

AGREEMENT FOR RICE POOL CONCEPTUAL DESIGN SERVICES

This Agreement for Rice Pool Conceptual Design Services at 1777 S. Blanchard Road, Wheaton, Illinois 60189 (the "Agreement"), made this 1st day of February 2016, by and between the Wheaton Park District, an Illinois park district (the "Park District") with its principal place of business at 102 E. Wesley Street, Wheaton, Illinois, and Water Technology, Inc. (WTI), an Illinois corporation (the "Contractor"), with its principal place of business at 100 Park Avenue, PO Box 614, Beaver Dam, Wisconsin 53916, collectively referred to as the "Parties" or individually as "Party."

WITNESSETH

That the Park District and Contractor, for the consideration hereinafter named, agree as follows:

1. Labor and Materials

The Contractor shall provide all labor, equipment and materials required to complete the following work: Conceptual development of a new outdoor water attraction, replacement of the children's sand play area, renovation of the wading pool/ waterfall area, and renovation of the slide complex (the "Work"), as indicated in Contractor's [Proposal/Quote], dated January 4, 2016, attached to and incorporated as part of this Agreement as **Exhibit A** (the "Contractor's Proposal").

2. Term

The term of this Agreement shall be commence on February 1, 2016 and expire on June 30, 2016, (the "Term") unless terminated earlier pursuant to the terms of this Agreement.

3. Performance of Work

Contractor agrees to perform in a good and workmanlike manner and to the best of Contractor's ability, experience, and talents, in accordance with generally-accepted conceptual development of a new outdoor water attraction practices in the Greater Chicago area, all of the duties that are described in Contractor's Proposal or as otherwise required by the express and implicit terms of this Agreement, to the satisfaction of the Park District. Contractor's duties may be specified and modified from time to time by the Park District in writing.

The Park District reserves the right to evaluate Contractor's performance of the Work, its employees and agents and, in the event such Work or performance are not in conformity with the requirements of this Agreement, as determined by the Park District, the Park District shall have the option to terminate this Agreement in accordance with Section 8 of this Agreement. Should the Park District reasonably determine that the performance of an employee or contractor of Contractor is inadequate or that said employee's or contractor's continued

presence is in any way inconsistent with the policies and practices of the Park District, Contractor shall remove or reassign said employee or contractor immediately upon receipt of notice from the Park District.

Contractor shall not interfere in any way with and shall cooperate fully with other contractors used by Park District for any other work at the Project sites.

4. Contract Sum

The Park District agrees to pay Contractor for the proper and timely performance of the Work in strict accordance with the Agreement for the Term of this Agreement as follows: \$15,800.00

5. Payment

Payment shall be made by the Park District to the Contractor upon the Park District's receipt of a monthly invoice itemizing the Work properly performed, as determined by the Park District, for the period covered by the invoice. Payments of all invoices, and any late payment penalties, shall be governed by the Local Government Prompt Payment Act (5 ILCS 505/1 *et seq.*).

6. Cleaning Up

The Contractor shall keep the project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Agreement.

7. Safety of Persons and Property

- A. The Contractor shall take reasonable precautions for the health and safety of, and shall provide reasonable protection to prevent damage, injury or loss to:
 - 1. employees engaged in the Work and other persons who may be affected thereby; and
 - 2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors.
- B. The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
- C. The Contractor shall promptly remedy damage and loss to Park District property caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except damage or loss attributable to

acts or omissions of the Park District or anyone directly or indirectly employed by Park District, or by anyone for whose acts Park District may be liable, and not attributable to the fault or negligence of the Contractor.

8. Termination

- a. The Park District may, at any time, terminate the Agreement in whole or in part for the Park District's convenience and without cause. Termination by the Park District under this section shall be by a notice of termination delivered to the Contractor specifying the extent of the termination and the effective date. Upon receipt of a notice of termination, the Contractor shall immediately, in accordance with instructions from the Park District: (1) cease operation as specified in the notice; (2) place no further orders; (3) enter into no further subcontracts for materials, labors, services or facilities except as necessary to complete continued portions of the Work; (4) terminate all subcontracts and orders to the extent they relate to the Work terminated; (5) proceed to complete the performance of Work not terminated; and, (6) take actions that may be necessary or that the Park District may direct, for the protection and preservation of the terminated Work. The Contractor shall recover payment for approved and properly performed Work completed prior to the effective date of termination and for proven, out-of-pocket costs with respect to materials and equipment ordered but not used by Contractor for the Work prior to receipt of the notice of termination. Contractor shall not be entitled to damages or lost profits resulting from termination for convenience under this Section.
- b. Park District may terminate the Agreement, in whole or in part, for cause as follows:
 - (i) In the event Contractor breaches any of the provisions of this Agreement, Park District may terminate the Agreement immediately upon written notice to Contractor, if Contractor shall not have cured such breach within forty eight (48) business hours after Park District shall have first notified Contractor of such breach in writing or, if by its nature the breach is not capable of being cured within said forty-eight (48) business hours, Contractor shall not have commenced such cure within said forty-eight (48) business hours and diligently pursued the same to completion; provided, however, that if Contractor shall have repeatedly breached the same or other provisions previously, Park District may terminate the Agreement immediately without affording Contractor an opportunity to cure the breach, upon written notice to Contractor. Failure of Contractor to maintain required insurance coverage shall be cause for immediate termination of the Agreement, or the immediate suspension of the Agreement until such insurance has been obtained and satisfactory proof thereof provided to Park District.

In the event the Park District terminates this Contract in accordance with this Section 8(b)(i), the Park District may enter into an agreement with another Contractor or Contractors to provide the Work. In such event, Contractor shall be liable to the Park District and shall pay the Park District promptly upon demand the increased cost to the

Park District of obtaining the Work from the substitute Contractor(s), including, without limitation, the cost of labor and materials associated with the preparation of bid documents, advertising and attorney's fees plus.

