, or to carry out oversight responsibilities.

7. Record Retention and Access to Records.

The Contractor shall maintain and make available to the Department or OSA, any financial records, supporting documents, statistical records and all other records pertinent to the services performed under this contract in accordance with the Contractor's policies and procedures or professional regulatory requirements. If any litigation or other legal action, by or on behalf of the State has begun that is not completed at the end of the five (5) year period, or if audit findings, litigation or other legal action has not been resolved at the end of the five (5) year period, the records shall be retained until resolution. The Contractor agrees to make its working papers available to audit firms which may be retained to audit a subsequent fiscal year.

8. Termination.

A. Termination for Convenience:

This contract may be terminated in whole or in part by either the Department or OSA or both acting jointly, with or without cause. In such circumstances, the party seeking termination shall provide a fifteen (15) day written notice of termination to the other parties. However, prior to termination of this contract by the Agency, the Agency must provide written justification to OSA documenting the reasons for requesting the contract be terminated. The Agency must obtain written approval from OSA prior to terminating the contract. After such effective date, the Contractor shall incur no further obligations in connection with the terminated work and the Contractor shall stop work to the extent specified. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

B. Termination for Default:

1. If either party refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or after any extension thereof otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the non-defaulting party, with the written consent of OSA, shall have the right to send a written notice to the defaulting party specifying such failure and demanding cure within ten (10) days of receipt of such notice. If the defaulting party has not remedied such failure within the cure period, or has not made substantial progress toward remedying such failure within the cure period, then the non-defaulting party may terminate the contract immediately by sending a written notice of termination to the defaulting party. However, prior to termination of this contract by the Department, the Department must provide written justification to OSA documenting the reasons for requesting the contract be terminated. The Department must obtain written approval from OSA prior to terminating the contract. In the event of termination for cause by the Department and/or OSA, in addition to other remedies provided herein or available at law or in equity, the Contractor shall bear all costs associated with the issuance of a new contract for audit services, including, but not limited to, the cost of reissuing another request for proposals and any additional costs resulting from an acceleration of services necessary for the timely completion of such auditing services. In the event of termination in whole or in part, the Department may procure similar services with the consent of OSA, in a manner and upon terms deemed appropriate by the Department. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services with respect to the terminated portion, in addition to other remedies provided herein or available at law or in equity.

2. Notwithstanding termination of the contract and subject to any directions from the Department, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which the State has an interest. All finished or unfinished tests, surveys, checklists, forms, manuals, reports or other material prepared by the Contractor under this contract shall become the property of the OSA.

3. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

9. Final Payment.

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract, the Contractor shall execute and deliver to the Department and OSA, a release of all claims against the Department and OSA arising under, or by virtue of, this contract, except claims which are specifically exempted by the Contractor to be set forth therein. Unless otherwise provided in the contract, by state law or otherwise expressly agreed to by the parties in this contract, final payment under this contract or settlement upon termination of this contract shall not constitute a waiver of the Department or OSA's claims against the Contractor or his sureties under this contract or applicable performance and payment bonds.

10. Funding.

The parties expressly understand that the fulfillment of the payment obligations of the Department under this contract is conditioned upon the availability and receipt of State and Federal funds. In the event that funds are insufficient or otherwise unavailable to satisfy payments due under this agreement, the Department shall not be obligated to make such payments, and all further obligations of the Department and the Contractor under this agreement shall cease immediately, without penalty, cost or expense to the Department or the Contractor of any kind whatsoever. In the event of such insufficiency or unavailability of funding, the Department shall promptly notify the Contractor and OSA in writing, of such event.

11. Insurance.

The Contractor represents that it will maintain workers' compensation insurance as prescribed by law which shall inure to the benefit of the Contractor's personnel, as well as comprehensive general liability, or professional liability insurance and, where applicable, employee fidelity bond insurance. The Contractor will, upon request, furnish the Department or OSA with a certificate of conformity providing the aforesaid coverage.

12. Conflict of Interest.

The Contractor shall notify the Department and OSA of any potential conflict of interest including, but not limited to a conflict of interest resulting from the representation of, or service to, other clients. If such conflict cannot be resolved to the Department and OSA's satisfaction, the Department and OSA reserve the right to terminate this contract or to award the specific services to another Contractor.

