



STATE OF MICHIGAN PROCUREMENT
 Department of Natural Resources
 525 W Allegan, Lansing, MI 48933

NOTICE OF CONTRACT

NOTICE OF CONTRACT NO. **230000000913**
 between
 THE STATE OF MICHIGAN
 and

CONTRACTOR	Kieser & Associates, LLC
	536 E Michigan Ave, Suite 300
	Kalamazoo, MI 49007
	Mark Kieser
	269-344-7117
	mkieser@kieser-associates.com
	VS0001428

STATE	Program Manager	Jay Wesley	DNR
		269-204-7057	
	wesleyj@michigan.gov		
	Contract Administrator	Kip Conley	DNR
517-388-5956			
Conleyk1@michigan.gov			

CONTRACT SUMMARY			
DESCRIPTION: Prairie River Temperature Data			
INITIAL EFFECTIVE DATE	INITIAL EXPIRATION DATE	INITIAL AVAILABLE OPTIONS	EXPIRATION DATE BEFORE CHANGE(S) NOTED BELOW
5/11/23	5/10/26	2 – 1-year options	5/10/26
PAYMENT TERMS		DELIVERY TIMEFRAME	
Net 45		NA	
ALTERNATE PAYMENT OPTIONS			EXTENDED PURCHASING
<input type="checkbox"/> P-card <input type="checkbox"/> Payment Request (PRC) <input type="checkbox"/> Other			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
MINIMUM DELIVERY REQUIREMENTS			
NA			
MISCELLANEOUS INFORMATION			
THIS IS NOT AN ORDER: This Contract Agreement is awarded on the basis of our inquiry bearing the solicitation (RFP) No. 2300000001944. Orders for delivery will be issued directly by the Michigan Department of Natural Resources.			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION			\$69,175.00

FOR THE CONTRACTOR:

Kieser & Associates, LLC
Company Name

Authorized Agent Signature

Mark Kieser
Authorized Agent (Print or Type)

Date

FOR THE STATE:

Signature

Kip Conley, Lead Buyer
Name & Title

Department of Natural Resources
Agency

Date

STANDARD CONTRACT TERMS

This STANDARD CONTRACT (“**Contract**”) is agreed to between the State of Michigan (the “**State**”) and Kieser & Associates, LLC (“**Contractor**”). This Contract is effective on 5/5/2023 (“**Effective Date**”), and unless terminated, will expire on 5/4/2026 (the “**Term**”).

This Contract may be renewed for up to 2 additional 1-year renewal option period(s). Renewal is at the sole discretion of the State and will automatically extend the Term of this Contract. The State will document its exercise of renewal options via Contract Change Notice.

The parties agree as follows:

- 1. Duties of Contractor.** Contractor must perform the services and provide the deliverables (the “**Contract Activities**”) described in a Statement of Work, the initial Statement of Work is attached as Schedule A – Statement of Work. An obligation to provide delivery of any commodity is considered a service and is a Contract Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Contract Activities unless otherwise specified in a Statement of Work.

Contractor must: (a) perform the Contract Activities in a timely, professional, safe, and workmanlike manner consistent with standards in the trade, profession, or industry; (b) meet or exceed the performance and operational standards, and specifications of the Contract; (c) provide all Contract Activities in good quality, with no material defects; (d) not interfere with the State’s operations; (e) obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of the Contract; (f) cooperate with the State, including the State’s quality assurance personnel, and any third party to achieve the objectives of the Contract; (g) return to the State any State-furnished equipment or other resources in the same condition as when provided when no longer required for the Contract; (h) assign to the State any claims resulting from state or federal antitrust violations to the extent that those violations concern materials or services supplied by third parties toward fulfillment of the Contract; (i) comply with all State physical and IT security policies and standards which will be made available upon request; and (j) provide the State priority in performance of the Contract except as mandated by federal disaster response requirements. Any breach under this paragraph is considered a material breach.

Contractor must also be clearly identifiable while on State property by wearing identification issued by the State, and clearly identify themselves whenever making contact with the State.

- 2. Notices.** All notices and other communications required or permitted under this Contract must be in writing and will be considered given and received: (a) when verified by written receipt if sent by courier; (b) when actually received if sent by mail without verification of receipt; or (c) when verified by automated receipt or electronic logs if sent by facsimile or email.

If to State:	If to Contractor:
See Contract Administrator information shown below.	Mark Kieser 536 E Michigan Ave, Suite 300 Kalamazoo, MI 49007 mkieser@kieser-associates.com 269-344-7117

3. **Contract Administrator.** The Contract Administrator, or the individual duly authorized for each party, is the only person authorized to modify any terms of this Contract, and approve and execute any change under this Contract (each a “**Contract Administrator**”):

State:	Contractor:
Kip Conley 525 W Allegan Lansing, MI 48933 Conleyk1@michigan.gov 517-388-5956	Mark Kieser 536 E Michigan Ave, Suite 300 Kalamazoo, MI 49007 mkieser@kieser-associates.com 269-344-7117

4. **Program Manager.** The Program Manager for each party will monitor and coordinate the day-to-day activities of the Contract (each a “**Program Manager**”):

State:	Contractor:
Jay Wesley 621 10 th St Plainwell, MI 49080 WesleyJ@michigan.gov 269-204-7057	Mark Kieser 536 E Michigan Ave, Suite 300 Kalamazoo, MI 49007 mkieser@kieser-associates.com 269-344-7117

5. **Performance Guarantee.** Contractor must at all times have financial resources sufficient, in the opinion of the State, to ensure performance of the Contract and must provide proof upon request. The State may require a performance bond (as specified in a Statement of Work) if, in the opinion of the State, it will ensure performance of the Contract.

6. **Insurance Requirements.**

General Requirements. Contractor, at its sole expense, must maintain the insurance coverage as specified herein for the duration of the Term. Minimum limits may be satisfied by any combination of primary liability, umbrella or excess liability, and self-insurance coverage. To the extent damages are covered by any required insurance, Contractor waives all rights against the State for such damages. Failure to maintain required insurance does not limit this waiver.

- a. **Qualification of Insurers.** Except for self-insured coverage, all policies must be written by an insurer with an A.M. Best rating of A- VII or higher unless otherwise approved by DTMB Enterprise Risk Management.