(ii) In the event Contractor shall have: (a) filed a voluntary petition in bankruptcy or made an assignment for the benefit of creditors; or (b) consented to the appointment of a receiver or trustee for all or a part of its property; or (c) an involuntary petition in bankruptcy shall have been filed in regard to Contractor and the same shall not have been dismissed within thirty (30) days of such filing, then the Park District may, without prejudice to any other right or remedy, immediately terminate the retention of Contractor and/or finish or cause to be finished the Contractor's Work required under this Contract by whatever method and by whichever persons the Park District deems expedient. In such case, Contractor shall not be entitled to receive any payment until the Work is completed. If the unpaid balance of the Contract Sum exceeds (1) the expenses of completing the Work, including compensation for additional managerial and administrative services, plus (2) the Park District's losses and damages because of Contractor's default, such excess shall be paid to Contractor. If such expense plus the Park District's losses and damages shall exceed such unpaid balance, Contractor shall pay the difference to the Park District promptly on demand and the Park District may resort to any other rights or remedies the Park District may have by law or under this Contract.

Upon termination of this Agreement for any reason, the rights and obligations of the Parties shall cease automatically except for the rights and obligations of the Parties accruing but unsatisfied prior to termination, including but not limited to the Park District's right to collect sums due from Contractor under this Agreement and remedies for breach of this Agreement and Contractor's obligations to make such payments and compensate Park District for such breach.

9. Insurance

Contractor will procure and maintain during the Term the insurance coverages provided in **Exhibit B**, attached to and incorporated by this reference in this Agreement, or such other insurance coverages as shall be required by the Park District's insurer or the risk management agency of which the Park District is a member.

10. Indemnification

Contractor shall indemnify and hold harmless the Park District and its officers, officials, employees, volunteers and agents in accordance with **Exhibit B**.

11. No Liability

The Park District is not responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including, without limitation Contractor's employees, or for any damage to, destruction, theft or misappropriation of any property, relating in any way, directly or indirectly, to Contractor's Services and obligations under this Agreement. The Park District is not liable for acts or omissions of Contractor or any of Contractor's employees, contractor's, agents or other persons purporting to act at the direction or request, on behalf, or with the implied or actual consent, of Contractor.

12. Compliance with Laws and Permits

Contractor shall comply with all applicable local, state and federal codes, laws, ordinances, rules and regulations. Contractor shall be licensed and bonded to perform the Work hereunder and shall, at its sole cost and obligation, be responsible for obtaining all permits required to perform its duties under this Agreement. Any breach by Contractor of the foregoing laws, regulations and rules shall constitute a breach by Contractor of this Agreement. Contractor's Compliance and Certification Attachment is attached to and incorporated as **Exhibit C** to this Agreement.

13. Choice of Law and Venue

This Agreement is governed by the laws of the State of Illinois. Any suit or action arising under this Agreement shall be commenced in the Circuit Court of DuPage County, Illinois, but only after exhausting all possible administrative remedies. In any suit or action arising under this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs of litigation. Contractor, its successors or assigns shall maintain no suit or action against the Park District on any claim based upon or arising out of this Agreement or out of anything done in connection with this Agreement unless such action shall be commenced within one year of the termination of this Agreement. Contractor acknowledges that each provision of this Agreement is important and material to the business and success of the Park District, and agrees that any breach of any provision of this Agreement is a material breach of the Agreement and may be cause for immediate termination of this Agreement. In the event of a breach, Contractor shall also pay to the Park District all damages (including, but not limited to, compensatory, incidental, consequential, and punitive), which arise from the breach, together with interest, costs, and the Park District's reasonable attorneys' fees.

14. No Third Party Beneficiary

This Agreement is entered into solely for the benefit of the contracting Parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities and/or privileges of the Park District and/or Contractor, and/or any of their respective officials, officers and/or employees.

15. No Waiver

Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of claimant to enforce the provisions of this Agreement or require performance by opponent of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

16. Independent Contractor

Contractor acknowledges that it is an independent contractor; that it alone retains control of the manner of conducting its activities in furtherance of this Agreement; that it, as well as any persons or agents as it may employ, are not employees of the Park District; and that neither this Agreement, nor the administration thereof, shall operate to render or deem either Party hereto the agent or employee of the other.

17. Non-Assignment

This Agreement is non-assignable in whole or in part by the Contractor, and any assignment shall be void without prior written consent of the Park District.

18. Notices

All notices required or permitted to be given under this Agreement shall be deemed given when such notice is hand delivered; or when such notice is sent by facsimile transmission provided such transmission together with fax machine generated confirmation of such transmission is also sent on the transmission date to the other Party by United States mail, with postage therewith prepaid; or when such notice is deposited in the United States mail, with postage thereon prepaid, addressed to the other party at the following addressees:

If to Park District: Wheaton Park District
 102 E. Wesley Street
 Wheaton, IL 60187
 (Fax) 630-665-5880
 Attention: Executive Director

If to Licensee: **Water Technology, Inc.**
 100 Park Avenue, PO Box 614
 Beaver Dam, WI 53916

 Attention: Ryan Nachreiner

19. Entire Agreement; No Amendment

This Agreement contains the entire agreement between the Parties, and no statement, promise or inducement made by either Party to the agency of either Party that is not contained in this written Agreement shall be valid or binding. No modification of this Agreement shall be effective unless in writing dated a date subsequent to the date of this Agreement and signed by an authorized representative of each Party.

20. Headings

The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

21. Severability

The invalidity of any section, paragraph or subparagraph of this Agreement shall not impair the validity of any other section, paragraph or subparagraph. If any provision of this Agreement is determined to be unenforceable, such provision shall be deemed severable and the Agreement may be enforced with such provision severed or as modified by such court.

IN WITNESS WHERE OF the Parties hereto have set their respective hands and seals the day and year first above written.

WHEATON PARK DISTRICT

By: 

Attest:

By: _____

CONTRACTOR

By: 

Attest:

By:
637454



Professional Services Proposal

Rice Pool & Water Park Renovation
Wheaton, Illinois

WTI Project Number: 15139.01
January 4, 2016

Client

Wheaton Park District
1000 Manchester Road
Wheaton, IL 60187

Rob Sperl
Director Parks and Planning
T. 630.510.4970
E. rsperl@wheatonparks.org

Consultant

Water Technology, Inc. (WTI)
100 Park Avenue, PO Box 614
Beaver Dam, WI 53916
www.wtiworld.com

Ryan Nachreiner
Project Director
M. 920.392.2918
E. rnachreiner@wtiworld.com

Scott LeMonds
Project Manager
M. 920.210.2193
E. slemonds@wtiworld.com

Project Understanding

Scope

WTI services involve the preliminary design of the aquatic components, features, and spaces. WTI will also provide consultation on the specialty design and engineering for the associated mechanical and water treatment systems.