13. Representation Regarding Contingent Fees.

The Contractor represents that it has not retained a person to solicit or secure a State contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the Contractor's proposal.

14. Representation Regarding Gratuities.

The Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 7-204 (Gratuities) of the Mississippi Personal Service Contract Procurement Regulations.

15. The Contractor certifies to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this contract been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in item h. of this certification; and
- d. Have not within a three-year period preceding this contract had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the Contractor is unable to certify to any of the statements in this certification, an explanation should be attached.

16. Price.

The Contractor certifies that the price submitted has been arrived at independently and without – for the purpose of restricting competition – any consultation, communication, or agreement with any other bidder or competitor relating to the price, the intention to submit a bid, or the methods or factors used to calculate the price bid.

17. Recycled Paper.

Pursuant to EPA Order 1000.25, dated January 24, 1990, the Contractor agrees to use recycled paper for all reports which are prepared as a part of the contract and delivered to the Department. This requirement applies even when the cost of recycled paper is higher than that of virgin paper.

18. E-Verify.

Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated, and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security, where required, to provide a copy of each such verification to the State. Contractor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Contractor understands and agrees that any breach of these warranties may subject Contractor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination or cancellation, Contractor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

19. Disputes.

Any dispute concerning a question of fact arising under this contract that pertains in any manner to the Contractor's compliance or noncompliance with the statement of work as described in Paragraph 2 of this Attachment A or Attachment D shall be disposed of by good faith negotiation between a duly authorized representative of the Department, OSA, and the Contractor. Such a resolution shall be reduced to writing and a copy thereof mailed or furnished to the Contractor and shall be final and conclusive. If the Contractor disputes any question of fact that has been resolved by agreement of the Department and OSA, the Contractor shall give notice of such dispute to all of the parties, and if the matter is not resolved within ten (10) days of such notice, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of the Contractor's position on the issue in dispute and under review. The State Health Officer, or her designee from the Department, shall be advised of such review and shall be given an opportunity to be heard. The review will be handled under a panel for arbitration composed of the Deputy State Auditor, the Director of Technical Assistance and the Director of the Financial and Compliance Audit Division, or such other individuals as may be designated by the State Auditor. The decision of such panel on the review shall be final and conclusive unless determined by a court of competent jurisdiction in Hinds County, State of Mississippi, to have been fraudulent, capricious, or so grossly erroneous as necessarily to imply bad faith, or not to be supported by substantial evidence. Pending the final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the duties and obligations of the contract.

20. Failure to Deliver.

In the event of failure of the Contractor to deliver goods or services in accordance with the contract terms and conditions, the Department, with the consent of OSA, may procure the services from other sources and, after the final decision pursuant to Paragraph 19 of this contract (if applicable), hold the Contractor responsible for any resulting additional contracting and administrative costs. This remedy shall be in addition to any other remedies that the Department may have.

21. Compliance with Laws.

The Contractor understands that the Department and OSA are equal opportunity employers and therefore each maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, state or local laws. All such discrimination is unlawful and the Contractor agrees during the term of the agreement that the Contractor will strictly adhere to this policy in its employment practices and provision of services. The Contractor shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

22. Third Party Action Notification.

The Contractor shall give the Department and OSA prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the Contractor by any entity that may result in litigation related in any way to this contract.

23. Authority to Contract.

The Contractor warrants that it is a validly organized business with valid authority to enter into this contract, that entry into and performance under this contract is not restricted or prohibited by any loan, security, financing, contractual or other agreement of any kind, and notwithstanding any other provision of this contract to the contrary, that there are no existing legal proceedings, or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this contract.

24. Confidential Information.

The Contractor shall treat all the Department data and information to which it has access by its performance under this contract as confidential to the extent that confidential treatment of same is required under federal and/or state law and shall not disclose such data or information to a third party without specific written consent of the Department. In the event that the Contractor receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, the Contractor shall promptly inform the Department and thereafter respond in conformity with such subpoena to the extent mandated by state or federal law. This paragraph shall survive the termination or completion of this contract.

25. Assignment.

The Contractor shall not assign or otherwise transfer the obligations incurred on its part pursuant to the terms of this contract without the prior written consent of the Department and OSA. Any attempted assignment or transfer of its obligations without such consent shall be null and void. All obligations and duties of either party under this contract shall be binding on all successors in interest or assigns of such party.