- b. Primary and Non-Contributory Coverage.** All policies for which the State of Michigan is required to be named as an additional insured must be on a primary and non-contributory basis.
- c. Claims-Made Coverage.** If any required policies provide claims-made coverage, Contractor must:
 - (1) Maintain coverage and provide evidence of coverage for at least 3 years after the later of the expiration or termination of the Contract or the completion of all its duties under the Contract;
 - (2) Purchase extended reporting coverage for a minimum of 3 years after completion of work if coverage is cancelled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Effective Date of this Contract
- d. Proof of Insurance**
 - (1) Insurance certificates showing evidence of coverage as required herein must be submitted to the Contract Administrator within 10 days of the contract execution date.
 - (2) Renewal insurance certificates must be provided on annual basis or as otherwise commensurate with the effective dates of coverage for any insurance required herein.
 - (3) Insurance certificates must be in the form of a standard ACORD Insurance Certificate unless otherwise approved by DTMB Enterprise Risk Management.
 - (4) All insurance certificates must clearly identify the Contract Number (e.g., notated under the Description of Operations on an ACORD form).
 - (5) The State may require additional proofs of insurance or solvency, including but not limited to policy declarations, policy endorsements, policy schedules, self-insured certification/authorization, and balance sheets.
 - (6) In the event any required coverage is cancelled or not renewed, Contractor must provide written notice to the Contract Administrator no later than 5 business days following such cancellation or nonrenewal.
- e. Subcontractors.** Contractor is responsible for ensuring its subcontractors carry and maintain insurance coverage.
- f. Limits of Coverage & Specific Endorsements.** (See Table 6.1 Below)

TABLE 6.1

Required Limits	Additional Requirements
Commercial General Liability Insurance	
Minimum Limits: \$1,000,000 Each Occurrence	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using

Required Limits	Additional Requirements
\$1,000,000 Personal & Advertising Injury \$2,000,000 Products/Completed Operations \$2,000,000 General Aggregate	endorsement CG 20 10 11 85, or both CG 20 10 12 19 and CG 20 37 12 19.
Automobile Liability Insurance	
Minimum Limits: \$1,000,000 Per Accident	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
Minimum Limits: Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
Minimum Limits: \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease	

g. Non-Waiver. This Section 6 is not intended to and is not to be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations under this Contract, including any provisions hereof requiring Contractor to indemnify, defend and hold harmless the State.

7. RESERVED.

8. RESERVED.

9. Relationship of the Parties. The relationship between the parties is that of independent contractors. Contractor, its employees, and agents will not be considered employees of the State. No partnership or joint venture relationship is created by virtue of this Contract. Contractor, and not the State, is responsible for the payment of wages, benefits and taxes of Contractor's employees and any subcontractors. Prior performance does not modify Contractor's status as an independent contractor. Neither party has authority to contract for nor bind the other party in any manner whatsoever.

- 10. Intellectual Property Rights.** If a Statement of Work requires Contractor to create any intellectual property, Contractor hereby acknowledges that the State is and will be the sole and exclusive owner of all right, title, and interest in the Contract Activities and all associated intellectual property rights, if any. Such Contract Activities are works made for hire as defined in Section 101 of the Copyright Act of 1976. To the extent any Contract Activities and related intellectual property do not qualify as works made for hire under the Copyright Act, Contractor will, and hereby does, immediately on its creation, assign, transfer and otherwise convey to the State, irrevocably and in perpetuity, throughout the universe, all right, title and interest in and to the Contract Activities, including all intellectual property rights therein.
- 11. Subcontracting.** Contractor may not delegate any of its obligations under the Contract without the prior written approval of the State. Contractor must notify the State at least 90 calendar days before the proposed delegation and provide the State any information it requests to determine whether the delegation is in its best interest. If approved, Contractor must: (a) be the sole point of contact regarding all contractual matters, including payment and charges for all Contract Activities; (b) make all payments to the subcontractor; and (c) incorporate the terms and conditions contained in this Contract in any subcontract with a subcontractor. Contractor remains responsible for the completion of the Contract Activities, compliance with the terms of this Contract, and the acts and omissions of the subcontractor. The State, in its sole discretion, may require the replacement of any subcontractor.
- 12. Staffing.** The State's Contract Administrator may require Contractor to remove or reassign personnel providing services by providing a notice to Contractor.
- 13. Background Checks.** Pursuant to Michigan law, all agencies subject to IRS Pub. 1075 are required to ask the Michigan State Police to perform fingerprint background checks on all employees, including Contractor and Subcontractor employees, who may have access to any database of information maintained by the federal government that contains confidential or personal information, including, but not limited to, federal tax information. Further, pursuant to Michigan law, any agency described above is prohibited from providing Contractors or Subcontractors with the result of such background check. For more information, please see Michigan Public Act 427 of 2018. Upon request, or as may be specified in a Statement of Work, Contractor must perform background checks on all employees and subcontractors and its employees prior to their assignment. The scope is at the discretion of the State and documentation must be provided as requested. Contractor is responsible for all costs associated with the requested background checks. The State, in its sole discretion, may also perform background checks.
- 14. Assignment.** Contractor may not assign this Contract to any other party without the prior approval of the State. Upon notice to Contractor, the State, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Contract to any other party. If the State determines that a novation of the Contract to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.
- 15. Change of Control.** Contractor will notify the State, within 30 days of any public announcement or otherwise once legally permitted to do so, of a change in

Contractor's organizational structure or ownership. For purposes of this Contract, a change in control means any of the following: (a) a sale of more than 50% of Contractor's stock; (b) a sale of substantially all of Contractor's assets; (c) a change in a majority of Contractor's board members; (d) consummation of a merger or consolidation of Contractor with any other entity; (e) a change in ownership through a transaction or series of transactions; (f) or the board (or the stockholders) approves a plan of complete liquidation. A change of control does not include any consolidation or merger effected exclusively to change the domicile of Contractor, or any transaction or series of transactions principally for bona fide equity financing purposes.

In the event of a change of control, Contractor must require the successor to assume this Contract and all of its obligations under this Contract.

- 16. Ordering.** Contractor is not authorized to begin performance until receipt of authorization as identified in a Statement of Work.
- 17. Acceptance.** Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in a Statement of Work. If the Contract Activities are not fully accepted by the State, the State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 24, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

18. RESERVED.

19. RESERVED.

20. RESERVED.

- 21. Invoices and Payment.** Invoices must conform to the requirements communicated from time-to-time by the State. All undisputed amounts are payable within 45 days of the State's receipt. Contractor may only charge for Contract Activities provided as

specified in a Statement of Work. Invoices must include an itemized statement of all charges. The State is exempt from State sales tax for direct purchases and may be exempt from federal excise tax, if Services purchased under this Agreement are for the State's exclusive use. Notwithstanding the foregoing, all fees are exclusive of taxes, and Contractor is responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by the State under this Contract.

The State has the right to withhold payment of any disputed amounts until the parties agree as to the validity of the disputed amount. The State will notify Contractor of any dispute within a reasonable time. Payment by the State will not constitute a waiver of any rights as to Contractor's continuing obligations, including claims for deficiencies or substandard Contract Activities. Contractor's acceptance of final payment by the State constitutes a waiver of all claims by Contractor against the State for payment under this Contract, other than those claims previously filed in writing on a timely basis and still disputed.

The State will only disburse payments under this Contract through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/SIGMAVSS> to receive electronic fund transfer payments. If Contractor does not register, the State is not liable for failure to provide payment. Without prejudice to any other right or remedy it may have, the State reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by the State to Contractor under this Contract.