Description

The project involves the conceptual development of a new outdoor water attraction, replacement of the children's sand play area, renovation of the wading pool/waterfall area, and renovation of the slide complex.

Budget

WTI anticipates an aquatic construction budget of approximately \$2 million USD.

Schedule

The project schedule is undetermined or unknown to WTI.

Requirements

The following information, materials, and approvals are required for WTI to effectively and efficiently perform the services described in this proposal. The Client shall provide WTI, at no cost, with the following:

- Project site surveys
- Project record drawings, if applicable
- Background drawings/models, including site and building(s), for incorporation of WTI designs
- Written approval of WTI produced Deliverables

Scope of Services

Program and Concept Development

WTI will consult with the Client to develop an aquatic program consisting of prioritized aquatic goals and objectives, and intended activities and uses of the aquatic spaces and features. WTI will perform the following tasks:

- Conduct Aquatic Programming Presentation
- Discuss and Confirm Aquatic Goals and Objectives
- Discuss and Confirm Aquatic Activities and Uses
- Develop Aquatic Program and Capacities
- Define Pool Zones and Depths
- Identify Preliminary Water Rides, Activities, and Features
- Develop Rough Order of Magnitude (ROM) Aquatic Construction Budget
- Develop Aquatic Concept Plan

Deliverables

Program and Concept Development

- Aquatic Program Narrative
- ROM Aquatic Construction Budget
- Aquatic Concept Plan

Services Provided By Others

WTI will assist with coordinating all WTI provided services with other disciplines of the project team. A non-comprehensive outline of scope for coordination and exclusion from the proposed WTI Scope of Services is below. The following services and project scope shall be the responsibility of the Client, or other Consultants of the Client.

Architecture

- Change Facilities, Bathhouses, Locker Rooms, Food Areas, Retail Areas, Offices
- Pool Mechanical Equipment Rooms, Pool Chemical Storage Rooms

Civil Engineering

- Parking and vehicular access
- Storm and Sanitary sewers
- Site grading and drainage
- Utility distribution, including gas, electric and water

Feasibility and Operations

- Demographic research and analysis
- Revenue and expense forecasting
- Operational evaluation and analysis
- Facility and market research

Testing and Analysis

- Geotechnical testing and analysis
- Local water testing and analysis

Administrative

- Permits and regulatory fees
- LEED® Registration and Application
- Document reproduction and distribution

Terms and Conditions

Basis of Agreement

This proposal incorporates by reference AIA Document B101-2007, Standard Form of Agreement Between Owner and Architect, or AIA Document C401-2007, Standard Form of Agreement Between Architect and Consultant. The general conditions of the contract will be defined in AIA Document A201-2007, General Conditions of the Contract for Construction.

Scope of Services

Services offered are limited to those services described in the proposal. No other services are offered or implied unless specifically addressed in the proposal.

Expiration

The attached proposal is considered valid for a period of ninety (90) days from the date of the proposal or its last revision date, if any. Proposals older than ninety (90) days are expired, unless reissued by WTI with a reissue date.

Payment

All proposals are based upon payment in US dollars. Invoices will be issued monthly and are payable within forty-five (45) days of date of invoice. An interest rate of one percent (1.0%) per month will be payable on any amount not paid within this time period. Attorney's fees and any other costs incurred in collecting delinquent accounts shall be paid by Client. WTI will invoice professional fees monthly, on a percent complete basis, throughout the project term.

Hourly Charges/Additional Services

WTI personnel will be charged at the following rates:

Principal/Director	\$150.00
Project Manager/Engineer	\$105.00
Creative Studio	\$95.00
Project Design	\$95.00
Mechanical Design	\$75.00
Technical Design	\$65.00
Administrative	\$55.00

These rates are valid for a period of twelve (12) months from date of an accepted proposal. These rates are not valid for work involving claims settlement, expert witness or litigation work. Additional services, if requested by Client, will be performed on a stipulated sum or hourly basis, as agreed to in writing by both parties prior to initiating the additional services.

Reimbursable Expenses

Expenses and services not directly provided by WTI will be invoiced at one and 10/100 (1.10) times cost. Reimbursable expenses include travel expenses, printing of drawings and/or specifications and expedited delivery service. International travel is business class air. Domestic airfare will be coach. These costs are not included in WTI's fee unless specifically noted as included in our proposal. Air fares are based on fourteen (14) days advanced purchase. Costs associated with customer requested modifications to travel arrangements after purchase by WTI will be an addition to the contract sum.

Additional Project Related Costs

The following costs are not included in our proposal and should be anticipated in the owner's budgeting: geotechnical services and reports, topographic and boundary surveys (site surveys), testing, project related insurance, legal and safety consultant services, permits and fees, and marketing and operations development.

Project Requirements

The following information, records and electronic media will be provided to WTI at no cost:

- AutoCAD files of building, site and other work being prepared by others.
- Copies of geotechnical investigations, surveys and programming information.
- Complete set of plans and specifications of the building and site bid documents.

Standard of Care

Services provided by WTI under this Agreement will be performed in a manner consistent with that degree of skill and care ordinarily exercised by members of the same profession currently practicing under similar circumstances and in accordance with the governing codes and regulations adopted at the time of the execution of this Agreement. No other warranty or representation, either expressed or implied, is included or intended in our proposals, contracts, plans and specifications or reports.

Risk Allocation

Client agrees that to the fullest extent permitted by law, WTI's total liability to Client for any and all injuries, claims, losses, expenses, damages or claims expenses arising out of this Agreement from any cause or causes, shall not exceed the total amount of fees for services for this project or twenty-five thousand and no/100 dollars (\$25,000.00), whichever is greater.