26. Waiver.

Failure of any party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this contract.

27. Notice.

Any notices required or authorized to be given under this contract shall be in writing and sent by certified United States mail, postage prepaid, return receipt requested, to the addresses designated in this paragraph. Each party may change the person and address designated by delivering written notice to the other party. Any notice shall be effective upon delivery to the designated address. The parties agree to promptly notify each other in writing of any change of address as shown below:



<b>For the Contractor:</b>		
Name:	Tom Windham	
Title:	Certified Public Accountant	
Organization:	Windham & Lacey, PLLC	
Street Address:	2708 Old Brandon Road	
City, State, Zip:	Pearl, MS 39208	
<b>For the Department:</b>		
Name:	William F. Moody	
Title:	Director, Bureau of Public Water Supply	
Agency:	Mississippi State Department of Health	
Street Address:	570 East Woodrow Wilson Avenue, Suite U-232	
City, State, Zip:	Jackson, Mississippi 39215-1700	
<b>For OSA:</b>		
Name:	Sallie Dier	
Title:	Agency Audit Section	
Agency:	Office of State Auditor	
Street Address:	P. O. Box 956	
City, State, Zip:	Jackson, MS 39205	

28. Indemnification.

The Contractor agrees to indemnify, defend, save and hold harmless, the Department and OSA from and against all claims, demands, liabilities, suits, damages and costs of every kind and nature whatsoever, including court costs and attorney fees, arising out of or caused by a negligent or wrongful act of the Contractor, its officers or employees in the performance of services under this contract.

29. Attorney's Fees and Expenses.

Subject to other terms and conditions of this contract, in the event the Contractor defaults in any obligations under this contract, the Contractor shall pay to the Department all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by the Department and/or the OSA in enforcing this contract or otherwise reasonably related thereto. The Contractor agrees that under no circumstances shall the Department or the OSA be obligated to pay any attorney's fees or costs of legal action to the Contractor. This clause shall not apply to any contracts entered into with another state agency, board, or commission.

30. Recovery of Money.

Whenever, under this contract, any sum of money shall be recoverable from or payable by the Contractor to the Department, the same amount may be deducted from any sum due to the Contractor under the contract or under any other contract between the Contractor and the Department. The rights of the Department are in addition and without prejudice to any other right the Department may have to claim the amount of any loss or damage suffered by the Department on account of the acts or omissions of the Contractor.

31. No Limitation of Liability.

Nothing in this Contract shall be interpreted as excluding or limiting any tort liability of the Contractor for harm caused by the intentional or reckless conduct of the Contractor or for the damages incurred through the negligent performance of duties by the Contractor.

32. Governing Law.

This contract shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.

33. Severability.

If any term or provision of this contract is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the contract shall not be affected thereby and each term and provision of the contract shall be valid and enforceable to the fullest extent permitted by law.

34. Integrated Agreement/Merger.

This contract constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, representations, understandings and agreements, written or oral, among the parties relating thereto. This contract shall not be construed or interpreted in favor of or against the State, the Department, or the Contractor on the basis of draftsmanship or preparation.

35. Captions.

The captions or headings in this contract are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this contract.

36. Modification or Amendment.

The Department or OSA may, from time to time, request changes in the scope of services of the Contractor to be performed hereunder or otherwise modify the terms and provisions of this contract. Such changes, including any increase or decrease in the amount of the Contractor's compensation, shall be effective only if the altered, amended, or modified provisions are duly set forth in writing and signed by all of the parties.

37. Force Majeure.

Each party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its subcontractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (the "Force Majeure Events"). When such a cause arises, the Contractor shall notify the Department immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to Force Majeure Events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless the Department determines it to be in its best interest to terminate the contract.