Excluding federal government charges and terms, Contractor warrants and agrees that each of the fees, economic or product terms or warranties granted pursuant to this Contract are comparable to or better than the equivalent fees, economic or product term or warranty being offered to any commercial or government customer (including any public educational institution within the State of Michigan) of Contractor. If Contractor enters into any arrangements with another customer of Contractor to provide the products or services, available under this Contract, under more favorable prices, as the prices may be indicated on Contractor's current U.S. and International price list or comparable document, then this Contract will be deemed amended as of the date of such other arrangements to incorporate those more favorable prices, and Contractor will immediately notify the State of such fee and formally memorialize the new pricing in a change notice.

- 22. Liquidated Damages.** Liquidated damages, if applicable, will be assessed as described in a Statement of Work. The parties understand and agree that any liquidated damages (which includes but is not limited to applicable credits) set forth in this Contract are reasonable estimates of the State's damages in accordance with applicable law. The parties acknowledge and agree that Contractor could incur liquidated damages for more than 1 event. The assessment of liquidated damages will not constitute a waiver or release of any other remedy the State may have under this Contract for Contractor's breach of this Contract, including without limitation, the State's right to terminate this Contract for cause under Section 24 and the State will be entitled in its discretion to recover actual damages caused by Contractor's failure to perform its obligations under this Contract. However, the State will reduce such actual damages by the amounts of liquidated damages received for the same events

causing the actual damages. Amounts due the State as liquidated damages may be set off against any fees payable to Contractor under this Contract, or the State may bill Contractor as a separate item and Contractor will promptly make payments on such bills.

23. Stop Work Order. The State may suspend any or all activities under the Contract at any time. The State will provide Contractor a written stop work order detailing the suspension. Contractor must comply with the stop work order upon receipt. Within 90 calendar days, or any longer period agreed to by Contractor, the State will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate the Contract or delivery order. The State will not pay for Contract Activities, Contractor's lost profits, or any additional compensation during a stop work period.

24. Termination for Cause. (a) The State may terminate this Contract for cause, in whole or in part, if Contractor, as determined by the State: (i) endangers the value, integrity, or security of any facility, data, or personnel; (ii) becomes insolvent, petitions for bankruptcy court proceedings, or has an involuntary bankruptcy proceeding filed against it by any creditor; (iii) engages in any conduct that may expose the State to liability; (iv) breaches any of its material duties or obligations under this Contract; or (v) fails to cure a breach within the time stated by the State in a notice of breach, if in its sole discretion the State has chosen to provide a time to cure. Any reference to specific breaches being material breaches within this Contract will not be construed to mean that other breaches are not material.

(b) If the State terminates this Contract under this Section, the State will issue a termination notice specifying whether Contractor must: (i) cease performance immediately. Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due to Contractor for Contract Activities accepted by the State under this Contract or (ii) continue to perform for a specified period. If it is later determined that Contractor was not in breach of the Contract, the termination will be deemed to have been a Termination for Convenience, effective as of the same date, and the rights and obligations of the parties will be limited to those provided in Section 25, Termination for Convenience.

The State will only pay for amounts due to Contractor for Contract Activities accepted by the State on or before the date of termination, subject to the State's right to set off any amounts owed by the Contractor for the State's reasonable costs in terminating this Contract. Contractor must promptly reimburse to the State any fees prepaid by the State prorated to the date of such termination, including any prepaid fees. The Contractor must pay all reasonable costs incurred by the State in terminating this Contract for cause, including administrative costs, attorneys' fees, court costs, transition costs, and any costs the State incurs to procure the Contract Activities from other sources.

25. Termination for Convenience. The State may immediately terminate this Contract in whole or in part without penalty and for any reason or no reason, including but not limited to, appropriation or budget shortfalls. The termination notice will specify whether Contractor must: (a) cease performance of the Contract Activities

immediately. Contractor must submit all invoices for Contract Activities accepted by the State within 30 days of the date of termination. Failure to submit an invoice within that timeframe will constitute a waiver by Contractor for any amounts due Contractor for Contract Activities accepted by the State under this Contract, or (b) continue to perform the Contract Activities in accordance with Section 26, Transition Responsibilities. If the State terminates this Contract for convenience, the State will pay all reasonable costs, as determined by the State, for State approved Transition Responsibilities to the extent the funds are available.

- 26. Transition Responsibilities.** Upon termination or expiration of this Contract for any reason, Contractor must, for a period of time specified by the State (not to exceed 90 calendar days), provide all reasonable transition assistance requested by the State, to allow for the expired or terminated portion of the Contract Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Contract Activities to the State or its designees. Such transition assistance may include, but is not limited to: (a) continuing to perform the Contract Activities at the established Contract rates; (b) taking all reasonable and necessary measures to transition performance of the work, including all applicable Contract Activities, training, equipment, software, leases, reports and other documentation, to the State or the State's designee; (c) transferring title in and delivering to the State, at the State's discretion, all completed or partially completed deliverables prepared under this Contract as of the Contract termination date; and (d) preparing an accurate accounting from which the State and Contractor may reconcile all outstanding accounts (collectively, "**Transition Responsibilities**"). This Contract will automatically be extended through the end of the transition period.
- 27. Return of State Property.** Upon termination or expiration of this Contract for any reason, Contractor must take all necessary and appropriate steps, or such other action as the State may direct, to preserve, maintain, protect, or return to the State all materials, data, property, and confidential information provided directly or indirectly to the Contractor by any entity, agent, vendor, or employee of the State.
- 28. Indemnification.** Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to: (a) any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Contract; (b) any infringement, misappropriation, or other violation of any intellectual property right or other right of any third party; (c) any bodily injury, death, or damage to real or tangible personal property occurring wholly or in part due to action or inaction by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable); and (d) any acts or omissions of Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable).

The State will notify Contractor in writing if indemnification is sought; however, failure to do so will not relieve Contractor, except to the extent that Contractor is materially

prejudiced. Contractor must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations.

The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own cost and expense, if the State deems necessary. Contractor will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding.

Any litigation activity on behalf of the State, or any of its subdivisions under this Section, must be coordinated with the Department of Attorney General. An attorney designated to represent the State may not do so until approved by the Michigan Attorney General and appointed as a Special Assistant Attorney General.

The State is constitutionally prohibited from indemnifying Contractor or any third parties.

- 29. Infringement Remedies.** If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense: (a) procure for the State the right to continue using the equipment, software, commodity, or service, or if this option is not reasonably available to Contractor, (b) replace or modify the same so that it becomes non-infringing; or (c) accept its return by the State with appropriate credits to the State against Contractor's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.
- 30. Limitation of Liability and Disclaimer of Damages. IN NO EVENT WILL THE STATE'S AGGREGATE LIABILITY TO CONTRACTOR UNDER THIS CONTRACT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS CONTRACT, EXCEED THE MAXIMUM AMOUNT OF FEES PAYABLE UNDER THIS CONTRACT.** The State is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.
- 31. Disclosure of Litigation, or Other Proceeding.** Contractor must notify the State within 14 calendar days of receiving notice of any litigation, investigation, arbitration, or other proceeding (collectively, "**Proceeding**") involving Contractor, a subcontractor, or an officer or director of Contractor or subcontractor, that arises during the term of the Contract, including: (a) a criminal Proceeding; (b) a parole or probation Proceeding; (c) a Proceeding under the Sarbanes-Oxley Act; (d) a civil Proceeding involving: (1) a claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or (2) a governmental or public entity's claim or written allegation of fraud; or (3) any complaint filed in a legal or administrative proceeding alleging the Contractor or its subcontractors discriminated against its employees, subcontractors, vendors, or suppliers during the term of this Contract; or (e) a Proceeding involving any license that Contractor is required to possess in order to perform under this Contract.