Governance

This Agreement shall be governed by the laws of the State of Wisconsin.



Insurance

Notwithstanding any other provisions in this Agreement, nothing shall be construed so as to void, vitiate, adversely affect or in any other way impair any insurance coverage held by either party to this Agreement. During the term of this agreement, WTI agrees to provide evidence of insurance coverage as shown in the example Insurance Certificate attached hereto. In addition, WTI will attempt to maintain continuous professional liability coverage for the period of design and construction of this project, and for a period of three (3) years following substantial completion, if such coverage is reasonable available at commercially affordable premiums. For the purposes of this agreement, "reasonably available" and "commercially affordable" shall mean that more than half the design professionals practicing in this state in this discipline are able to obtain such coverage. Owner will require that any party hired for the construction of the project, including but not limited to the general contractor, construction manager, and subcontractors will include, in addition to the Owner, Water Technology, Inc. and it's consultants as additional insured for all policies related to the project. Standard insurance carried by WTI is as follows:

General Liability (Occurrence)	\$1.0 Million USD
General Aggregate (Project)	\$2.0 Million USD
Automobile	\$1.0 Million USD
Umbrella/ Excess (Occurrence)	\$4.0 Million USD
Workers Compensation	Statutory
Professional Liability (Occurrence)	\$2.0 Million USD
Professional Liability (Aggregate)	\$4.0 Million USD

Costs for additional coverage limits, if requested, will be paid for by Client.

Photography

The project architect agrees that any published photos, descriptions or award submittals of the project that include reference to the aquatic work shall include WTI as the aquatic consultant.

Client Services

As part of WTI's quality assurance program, WTI will contact the Owner regarding services provided by WTI.

Dispute Resolution

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, Client and WTI agree that all disputes between them arising out of or relating to this agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise. Client and WTI further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing all mediation as the primary method for dispute resolution, between the parties to those agreements. No mediation arising out of or relating to this agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this agreement, except by written consent containing a specific reference to this agreement signed by Client, WTI and any other person or entity sought to be joined. Consent to mediation involving an additional person or entity duly consented to by the parties to this agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

Hazardous Materials

Client represents to WTI that to the best of Client's knowledge no hazardous or toxic substances within the meaning of any applicable statute or regulation are presently stored, or otherwise located, on the project site or adjacent thereto. Further, within the definition of such statutes or regulations, no part of the project site or adjacent real estate, including the ground water located thereon, is presently contaminated.

Existing Conditions

Inasmuch as the remodeling and/or rehabilitation of an existing site/structure requires that certain assumptions be made regarding existing conditions, and because some of these assumptions may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of the building, Client agrees, to fullest extent permitted by law, to indemnify and hold the design professional harmless from any claim, liability or cost (including reasonable attorney's fees and costs of defense) for injury or economic loss arising or allegedly arising out of the professional services provided under this agreement, excepting only those damages, liabilities or costs attributable to the sole negligence or willful misconduct of the design professional.

Termination

Either party may terminate the agreement for convenience after seven (7) days written notice of intent to terminate. Client shall be responsible for all costs and charges incurred up to the date of termination, including reasonable costs for WTI to close the work and organize files. WTI agrees not to charge for lost or anticipated profits on the work not completed and will provide copies of work files to Client upon receipt of final payment.

Fee for Professional Services

WTI professional services are offered for a stipulated lump sum, and are contingent upon WTI Terms and Conditions.

Fee for Professional Services \$15,800.00 USD

Project related expenses are reimbursable and are not included in the proposed fee. Reimbursable expenses include travel, express shipping, and printing. WTI will perform a total of up to the following number of trips to facilitate meetings and/or conduct site visits.

Trips / Visits / Meetings 2

Trip cost may vary depending on length of stay and number of WTI professionals required. Adding or combining tasks and meetings to trips will vary the cost of travel. Trip cost may vary as a result of unanticipated fluctuation in the cost of travel. WTI will make every reasonable effort to travel efficiently. WTI will charge \$1,250.00 USD plus travel expenses in addition to the above fee for additional travel, if requested, involving one WTI professional for one overnight stay.

This proposal will remain valid for a period of 90 days. Please provide the signature of an authorized representative on the line below indicating acceptance of the proposed scope and fee for professional services.

Water Technology, Inc.

Signature

Name / Title

Date

Client

Signature

Name / Title

Date

2/11/16

EXHIBIT B
INSURANCE AND INDEMNIFICATION REQUIREMENTS

I. Insurance

A. Commercial General and Umbrella Liability Insurance

Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location.

CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or at Owner's sole option on a more current ISO form or a substitute form providing at least equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

Owner shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing at least equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Owner. If the additional insured have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the Contractor's liability under this insurance policy shall not be reduced by the existence of such other insurance.

There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Business Auto and Umbrella Liability Insurance

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos.

Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing at least equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage at least equivalent to that provided in the 1990 and later editions of CA 00 01.

C. Workers Compensation Insurance

Contractor shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

If Owner has not been included as an insured under the CGL using ISO additional insured

endorsement CG 20 10 or a substitute endorsement acceptable to Owner under the Commercial General and Umbrella Liability Insurance required in this Agreement, the Contractor waives all rights against Owner and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to the Contractor's and Architect's work.

D. General Insurance Provisions

1. Evidence of Insurance

Prior to beginning work, Contractor shall furnish Owner with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, and such other evidence of insurance as shall be requested by Owner, showing compliance with the insurance requirements set forth above.

All certificates shall provide for 30 days' written notice to Owner prior to the cancellation or material change of any insurance referred to therein. Written notice to Owner shall be by certified mail, return receipt requested. Failure of Owner to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.

Owner shall have the right, but not the obligation, of prohibiting Contractor or any subcontractor from entering the Contract site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Owner.

Failure to maintain the required insurance may result in termination of this Agreement at Owner's option. With respect to insurance maintained after final payment in compliance with a requirement above, an additional certificate(s) evidencing such coverage shall be promptly provided to Owner whenever requested. Contractor shall provide certified copies of all insurance policies required above within 10 days of Owner's written request for said copies.

2. Acceptability of Insurers

For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Owner has the right to reject insurance written by an insurer it deems unacceptable.