38. Special Terms and Conditions.

NONE

39. Other terms of this contract are as follows:

See Attachments C, D & E

40. A. Official Signatures for the contract on behalf of the Department are as follows:

William B. Murphy 5/27/2015  
Program Director/Originator Date  
Sam H. G. [Signature] 29 May 2015  
Office Director/District Health Officer/District Administrator, or Designee Date  
Michael [Signature] 7/7/15  
Director of Health Administration/District Administrative Officer Date

- B. Official Signatures for the contract on behalf of the Office of State Auditor are as follows:

[Signature] 5/20/15  
Director of Department of Audit Date

- C. Official Signatures for the contract on behalf of the Contractor are as follows:

[Signature] CPA, Member 5/26/15  
Contractor's Signature and Title Date  
\_\_\_\_\_  
Contractor's Signature and Title (if applicable) Date

**ATTACHMENT B: CONFLICTS OF INTEREST**

1. List the names of Members of the Board of Directors or other Governing Body:

None

2. Are any Members of the Governing Body or Project Staff also MSDH employees?

Check one, only: ☐ YES ☒ NO

3. If Yes, please list the name of the MSDH employee(s) and the position held within the MSDH.

N/A

4. Are any Members of the Governing Body or Project Staff also Spouses, Parents, or Children of MSDH Employees?

Check one, only: ☐ YES ☒ NO


5. If Yes, List the Name and Relationship to the MSDH employee:

6. List all other current contracts with MSDH (include \$ amount and contract beginning & ending dates):

FY2014 DWSRF Audit

\$10,000

7. Contractor's Signature:

  
Signature

5/26/15  
Date

**ATTACHMENT C: SPECIAL TERMS AND CONDITIONS**

**NONE**

## ATTACHMENT D: AUDIT SERVICES SCHEDULE

The following procedures must be performed by the CONTRACTOR for each audited fiscal year after a contract has been awarded:

- Hold an entrance conference with the CONTRACTOR's auditor-in-charge, MSDH's Internal Audit Staff, Program Director, and OSA's authorized representatives prior to commencement of any work in order to determine the scope of services, and other related factors.
- Express an opinion on the fair presentation of the financial statements of the Drinking Water Systems Improvements Revolving Loan Fund (DWSRF) Program in conformity with accounting principles generally accepted in the United States of America.
- Perform certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards.
- Complete the attached "Certification Regarding Lobbying" and "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."
- Provide a copy of the CONTRACTOR's most recent peer review report, as required by *Government Auditing Standards*.

The CONTRACTOR shall perform the following procedures at the request of the OSA:

- Read and provide comments on the GAAP reporting packages of the DWSRF for state fiscal years 2015, 2016 & 2017 and underlying records for completeness and accuracy for inclusion in the State of Mississippi's *Comprehensive Annual Financial Report*.
- Propose adjusting entries to the trial balances (as needed) prepared by the Department of Finance and Administration (DFA) based on the Agency's GAAP packages in order to adjust the trial balances on DFA forms. Adjusting entries should be approved by Agency management by signature and then be forwarded to OSA for review and processing.
- If applicable, submit changes to cash flow statements for the adjusted funds.
- Prepare a schedule of uncorrected misstatements, have Agency management approve the schedule, and submit it to OSA for inclusion in communications to DFA.
- Provide OSA the planning materiality level(s) used on the audits of fund GAAP reporting packets for use in performing analysis of unaudited aggregated funds and accounts for the CAFR.
- Obtain the notes to the statewide financial statements related to the Agency. The CONTRACTOR should: a) read and provide comments on current year amounts and information and, b) read and provide comments on the notes for compliance with applicable GASB statements and notify the OSA's authorized representatives of noncompliance and errors.
- Conduct an exit conference upon giving prior notice to MSDH and OSA.
- Obtain a plan of corrective action from the MSDH in accordance with instructions provided by OSA.
- Submit to the OSA a completed "Request for Representations from Other Auditor."
- Complete a report on the fair presentation of the Schedule of Expenditures of Federal Awards.

- Complete a conclusion memorandum on compliance with requirements applicable to the program and internal control over compliance in accordance with OMB Circular A-133.
- Prepare note disclosures for inclusion in the state of Mississippi's *Single Audit Report* based on instructions from OSA.
- Perform subsequent events testing between the date of the auditor's report and December 31<sup>st</sup> of each audit year and submit to OSA a memo detailing the results noted.
- A report on the fair presentation of the financial statements of the DWSRF in conformity with accounting principles generally accepted in the United States of America.
- A report, *Report on Internal Control Over Financial Reporting and Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance With Government Auditing Standards* (GAGAS report), on the CONTRACTOR's consideration of internal control over financial reporting and tests of compliance made as part of its audit of the financial statements.
- A report on compliance with requirements applicable to the U. S. Environmental Protection Agency's State Revolving Fund Program in accordance with Government Auditing Standards.
- A Management Letter

In accordance with *Government Auditing Standards*, the CONTRACTOR will also issue a management letter to communicate instances of noncompliance with provisions of contracts or grant agreements or abuse that have an effect on the financial statements that is less than material but warrant the attention of those charged with governance. The management letter will detail audit findings and recommendations regarding financial statements, internal controls, accounting, information systems, legality of actions, instances of noncompliance with laws and regulations, and any other material matters the auditor believes to be of potential benefit to the entity or has been requested to communicate.