32. State Data. All data and information provided to Contractor by or on behalf of the State, and all data and information derived therefrom, is the exclusive property of the State ("**State Data**"); this definition is to be construed as broadly as possible. Upon request, Contractor must provide to the State, or a third party designated by the State, all State Data within 10 calendar days of the request and in the format requested by the State. Contractor will assume all costs incurred in compiling and supplying State Data. No State Data may be used for any marketing or commercial purposes.

33. RESERVED.

34. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties.

a. **Meaning of Confidential Information.** For the purposes of this Contract, the term "**Confidential Information**" means all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; or, (c) should reasonably be recognized as confidential information of the disclosing party. The term "Confidential Information" does not include any information or documentation that was or is: (a) subject to disclosure under the Michigan Freedom of Information Act (FOIA); (b) already in the possession of the receiving party without an obligation of confidentiality; (c) developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights; (d) obtained from a source other than the disclosing party without an obligation of confidentiality; or, (e) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through, or on behalf of, the receiving party). For purposes of this Contract, in all cases and for all matters, State Data is deemed to be Confidential Information.

b. **Obligation of Confidentiality.** The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Contract or to use such Confidential Information for any purposes whatsoever other than the performance of this Contract. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential. Disclosure to a subcontractor is permissible where: (a) use of a subcontractor is authorized under this Contract; (b) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and (c) Contractor obligates the subcontractor in a written contract to maintain the State's Confidential Information in confidence. At the State's request, any employee of Contractor or any subcontractor may be required to execute a separate agreement to be bound by the provisions of this Section.

- c. **Cooperation to Prevent Disclosure of Confidential Information.** Each party must use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party must advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Contract and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.
- d. **Remedies for Breach of Obligation of Confidentiality.** Each party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a party may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, in the case of the State, at the sole election of the State, the immediate termination, without liability to the State, of this Contract or any Statement of Work corresponding to the breach or threatened breach.
- e. **Surrender of Confidential Information upon Termination.** Upon termination of this Contract or a Statement of Work, in whole or in part, each party must, within 5 calendar days from the date of termination, return to the other party any and all Confidential Information received from the other party, or created or received by a party on behalf of the other party, which are in such party's possession, custody, or control; provided, however, that Contractor must return State Data to the State following the timeframe and procedure described further in this Contract. Should Contractor or the State determine that the return of any Confidential Information is not feasible, such party must destroy the Confidential Information and must certify the same in writing within 5 calendar days from the date of termination to the other party. However, the State's legal ability to destroy Contractor data may be restricted by its retention and disposal schedule, in which case Contractor's Confidential Information will be destroyed after the retention period expires.

35. RESERVED.

36. RESERVED.

37. RESERVED.

38. Records Maintenance, Inspection, Examination, and Audit. Pursuant to MCL 18.1470, the State or its designee may audit Contractor to verify compliance with this Contract. Contractor must retain and provide to the State or its designee and the auditor general upon request, all records related to the Contract through the term of the Contract and for 4 years after the latter of termination, expiration, or final payment under this Contract or any extension ("**Audit Period**"). If an audit, litigation, or other action involving the records is initiated before the end of the Audit Period, Contractor must retain the records until all issues are resolved.

Within 10 calendar days of providing notice, the State and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Contract Activities are being performed, and

examine, copy, and audit all records related to this Contract. Contractor must cooperate and provide reasonable assistance. If financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of the Contract must be paid or refunded within 45 calendar days.

This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.

- 39. Representations and Warranties.** Contractor represents and warrants: (a) Contractor is the owner or licensee of any Contract Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use; (b) all Contract Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect; (c) the Contract Activities will not infringe the patent, trademark, copyright, trade secret, or other proprietary rights of any third party; (d) Contractor must assign or otherwise transfer to the State or its designee any manufacturer's warranty for the Contract Activities; (e) the Contract Activities are merchantable and fit for the specific purposes identified in the Contract; (f) the Contract signatory has the authority to enter into this Contract; (g) all information furnished by Contractor in connection with the Contract fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform the State of any material adverse changes; (h) all information furnished and representations made in connection with the award of this Contract is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading; and that (i) Contractor is neither currently engaged in nor will engage in the boycott of a person based in or doing business with a strategic partner as described in 22 USC 8601 to 8606. A breach of this Section is considered a material breach of this Contract, which entitles the State to terminate this Contract under Section 24, Termination for Cause.
- 40. Conflicts and Ethics.** Contractor will uphold high ethical standards and is prohibited from: (a) holding or acquiring an interest that would conflict with this Contract; (b) doing anything that creates an appearance of impropriety with respect to the award or performance of the Contract; (c) attempting to influence or appearing to influence any State employee by the direct or indirect offer of anything of value; or (d) paying or agreeing to pay any person, other than employees and consultants working for Contractor, any consideration contingent upon the award of the Contract. Contractor must immediately notify the State of any violation or potential violation of these standards. This Section applies to Contractor, any parent, affiliate, or subsidiary organization of Contractor, and any subcontractor that performs Contract Activities in connection with this Contract.
- 41. Compliance with Laws.** Contractor must comply with all federal, state and local laws, rules and regulations.
- 42. RESERVED.**
- 43. RESERVED.**

- 44. Nondiscrimination.** Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, *et seq.*, and [Executive Directive 2019-09](#). Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex (as defined in Executive Directive 2019-09), height, weight, marital status, partisan considerations, any mental or physical disability, or genetic information that is unrelated to the person's ability to perform the duties of a particular job or position. Breach of this covenant is a material breach of this Contract.
- 45. Unfair Labor Practice.** Under MCL 423.324, the State may void any Contract with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.
- 46. Governing Law.** This Contract is governed, construed, and enforced in accordance with Michigan law, excluding choice-of-law principles, and all claims relating to or arising out of this Contract are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Contract must be resolved in the Michigan Court of Claims. Complaints against the State must be initiated in Ingham County, Michigan. Contractor waives any objections, such as lack of personal jurisdiction or *forum non conveniens*. Contractor must appoint an agent in Michigan to receive service of process.
- 47. Non-Exclusivity.** Nothing contained in this Contract is intended nor is to be construed as creating any requirements contract with Contractor, nor does it provide Contractor with a right of first refusal for any future work. This Contract does not restrict the State or its agencies from acquiring similar, equal, or like Contract Activities from other sources.
- 48. Force Majeure.** Neither party will be in breach of this Contract because of any failure arising from any disaster or acts of god that are beyond their control and without their fault or negligence. Each party will use commercially reasonable efforts to resume performance. Contractor will not be relieved of a breach or delay caused by its subcontractors. If immediate performance is necessary to ensure public health and safety, the State may immediately contract with a third party.
- 49. Dispute Resolution.** The parties will endeavor to resolve any Contract dispute in accordance with this provision. The dispute will be referred to the parties' respective Contract Administrators or Program Managers. Such referral must include a description of the issues and all supporting documentation. The parties must submit the dispute to a senior executive if unable to resolve the dispute within 15 business days. The parties will continue performing while a dispute is being resolved, unless the dispute precludes performance. A dispute involving payment does not preclude performance.