3. Cross-Liability Coverage

If Contractor's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

4. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to the Owner. At the option of the Owner, the Contractor may be asked to eliminate such deductibles or self-insured retentions as

respects the Owner, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

5. Subcontractors

Contractor shall cause each subcontractor employed by Contractor to purchase and maintain insurance of the type specified above. When requested by the Owner, Contractor shall furnish copies of certificates of insurance evidencing coverage for each subcontractor.

I. Indemnification

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Park District and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including but not limited to legal fees (attorney's and paralegals' fees and court costs), arising out of or resulting from the performance of the Contractor's obligations pursuant to this Agreement, provided that any such claim, damage, loss or expense (i) is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, including the loss of use resulting therefrom and (ii) is caused in whole or in part by any wrongful or negligent act or omission, by the Contractor, any subcontractor, and anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph. Contractor shall similarly protect, indemnify and hold and save harmless the Park District's officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to legal fees, incurred by reason of breach of any of their obligations under, or default of, any provision of the Agreement.

EXHIBIT C
CONTRACTOR COMPLIANCE AND CERTIFICATIONS ATTACHMENT

Note: The following certifications form an integral part of the Agreement between the Park District and Contractor. Breach by Contractor of any of the certifications may result in immediate termination of the Contractor's services by the Park District.

THE UNDERSIGNED CONTRACTOR HEREBY ACKNOWLEDGES, CERTIFIES, AFFIRMS AND AGREES AS FOLLOWS:

- A. Contractor has carefully read and understands the contents, purpose and legal effect of this document as stated above and hereafter in this document. The certifications contained herein are true, complete and correct in all respects.
- B. Contractor shall abide by and comply with, and in contracts which it has with all persons providing any of the services or Work on this project on its behalf shall require compliance with, all applicable Federal, State and local laws and rules and regulations including without limitation those relating to 1) fair employment practices, affirmative action and prohibiting discrimination in employment; 2) workers' compensation; 3) workplace safety; and 4) wages and claims of laborers, mechanics and other workers, agents, or servants in any manner employed in connection with contracts involving public funds.
- C. To the best of Contractor's knowledge, no officer or employee of Contractor has been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, or any unit of local government, nor has any officer or employee made an admission of guilt of such conduct which is a matter of record.
- E. Contractor is not barred from bidding on or entering into public contracts due to having been convicted of bid-rigging or bid rotating under paragraphs 33E-3 or 33E-4 of the Illinois Criminal Code. Contractor also certifies that no officers or employees of the Contractor have been so convicted and that Contractor is not the successor company or a new company created by the officers of one so convicted. Contractor further certifies that any such conviction occurring after the date of this certification will be reported to the Park District, immediately in writing, if it occurs prior to entering into the Contract therewith.
- F. Pursuant to the Illinois Human Rights Act (775 ILCS 5/2-105), Contractor has a written sexual harassment policy that includes, at a minimum, the following information: (i) a statement on the illegality of sexual harassment; (ii) the definition of sexual harassment under State law; (iii) a description of sexual harassment utilizing examples; (iv) the Contractor's internal complaint process including penalties; (v) the legal recourse, investigative and complaint process available through the Illinois Department of Human Rights and the Human Rights Commission and directions on how to contact both; and (vi) protection against retaliation as provided by Section 6-101 of the Illinois Human Rights Act. Contractor further certifies that such policy shall remain in full force and effect. A copy of the policy shall be provided to the Illinois Department of Human Rights upon request.
- G. (i) Contractor's proposal was made without any connection or common interest in the profits anticipated to be derived from the Contract by Contractor with any other persons submitting any proposal for the Contract; (ii) the Contract terms are in all respects fair and the Contract will be entered into by Contractor without collusion or fraud; (iii) no official, officer or employee of the Park District has any direct or indirect financial interest in Contractor's bid proposal or in Contractor, (iv) the Contractor has not directly or indirectly provided, and shall not directly or indirectly provide, funds or other consideration to any person or entity (including, but not limited to, the Park District and the Park District's employees and agents), to procure improperly special or unusual treatment with respect to this Agreement or for the purpose of otherwise improperly influencing the relationship between the Park District and the Contractor. Additionally, the Contractor shall cause all of its officers, directors, employees, (as the case may be) to comply with the restrictions contained in the preceding sentence.
- I. Contractor knows and understands the Equal Employment Opportunity Clause administered by the Illinois

Department of Human Rights, which is incorporated herein by this reference, and agrees to comply with the provisions thereof. Contractor further certifies that Contractor is an "equal opportunity employer" as defined by Section 2000 (e) of Chapter 21, Title 42 of the United States Code Annotated and Executive Orders #11246 and #11375 as amended, which are incorporated herein by this reference.

- K. Contractor is not barred from contracting with the Park District because of any delinquency in the payment of any tax administrated by the Illinois Department of Revenue, unless it is being contested. Contractor further certifies that it understands that making a false statement regarding delinquency in taxes is a Class A misdemeanor and, in addition, voids the Contract and allows the Park District, a municipal entity, to recover in a civil action all amounts paid to the Contractor.
- L. If Contractor has 25 or more employees at the time of letting of the Contract, Contractor knows, understands and acknowledges its obligations under the Illinois Drug Free Workplace Act (30 ILCS 580/1 *et seq.*) and certifies that it will provide a drug-free workplace by taking the actions required under, and otherwise implementing on a continuing basis, Section 3 of the Drug Free Workplace Act. Contractor further certifies that it has not been debarred and is not ineligible for award of this Contract as the result of a violation of the Illinois Drug Free Workplace Act.
- M. Contractor shall comply with the requirements and provisions of the Freedom of Information Act (5 ILCS 140/1 *et. seq.*) and, upon request of the Wheaton Park District's designated Freedom of Information Act Officer (FOIA Officer), Contractor shall within two (2) business days of said request, turn over to the FOIA Officer any record in the possession of the Contractor that is deemed a public record under FOIA.