- A report on fraud and illegal acts, if applicable

In accordance with *Government Auditing Standards*, the CONTRACTOR is also required in certain circumstances to report fraud, noncompliance with provisions of laws, regulations, contracts, or grant agreements, or abuse directly to parties outside the auditee.

Upon receipt of the final audit reports, OSA will:

- review the reports,
- approve or reject the reports,
- approve or reject final payment for services rendered.

Upon completion of the audit services, the audit conclusion memoranda and any other required reports should be submitted to the OSA's authorized representatives in accordance with the contractual provisions. All final documentation of services shall be submitted no later than the date specified.

State Auditor's Authorized Representatives:

The State Auditor has empowered the following to act as his duly authorized representative:

- \* Patrick Dendy, CPA  
State Auditor's Office  
P.O. Box 956  
Jackson, MS 39205  
Phone: (601) 576-2672

Legal Compliance Provision:

Any preliminary finding of possible fraud, misapplication or misappropriation of funds shall be immediately reported in writing to the State Health Officer and OSA's authorized representative. Notwithstanding anything herein to the contrary, nothing shall prevent the Contractor from reporting such findings to the appropriate persons in accordance with professional standards.

If the Contractor is required to give advice, testimony or other such activity not within the scope of rendering, confirming or justifying a report of audit services rendered, such arrangements shall be set forth in a separate engagement letter.



TO BE FILLED OUT ONLY FOR 300 LINE ITEM CONTRACTS

CONTRACT JUSTIFICATION

Detailed description of contractual services to be performed including location, program, purpose, and condition or regulatory agency establishing the requirement for contract personnel services (contract services which require regulatory agency action must have concurrence of regulatory agency prior to submission to the State Personnel Director):

The Federal EPA has adopted an audit strategy that requires financial statement audits on an annual basis for all Drinking Water State Revolving Funds. All such audits of state agencies in Mississippi must be under the direction of the Office of State Auditor (OSA). The purpose of this contract is to provide the MSDH and OSA with an audit of the Drinking Water Systems Improvements State Revolving Fund Loan Program. Three external reports are required for the program: (1) Financial statements for each of the state fiscal years of the contract reporting period, (with appropriate notes), including a report on the fair presentation of the financial statements in conformity with accounting principles generally accepted in the United State of America; (2) a report on compliance and internal controls based on an audit of financial statements performed in accordance with Government Auditing Standards; and (3) a report on compliance with requirements applicable to the Environmental Protection Agency's State Revolving Fund Program in accordance with Government Auditing Standards.

Justification of request, including assessment of current personnel resources (i.e. utilization of current position vacancies, temporary increase in workload above capability of current workforce, level of expertise required, position classification not available to agency):

The required audit must be conducted under the direction of the OSA. Due to the limited staffing in the Audit Division of the OSA and timing constraints, the OSA has recommended that the audit be contracted to a CPA firm as a joint OSA/MSDH contract.

Qualifications that make this contractor the best suited to perform this task:

The Contractor's staff is experienced in auditing federal and state programs. They are knowledgeable in all accounting documents needed for audit purposes based on their experience as Certified Public Accountants.

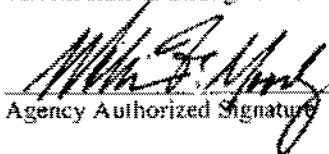
Justification of modification request (if applicable):

N/A

Consequence of contract being disapproved:

Disapproval of this contract may result in an increased cost to the program due to the necessity of advertising for bidders the possibility that the lowest bidder will be more costly.

I have reviewed this contract request and determined that these services are needed and cannot be provided by current staff or through the staffing of a vacant position.

  
\_\_\_\_\_  
Agency Authorized Signatory