Litigation to resolve the dispute will not be instituted until after the dispute has been elevated to the parties' senior executive and either concludes that resolution is unlikely or fails to respond within 15 business days. The parties are not prohibited from instituting formal proceedings: (a) to avoid the expiration of statute of limitations period; (b) to preserve a superior position with respect to creditors; or (c) where a

party makes a determination that a temporary restraining order or other injunctive relief is the only adequate remedy. This Section does not limit the State's right to terminate the Contract.

- 50. Media Releases.** News releases (including promotional literature and commercial advertisements) pertaining to the Contract or project to which it relates must not be made without the prior written approval of the State, and then only in accordance with the explicit written instructions of the State.
- 51. Schedules.** All Schedules and Exhibits that are referenced herein and attached hereto are hereby incorporated by reference. The following Schedules are attached hereto and incorporated herein:

Document Title	Document Description
Schedule A	Statement of Work
Schedule B	Pricing Matrix
Exhibit A	Map
Exhibit B	Stream Thermal Reclassification Policy and Procedure
Exhibit C	Work Plan, Budget and Timeline

- 52. Entire Agreement and Order of Precedence.** This Contract, which includes Statement of Work, and schedules and exhibits, is the entire agreement of the parties related to the Contract Activities. This Contract supersedes and replaces all previous understandings and agreements between the parties for the Contract Activities. If there is a conflict between documents, the order of precedence is: (a) first, this Contract, excluding its schedules, exhibits, and Statement of Work; (b) second, Statement of Work as of the Effective Date; and (c) third, schedules expressly incorporated into this Contract as of the Effective Date. NO TERMS ON CONTRACTOR'S INVOICES, ORDERING DOCUMENTS, WEBSITE, BROWSE-WRAP, SHRINK-WRAP, CLICK-WRAP, CLICK-THROUGH OR OTHER NON-NEGOTIATED TERMS AND CONDITIONS PROVIDED WITH ANY OF THE CONTRACT ACTIVITIES, OR DOCUMENTATION HEREUNDER, EVEN IF ATTACHED TO THE STATE'S DELIVERY OR PURCHASE ORDER, WILL CONSTITUTE A PART OR AMENDMENT OF THIS CONTRACT OR IS BINDING ON THE STATE OR ANY AUTHORIZED USER FOR ANY PURPOSE. ALL SUCH OTHER TERMS AND CONDITIONS HAVE NO FORCE AND EFFECT AND ARE DEEMED REJECTED BY THE STATE AND THE AUTHORIZED USER, EVEN IF ACCESS TO OR USE OF THE CONTRACT ACTIVITIES REQUIRES AFFIRMATIVE ACCEPTANCE OF SUCH TERMS AND CONDITIONS.
- 53. Severability.** If any part of this Contract is held invalid or unenforceable, by any court of competent jurisdiction, that part will be deemed deleted from this Contract and the severed part will be replaced by agreed upon language that achieves the same or similar objectives. The remaining Contract will continue in full force and effect.

- 54. Waiver.** Failure to enforce any provision of this Contract will not constitute a waiver.
- 55. Survival.** Any right, obligation or condition that, by its express terms or nature and context is intended to survive, will survive the termination or expiration of this Contract; such rights, obligations, or conditions include, but are not limited to, those related to transition responsibilities; indemnification; disclaimer of damages and limitations of liability; State Data; non-disclosure of Confidential Information; representations and warranties; insurance and bankruptcy.
- 56. Contract Modification.** This Contract may not be amended except by signed agreement between the parties (a "**Contract Change Notice**"). Notwithstanding the foregoing, no subsequent Statement of Work or Contract Change Notice executed after the Effective Date will be construed to amend this Contract unless it specifically states its intent to do so and cites the section or sections amended.

SCHEDULE A – STATEMENT OF WORK

CONTRACT ACTIVITIES

SCOPE

The DNR is seeking a contractor to collect continuous air and water temperature readings at five locations along the Prairie River in Branch County, Michigan following prescriptive procedures described in Policy Document 02.02.028 for three consecutive years. The Prairie River is a sub-watershed of the St. Joseph River, which flows into Lake Michigan and gradient changes from five feet per mile at the lower end to up to 9 feet per mile at the headwaters. Temperature data shall be collected within Water Management Area (WMA) 20781 (Map 1) found in the Water Withdrawal Assessment Tool: [https://www.egle.state.mi.us/wwat/\(S\(acrbwucxjpejqgdwe4lmiti\)\)/map.aspx](https://www.egle.state.mi.us/wwat/(S(acrbwucxjpejqgdwe4lmiti))/map.aspx)

Requirements

1.1. General Requirements

At each location, one temperature logger will be placed in the Prairie River to measure stream (water) temperature and one will be placed to measure air temperature. The Brink Road Site will have two stream temperature loggers as it is the most critical site. There will be a total of 11 loggers deployed each sampling year.

- a. Location: The five locations (Map 2) include sites near the following road crossings: 1) Brink Road or near the lower portion of WMU 20781; 2) Orland Road; 3) Gilead Lake Road; 4) Bowers Road; and 5) Walker Road.
 - i. Site Specific Considerations to follow: Air temperature loggers should be placed out of direct sunlight and be hidden or protected from vandalism. Stream temperature loggers shall be deployed in locations with as many of the following prioritized characteristics as possible:
 1. Representative portion of reach and not downstream of warm or cold-water sources.
 2. Well-mixed horizontally and vertically (e.g., in a run at a depth two-thirds of the distance from the water surface to the stream bottom)
 3. Of sufficient depth to keep the sensor submerged through the study period
 4. Stable, accessible, and easy to relocate
 5. Protected from physical impacts associated with high flow events (e.g., the downstream side of a large landmark rock or log)
 6. Low human activity to reduce vandalism and accidental snagging
 - ii. Site Specific Considerations to Avoid: Stream temperature loggers shall not be deployed in locations with the following characteristics:
 1. Areas of high use, visibility, or fishing access
 2. Have heavy beaver activity