Water Technology Inc
CONTRACTOR

By: Nicole Radosevic
Its: Controller

STATE OF WI)
)SS
COUNTY OF Dodge

I, the undersigned, a notary public in and for the State and County, aforesaid, hereby certify that Nicole Radosevic-WTI appeared before me this day and, being first duly sworn on oath, acknowledged that he/she executed the foregoing instrument as his/her free act and deed and as the act and deed of the Contractor.

Dated: 2-1-16

(SEAL)

Jim H. Nampel
(Notary Public) My Commission Expires 11/21/20

RIDER

TO TERMS AND CONDITIONS BETWEEN WATER TECHNOLOGY, INC. ("Consultant" or "WTI") AND WHEATON PARK DISTRICT ("Park District" or "Client") FOR CONSULTING SERVICES

This Rider amends, supplements and supersedes the Terms and Conditions included in Consultant's Proposal dated January 4, 2016 and agreed to by and between Consultant and Park District as of January 20, 2016. In the event of any conflict between any of the provisions of this Rider and the provisions of the Terms and Conditions, the provisions of this Rider will control. Consultant and Park District are hereinafter sometimes individually referred to as a "Party" or collectively as "Parties."

R-1 The section labeled "Basis of Agreement" is hereby amended by deleting the entire paragraph and replacing with the following: "These Terms and Conditions, Contractor's Proposal dated January 4, 2016 and the Rider dated 02/01, 2016 collectively form the Agreement between the Parties."

R-2 The section labeled "Payment" is hereby amended by deleting the second and third sentences and adding the following to the end of the section:

"Payment of said invoices, and any late payment penalties, shall be governed by the applicable provisions of the Local Government Prompt Payment Act (50 ILCS 505 *et seq.*).

a. Prior to final payment to Consultant, the following conditions shall be fulfilled by Consultant:

i. Consultant shall have made, or caused to have been made, all corrections and completion in Consultant's services which are required to remedy any defects therein or obtain compliance with this Agreement. Consultant shall, if required by Park District, deliver a certificate to Park District certifying such matters Park District may reasonably require.

ii. Consultant will provide Park District releases and waivers of lien from Consultant and Consultant's consultants and sub-consultants for the performance of the services provided under this Agreement.

iii. Consultant shall have delivered to Park District all deliverables required by this Agreement.

b. Additional Services. Except for this Agreement, there shall be no other basis for compensation for services or reimbursement for expenses rendered on behalf of the project by Consultant ("Additional Services") unless otherwise mutually agreed upon by the Parties. In the event any other Additional Services are required, Consultant shall notify Park District regarding the nature and extent and cost of any said Additional Services. Consultant shall not perform any Additional Services unless approved in writing in advance by Park District.

c. Payments in Dispute. Any provision of this Agreement to the contrary notwithstanding, Park District shall not be obligated to make any payment to Consultant hereunder for any one or more of the following reasons:

i. Consultant is in default of any of its obligations under this Agreement;

ii. Any part of such payment is attributable to services which are not performed in

accordance with this Agreement; provided, however, such payment shall be made as to the part thereof attributable to services which were performed in accordance with this Agreement; or

iii. Consultant has failed to make payments promptly to consultants or other third parties used in connection with the services for which Park District has made payment to Consultant.

As provided in the Illinois Local Government Prompt Payment Act, Park District shall notify Consultant in writing that a request for payment has been disapproved, and shall specify the reasons for the disapproval. Consultant shall not have the right to terminate this Agreement in accordance with this R-13 in the event the Park District withholds payment in accordance with this provision or otherwise withholds payment in accordance with the Prompt Payment Act."

R-3 The section labeled "Reimbursable Expenses" is hereby amended by adding the following to the end of this section: "Consultant's reimbursable expenses shall not exceed Eight Hundred and 00/100 Dollars (\$800.00) without prior written approval of Park District."

R-4 The section labeled "Additional Project Related Costs" is hereby amended by adding "if applicable" in the first sentence after "The following information".

R-5 The section labeled "Standard of Care" is hereby amended by deleting the entire paragraph and replacing with the following:

"Consultant agrees to perform faithfully, industriously, and to the best of Consultant's ability, experience, and talents, in accordance with generally accepted standards of professional skill and care among recognized industry experts engaged in similar services, all of the duties described in the Agreement or as otherwise required by the express and implicit terms of this Agreement, to the reasonable satisfaction of Park District. Consultant shall perform all of its duties hereunder according to Park District's requirements and procedures and in compliance with all applicable federal, state and local laws, regulations, codes, ordinances, orders and with those of any other body having jurisdiction. Park District shall be the sole judge of whether the Consultant's duties are performed satisfactorily."

R-6 The section labeled "Risk Allocation" is hereby deleted in its entirety.

R-7 The section labeled "Governance" is hereby deleted in its entirety and replaced with the following:

"Choice of Law and Venue. This Agreement is governed by the laws of the State of Illinois. Any suit or action arising under this Agreement shall be commenced in the Circuit Court of DuPage County, Illinois. In any suit or action arising under this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs of litigation."

R-8 The section labeled "Insurance" is hereby amended by deleting the entire section and replacing with the following:

"Consultant shall purchase and maintain the types and amounts of insurance as set forth in **Exhibit 1**, attached to and incorporated as part of this Agreement."

R-9 The section labeled "Photography" is hereby deleted in its entirety.

- R-10 The section labeled "Dispute Resolution is hereby amended by adding the words "non-binding" in front of the word "mediation" in second sentence and in lines 5, 6 and 9.
- R-11 The section labeled "Hazardous Materials" is hereby amended by adding the following to the last sentence after "of such statutes or regulations,": "to the best of Client's knowledge".
- R-12 The section labeled "Existing Conditions" is hereby deleted in its entirety.
- R-13 The section labeled "Termination" is hereby amended by deleting the entire paragraph and replacing with the following:

"This Agreement may be terminated or suspended by Park District, in whole or in part, for convenience and without cause upon five (5) days written notice. In the event of such termination, Consultant will be paid for all approved services rendered to the date of termination, and upon such payment, all obligations of Park District to Consultant under this Agreement shall cease. In the event of termination for any reason, Consultant shall not be entitled to lost or anticipated profits.

Park District shall have the right to terminate this Agreement immediately and without notice upon Consultant's default of its obligations hereunder or its violation of any federal or state laws, or local regulations or ordinances. Upon termination due to Consultant's breach of this Agreement, Consultant shall pay Park District all reasonable costs incurred by Park District due to said breach, including the cost of obtaining replacement services. In the event of such termination, payment to Consultant of any sums earned to the date of such termination shall be in full satisfaction of any and all claims by Consultant against Park District under this Agreement, and acceptance of sums paid by Consultant shall constitute a waiver of any and all claims that may be asserted by Consultant against Park District.

If Park District fails to make payments to Consultant in accordance with this Agreement, and such payments are not in dispute in accordance with R-2 above, such failure shall be considered substantial nonperformance and cause for termination at Consultant's option. If Consultant elects to terminate services in accordance with this Section, Consultant shall give fifteen (15) days' written notice to Park District before terminating services. Unless payment in full is received by Consultant within fifteen (15) days of the date of the notice, termination shall take effect without further notice.

Promptly upon the termination of this Agreement for any reason and payment in full of all outstanding invoices received from Consultant and not in dispute, Consultant shall deliver to Park District all Instruments of Services generated in the performance of their services under this Agreement up to and including the date of termination.

- R-14 The section labeled "Fee for Professional Service is hereby amended by deleting "and are contingent upon WTI Terms and Conditions."
- R-15 Add the following new sections to the Standard Terms and Conditions:

"Term. Consultant shall complete the services on or before June 30, 2016.

Designated Representatives. The Park District hereby designates Michael Benard as the Park District's representative ("Park District's Representative") for all matters for the Park District under this Agreement and with respect to the administration of this Agreement. The Park District's Representative shall be available to the Consultant at all reasonable times for consultation with the Consultant. The Consultant shall confirm to the Park District in writing any decision made by the Park District's

Representative. The Consultant hereby designates Ryan M. Nachreiner as the Consultant's Representative ("Consultant's Representative") for all matters for the Consultant under this Agreement and with respect to the Services to be performed by the Consultant for the Park District. The Consultant's Representative shall be available to the Park District at all reasonable times for consultation with the Park District's Representative. The Park District may conclusively rely on the decisions made by the Consultant's Representative, including those which modify this Agreement. Either Party may change its Representative under this Agreement by giving notice to the other Party as provided hereunder.

Ownership of Instruments of Service. Any and all documents, including but not limited to, any plans, notes, analysis, and any other documents prepared by Consultant in the performance of its services under this Agreement ("Instruments of Service") is work done for hire and ownership of such Instruments of Service vests in Park District. Park District retains exclusive property rights including all common law, statutory, federal and other reserved rights in the Instruments of Services, including copyrights.

Notwithstanding the foregoing, Consultant shall retain all common law, statutory and other reserved rights, including copyrights in its standard design elements, architectural/engineering details, and other previously produced intellectual property, which are neither unique to the Park District or its affiliates nor related to the business of the Park District and the Park District shall be granted a non-exclusive license to reproduce such design elements and architectural/engineering details.

Should the Park District use the Instruments of Service on other projects or provide the use of the Instruments of Service to third parties for their use on other projects, the Park District shall release Consultant from all claims and causes of action arising from such uses. The Park District, to the extent permitted by law, further agrees to indemnify and hold harmless Consultant and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent arising from the foregoing uses of the Instruments of Service. The Park District shall not assign, sublicense, or pledge any license to use or reproduce Instruments of Service produced by Consultant, in whole or in part, to another party without the prior written agreement of Consultant. Any unauthorized use of Instruments of Service provided by Consultant shall be at the Park District's sole risk and without liability to Consultant and its consultants.

Indemnification. To the fullest extent permitted by law, Consultant, its officers, directors, employees, volunteers and agents shall indemnify and hold harmless Park District and its officers, officials, employees, volunteers and agents from and against all claims, suits, damages, causes of action, judgment, losses, costs and expenses, including but not limited to reasonable legal fees (attorney's and paralegals' fees and court costs), to the extent caused by the services performed by Consultant, its officers, directors, employees, volunteers and agents under this Agreement, including but not limited to any accident, injury, damage, property loss or theft, or arising from or in any way connected with any act, omission, wrongful act or negligence of Consultant, its officers, director, employees, volunteers and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to Park District. Consultant shall similarly protect, indemnify and hold and save harmless Park District, its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses including but not limited to reasonable legal fees, incurred by reason of Consultant's breach of any of its obligations under, or Consultant's default of, any provision of this Agreement.

No Liability. Park District shall not be responsible or liable for any injury, damages, loss or costs sustained or incurred by any person including, without limitation Consultant's employees, or for any damage to, destruction, theft or misappropriation of any property, relating in any way, directly or indirectly, to Consultant's services and obligations under this Agreement. Park District shall not be liable for acts or omissions of Consultant or any of Consultant's employees, subcontractor's, agents or other persons approved to act at the direction or request, on behalf, or with the implied or actual consent, of Consultant.

Release of Project Information/Confidentiality. Park District reserves the sole right to release all project information, as well as to time its release, form and content. This requirement shall survive the expiration of this Agreement. Notwithstanding the foregoing, Park District shall not withhold permission unreasonably for Consultant to release general promotional information concerning the project, provided that such information shall be reviewed and approved in advance in writing by Park District. The foregoing shall not be deemed to preclude Consultant from (i) including Park District's name in a list of former clients in specific proposals to prospective clients or (ii) listing Park District's name or project in Consultant's internal publications.

If Consultant or Park District receives information specifically designated by the other Party as "confidential" or "business proprietary," the receiving Party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services and exclusively for this project, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) or as otherwise required by law.

No Waiver. Waiver of any of the terms of this Agreement shall not be valid unless it is in writing and signed by all Parties. The failure of claimant to enforce the provisions of this Agreement, or require performance by opponent of any of the provisions, shall not be construed as a waiver of such provisions or affect the right of claimant to thereafter enforce the provisions of this Agreement. Waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach of the Agreement.

Non-Assignment. This Agreement is non-assignable in whole or in part by the Consultant, and any assignment shall be void without prior written consent of the Park District.