3. Have backwater pools, eddies, or standing water that might stratify during low flow conditions
4. Are influenced by localized warm or cool water sources, such as:
 - a. a tributary influence
 - b. an impoundment (including beaver ponds)
 - c. a lake outlet
 - d. point source discharges including drain tiles
 - e. streamside wetland areas
 - f. hot springs
 - g. groundwater seeps
- b. Temperature Intervals: Both stream and air temperature shall be recorded every 30 minutes.
- c. Temperature Duration: Both stream and air temperature shall be recorded for the entire months of June, July, August, and September.
- d. Logger Download and Removal Schedule: Loggers shall be checked and downloaded between August 1 and August 15th with a final download and removal from site between October 1 and October 31st.
- e. Temperature Logger Calibration: Accuracy of temperature loggers must be tested prior to field use. The “ice bucket” method is a simple, effective, and commonly accepted practice for determining whether temperature loggers are accurately recording water temperature and involves placing loggers in an ice bath and checking readings against the readings from a National Institute of Standards and Technology (NIST) certified thermometer. Temperature loggers must read within $\pm 0.2^{\circ}\text{C}$ of the calibration thermometer (or $\pm 0.5^{\circ}\text{C}$ for liquid filled thermometer) to be considered accurate. For each logger, calibration check results should be recorded and maintained for the useful life of the logger.
- f. Temperature Logger Retrieval Calibration: Temperature of the stream and air should be recorded upon retrieval using a NIST certified thermometer to compare to logger data.
- g. Quality Assurance/Quality Control: After retrieval, if data have not been downloaded on-site, loggers should be returned to the appropriate office and data should be downloaded to spreadsheets files. These files should be documented and stored to facilitate later use and sharing with appropriate databases, taking all steps to preserve metadata and maintain data integrity. Following data download, unit calibrations should be checked to note any differences in the pre- and post-calibration factors. Data must be visually checked for errors caused by dewatering during low flow conditions, movement during high flow conditions, sediment burial, vandalism, or equipment malfunction. Water temperature data must be graphically checked against air temperature. If air and water temperatures appear to be nearly identical, this indicates that the water temperature logger was dewatered. If the graph shows daily fluctuations with flat tops, the logger might have been buried in sediment. If the discrepancies occur, use the graph to specify the time and duration of errors in the raw data files. All data should be retained and made available annually.

- h. Riparian land-owner permission for stream and streambank installations at recommended sites is to be secured by MDNR as necessary for contractor to complete installations without trespassing concerns.
- i. 11 sensors across the 5 project locations will be deployed consisting of the following (this equipment will be the property of the contractor and annual instrumentation fees will be billed to the MDNR following annual instrument recovery as outline in Exhibit C, any additional cost outside of Exhibit C and Schedule B will need to be approved by MDNR):
 - i. Six (6) HOBO Water Temperature Pro 2 Data Loggers (Model U22-001) for water Temperature measurements
 - ii. Five (5) HOBO 64k Pendant Temperature/Alarm Data Loggers (Model UA-001-64) for air temperature measurements
- j. The contractor will meet with MDNR staff to recommend placement and site locations for deployment.

2. Service Requirements

2.1. Milestones and Deliverables

- a. Data Sheet Development: Prior to deploying temperature loggers, develop data sheets for 1) detailing calibration of each temperature logger; 2) logger deployment detailing nearest road crossing, GPS, date, and a detailed description of the site-specific considerations listed in 2.a.i and ii above; 3) logger retrieval detailing date, changes in site conditions, issues with vandalism, and calibration stream and air temperatures. Some examples exist that can be provided that don't include all necessary information needed to be recorded.
- b. Annual Report: Provide a report summarizing the monthly mean stream and air temperature of each site, explain any issues with data quality, and provide copies of all data sheets and share with the Water Use Advisory Council Data Committee (Data Committee).
- c. Annually Share Data Files: All spreadsheets shall be shared electronically to Fisheries Division once Quality Assurance/Quality Control is complete, which will be shared with the Data Committee.
- d. Annual Meeting: Provide a meeting in person or virtually with Fisheries Division and the Data Committee to discuss findings and any issues. This meeting should occur after the annual report is complete and prior to March of each year.
- e. Final Report: A final report summarizing the three years of data collection along with all data sheets is due February 15, 2026.

2.2. Duration of Services

Temperature monitoring shall occur for three years (2023, 2024, and 2025) with a final report due by February 15th, 2026.

3. Acceptance

3.1. Acceptance, Inspection, and Testing

Contract Activities are subject to inspection and testing by the State within 30 calendar days of the State's receipt of them ("**State Review Period**"), unless otherwise provided in a Statement of Work. If the Contract Activities are not fully accepted by the State, the

State will notify Contractor by the end of the State Review Period that either: (a) the Contract Activities are accepted but noted deficiencies must be corrected; or (b) the Contract Activities are rejected. If the State finds material deficiencies, it may: (i) reject the Contract Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Contract in accordance with Section 24, Termination for Cause.

Within 10 business days from the date of Contractor’s receipt of notification of acceptance with deficiencies or rejection of any Contract Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Contract Activities to the State. If acceptance with deficiencies or rejection of the Contract Activities impacts the content or delivery of other non-completed Contract Activities, the parties’ respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to the Contract. However, nothing herein affects, alters, or relieves Contractor of its obligations to correct deficiencies in accordance with the time response standards set forth in this Contract.

If Contractor is unable or refuses to correct the deficiency within the time response standards set forth in this Contract, the State may cancel the order in whole or in part. The State, or a third party identified by the State, may perform the Contract Activities and recover the difference between the cost to cure and the Contract price plus an additional 10% administrative fee.

4. Staffing

4.1. Contractor Representative

The Contractor must appoint one contract representative specifically assigned to State of Michigan accounts, who will respond to State inquiries regarding the Contract Activities, answer questions related to ordering and delivery, etc. (the “Contractor Representative”).

The Contractor must notify the Contract Administrator at least 14 calendar days before removing or assigning a new Contractor Representative.

Contractor Representative	Mark Kieser, Senior Scientist/Owner, Kieser & Associates, LLC
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4.2. Customer Service Number

The Contractor must specify its customer service number for the State to contact the Contractor Representative. The Contractor Representative must be available for calls during the hours of 8:00 am to 5:00 pm EST.

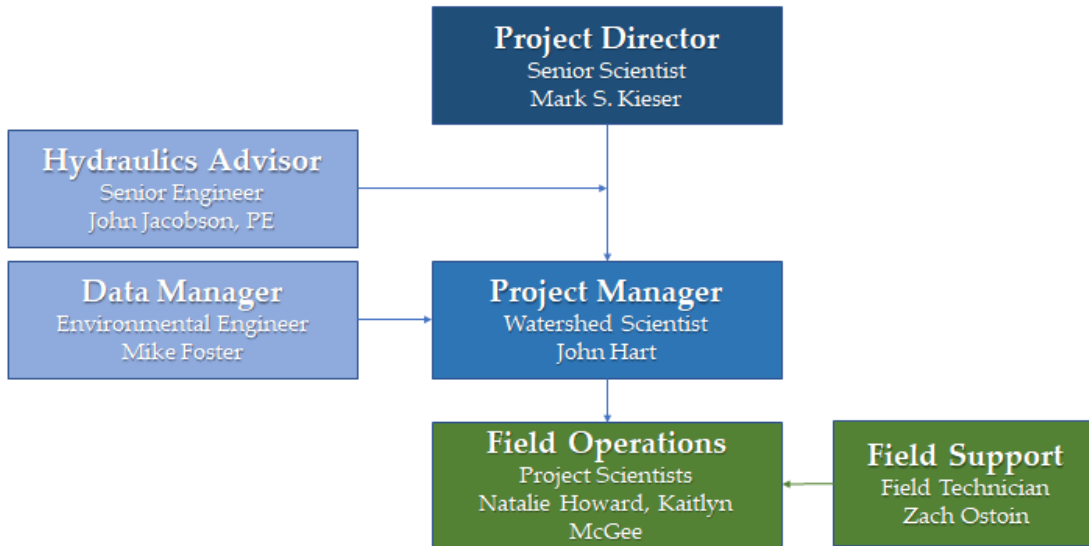
Primary Office Number	269-344-7117
Alternate Contact Number	269-217-6372

4.3. Work Hours

The Contractor must provide Contract Activities during the State’s normal working hours Monday – Friday, 7:00 a.m. to 6:00 p.m. EST and possible night and weekend hours depending on the requirements of the project.

4.4. Organizational Chart

The Contractor must provide an overall organizational chart that details staff members, by name and title, and subcontractors.



4.5. Disclosure of Subcontractors

If the Contractor intends to utilize subcontractors, the Contractor must disclose the following:

- The legal business name; address; telephone number; a description of subcontractor's organization and the services it will provide; and information concerning subcontractor's ability to provide the Contract Activities.
- The relationship of the subcontractor to the Contractor.
- Whether the Contractor has a previous working experience with the subcontractor. If yes, provide the details of that previous relationship.
- A complete description of the Contract Activities that will be performed or provided by the subcontractor.

4.6. Security

The State may require the Contractor's personnel to wear State issued identification badges when entering state facilities.

5. Project Management

5.1. Project Plan

The Contractor will carry out this project under the direction and control of the Program Manager. Within 30 calendar days of the Effective Date, the Contractor must submit a final project plan to the Program Manager for approval. The plan must include: (a) the

Contractor's organizational chart with names and title of personnel assigned to the project, which must align with the staffing stated in accepted proposals; and (b) the project breakdown showing sub-projects, tasks, timeline, and resources required.

Preliminary scope outline is identified in Exhibit C (see attached).

5.2. Meetings

The Contractor must attend the following meetings:

- Contract Kick-off Meeting

The State may request other meetings, as it deems appropriate.

5.3. Reporting

The Contractor must submit, to the Program Manager or designee, the following written reports:

- a. Annual Report: Provide a report summarizing the monthly mean stream and air temperature of each site, explain any issues with data quality, and provide copies of all data sheets and share with the Water Use Advisory Council Data Committee (Data Committee).
- b. Annually Share Data Files: All spreadsheets shall be shared electronically to Fisheries Division once Quality Assurance/Quality Control is complete, which will be shared with the Data Committee.
- c. Final Report: A final report summarizing the three years of data collection along with all data sheets is due February 15, 2026.

6. Pricing

6.1. Price Term

Pricing is firm for the entire length of the Contract.

6.2. Price Changes

Adjustments will be based on changes in actual Contractor costs. Any request must be supported by written evidence documenting the change in costs. The State may consider sources, such as the Consumer Price Index; Producer Price Index; other pricing indices as needed; economic and industry data; manufacturer or supplier letters noting the increase in pricing; and any other data the State deems relevant.

Following the presentation of supporting documentation, both parties will have 30 days to review the information and prepare a written response. If the review reveals no need for modifications, pricing will remain unchanged unless mutually agreed to by the parties. If the review reveals that changes are needed, both parties will negotiate such changes, for no longer than 30 days, unless extended by mutual agreement.

The Contractor remains responsible for Contract Activities at the current price for all orders received before the mutual execution of a Change Notice indicating the start date of the new Pricing Period.

7. Ordering

7.1. Authorizing Document

The appropriate authorizing document for the Contract will be a Delivery Order (DO).

8. Invoice and Payment

8.1. Invoice Requirements

All invoices submitted to the State must include: (a) date; (b) purchase order; (c) quantity; (d) description of the Contract Activities; (e) unit price; (f) shipping cost (if any); (g) vendor-generated invoice number; and (h) total price. Overtime, holiday pay, and travel expenses will not be paid.

8.2. Payment Methods

The State will make payment for Contract Activities via EFT.

8.3. Procedure

The contractor will submit invoices for approval to the Program Manager or designee. Invoices will be submitted annually or after a deliverable has been finalized and accepted by the Program Manager or designee.

9. Liquidated Damages

Late or improper completion of the Contract Activities will cause loss and damage to the State and it would be impracticable and extremely difficult to fix the actual damage sustained by the State. Therefore, if there is late or improper completion of the Contract Activities the State is entitled to collect liquidated damages in the amount of \$5,000 and an additional \$100 per day for each day Contractor fails to remedy the late or improper completion of the Work.

SCHEDULE B - PRICING

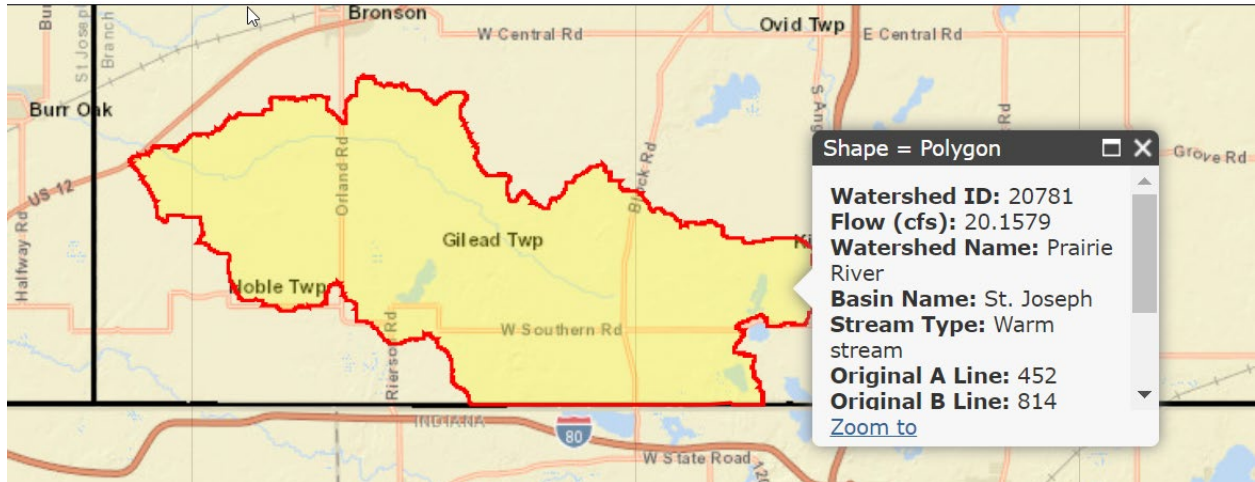
1. Price proposals must include all costs, including but not limited to, any one-time or set-up charges, fees, and potential costs that Contractor may charge the State (e.g., shipping and handling, per piece pricing, and palletizing).
2. The Contractor is encouraged to offer quick payment terms. The number of days must not include processing time for payment to be received by the Contractor's financial institution.