Entire Agreement. This Agreement contains the entire agreement between the Parties and no statement, promise or inducement made by either Party to the agency of either Party that is not contained in this written Agreement shall be valid or binding.

Amendment. No amendment or modification shall be made to this Agreement unless it is in writing and signed by both Parties.

Headings. The headings for each paragraph of this Agreement are for convenience and reference purposes only and in no way define, limit or describe the scope or intent of said paragraphs or of this Agreement nor in any way affect this Agreement.

Notice. All notices, demands, requests, exercises and other communications required or permitted to be given by either Party under this Agreement shall be in writing and shall be deemed given when such notice has been personally delivered, sent by facsimile or deposited in the United States mail, with postage thereon prepaid, addressed to each Party at the following addresses:

If to Consultant: Ryan Nachreiner
Water Technology, Inc.
100 Park Avenue, P.O. Box 614
Beaver Dam, Wisconsin 53916
Fax: 920-887-7999

If to the Park District: Executive Director
Wheaton Park District
102 Wesley Drive
Wheaton, Illinois 60187
Fax: (630) 665-5880

Independent Contractor. The relationship between Consultant and Park District is that of an independent contractor. Consultant shall supply all personnel, equipment, materials, and supplies at its own expense, except as specifically set forth herein. Consultant shall not be deemed to be, nor shall it represent itself as, employees, partners, or joint venturers of Park District. Consultant is not entitled to workers' compensation benefits or other employee benefits from Park District and is obligated to directly pay federal and state income tax on money earned under this Agreement.

Laws, Permits, Approvals and Licenses. Consultant shall comply with all applicable codes, laws, ordinances and regulations of Park District, the City of Wheaton, DuPage County, the State of Illinois, and the Federal Government. Consultant shall, at its sole cost and obligation, be responsible for obtaining all permits and licenses required to perform its duties under this Agreement.

No Third Party Beneficiary. This Agreement is entered into solely for the benefit of the contracting parties, and nothing in this Agreement is intended, either expressly or impliedly, to provide any right or benefit of any kind whatsoever to any person and/or entity who is not a party to this Agreement or to acknowledge, establish or impose any legal duty to any third party. Nothing herein shall be construed as an express and/or implied waiver of any common law and/or statutory immunities, defenses and/or privileges of the Park District and/or the Consultant, and/or any of their respective officials, officers and/or employees.

Severability. The invalidity of any section, paragraph or subparagraph of this Agreement shall not impair the validity of any other section, paragraph or subparagraph. If any provision of this Agreement is determined to be unenforceable, such provision shall be deemed severable and the Agreement may be enforced with such provision severed or as modified by such court."

IN WITNESS WHERE OF the Parties hereto have set their respective hands and seals the day and year as written below.

WHEATON PARK DISTRICT

By: 

As Its: Executive Director

Date: 2/11/16

WATER TECHNOLOGY, INC.

By: Nicole Kadosure

As Its: Controller

Date: 2-1-2016

Exhibit 1
Insurance Requirements

Consultant shall obtain insurance of the types and in the amounts listed below.

A. Commercial General and Umbrella Liability Insurance. Consultant shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than \$1,000,000 for each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this project/location. CGL insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 10 93, or a substitute form providing equivalent coverage, and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured Agreement (including the tort liability of another assumed in a business Agreement). Park District shall be included as an insured under the CGL, using ISO additional insured endorsement CG 20 10 or a substitute providing equivalent coverage, and under the commercial umbrella, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance afforded to Park District. There shall be no endorsement or modification of the CGL limiting the scope of coverage for liability arising from pollution, explosion, collapse, or underground property damage.

B. Professional Liability Insurance. Consultant shall maintain professional liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for each wrongful act arising out of the performance or failure to perform professional services and \$2,000,000 aggregate.

C. Business Auto and Umbrella Liability Insurance. Consultant shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$1,000,000 for each accident. Such insurance shall cover liability arising out of any auto including owned, hired and non-owned autos. Business auto insurance shall be written on Insurance Services Office (ISO) form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

D. Workers Compensation Insurance. Consultant shall maintain workers compensation as required by statute and employers liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$1,000,000 for each accident for bodily injury by accident or for each employee for bodily injury by disease. If Park District has not been included as an insured under the CGL using ISO additional insured endorsement CG 20 10 under the Commercial General and Umbrella Liability Insurance required in this Agreement, Consultant waives all rights against Park District and its officers, officials, employees, volunteers and agents for recovery of damages arising out of or incident to Consultant's work.

E. General Insurance Provisions

(1) Evidence of Insurance. Prior to beginning work, Consultant shall furnish Park District with a certificate(s) of insurance and applicable policy endorsement(s), executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. All certificates shall provide for 30 days' written notice to Park District prior to the cancellation or material change of any insurance referred to therein. Written notice to Park District shall be by certified mail, return receipt requested. Failure of Park District to demand such certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Park District to identify a deficiency from evidence that is provided shall not be construed as a waiver of Consultant's obligation to maintain such insurance. Park District shall have the right, but not the obligation, of prohibiting Consultant from entering the project site until such certificates or other evidence that insurance has been placed in complete compliance with these requirements is received and approved by Park District. Failure to maintain the required insurance may result in termination of this Agreement at Park District's option. Consultant shall provide certified copies of all insurance policies required above within 10 days of Park District's written request for said copies.

(2) Acceptability of Insurers. For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, Park District has the right to reject insurance written by an insurer it deems unacceptable.

(3) Cross-Liability Coverage. If Consultant's liability policies do not contain the standard ISO separation of insureds provision, or a substantially similar clause, they shall be endorsed to provide cross-liability coverage.

(4) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to Park District. At the option of Park District, Consultant may be asked to eliminate such deductibles or self-insured retentions as respects Park District, its officers, officials, employees, volunteers and agents or required to procure a bond guaranteeing payment of losses and other related costs including but not limited to investigations, claim administration and defense expenses.

(5) Subconsultant. Consultant shall cause each subconsultant employed by Consultant to purchase and maintain insurance of the type specified above. When requested by Park District, Consultant shall furnish copies of certificates of insurance evidencing coverage for each subconsultant.