Quick payment terms: 0.5% discount off invoice if paid within 8 days after receipt of invoice.

Deliverable	Price	Quantity	Total Cost
Data Sheet Development (Task 1)	\$680.00	1	\$680.00
Deploy and Retrieve 11 Data Loggers Annually (Tasks 2a-2i)	\$9,958.33	3	\$29,875.00
Annual Report (Tasks 4a-4c)	\$3,560.00	3	\$10,680.00
Annual Data Files (Tasks 3a-3c)	\$1,755.00	3	\$5,265.00
Kick-off + Annual Meeting (Tasks 5a-5d)	\$1,912.50	4	\$7,650.00
Final Report (Tasks 6a-6b)	\$15,025.00	1	\$15,025.00
Estimated Total Contract Value			\$69,175.00

EXHIBIT A

Map 1 – Screen shot of the Prairie River WMA 20181 in the Water Withdrawal Assessment Tool.



Map 2 – Location of proposed temperature logger locations identifying potential stream and road crossings.

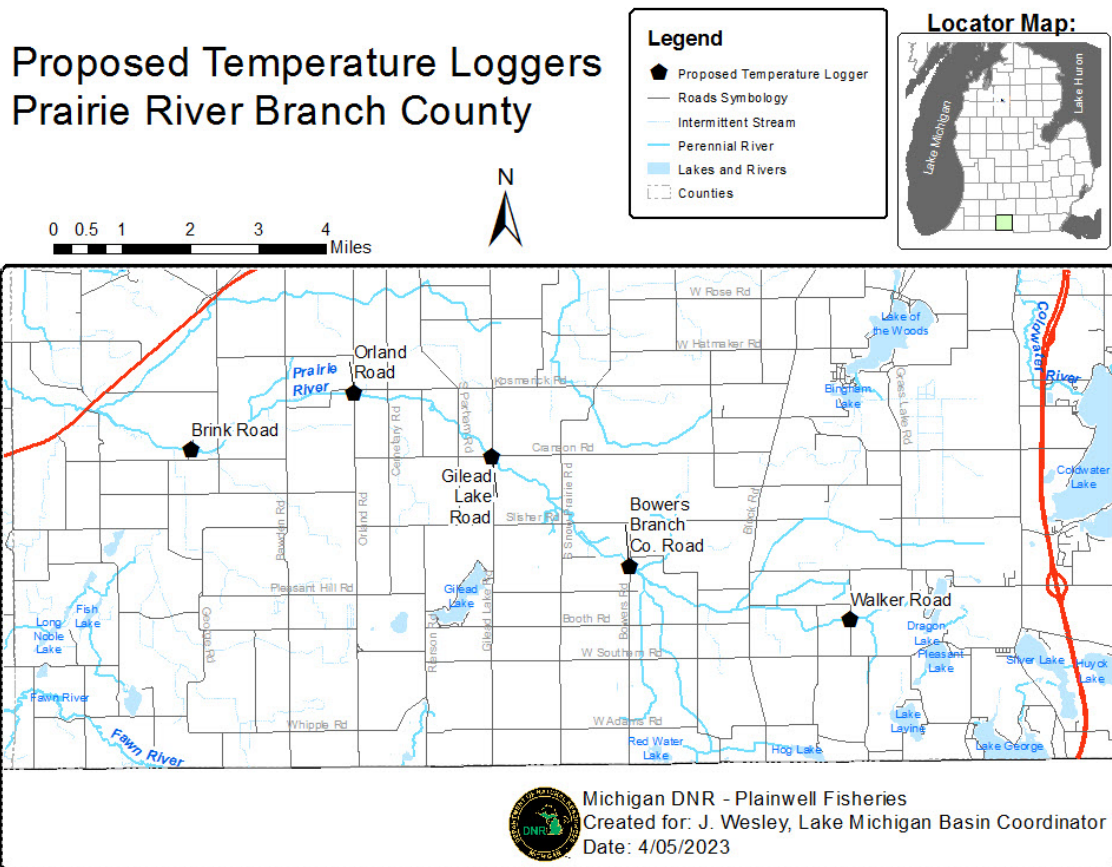



EXHIBIT B

See Policy Below

Fisheries Division  Policy & Procedure	Program Field Operation	Date Drafted: 08/10/2021
	Chapter 02 Resources Management	
	Responsible Program Field Operations	

Title Stream Thermal Reclassification Policy and Procedure	Number 02.02.028
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REFERENCES

Dunham, J., G. Chandler, R., B. Rieman, and D. Martin. 2005. Measuring stream temperatures with digital data loggers: a user’s guide. Gen.Tech. Rep. RMRS-GTR-150WWW. Fort Collins, CO: U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station.

Maryland Department of Natural Resources. 2016. Quality Assurance Document for Temperature Monitoring. Version 1.5. Available: http://dnr.maryland.gov/streams/Publications/QA_TemperatureMonitoring.pdf. (August 2021)

Schneider, J. C., G. R. Alexander and J. W. Merna. 2000. Modules for Lake and Stream Surveys. Chapter 2 in Schneider, James C. (ed.) 2000. Manual of fisheries survey methods II: with periodic updates. Michigan Department of Natural Resources, Fisheries Special Report 25, Ann Arbor.

USEPA (U.S. Environmental Protection Agency). 2014. Best Practices for Continuous Monitoring of Temperature and Flow in Wadeable Streams. Global Change Research Program, National Center for Environmental Assessment, Washington DC; EPA/600/R-13/170F.

Wilde, F. D. 2006. Temperature (ver. 2.0): U.S. Geological Survey Techniques of Water-Resources Investigations, book 9, chap. A6., sec. 6.1. <https://doi.org/10.3133/twri09A6.1> (August 2021)

Wills, T. C., T. G. Zorn, and A. J. Nuhfer. 2006. Stream Status and Trends Program sampling protocols. Chapter 26 in Schnedier, James C. (ed.) 2000. Manual of fisheries survey methods II: with periodic updates. Michigan Department of Natural Resources, Fisheries Special Report 25, Ann Arbor.

POLICY

Fisheries Division staff shall follow a defined procedure when collecting stream water temperature data for the purpose of stream thermal classification or reclassification, including monitoring for a minimum of 3 consecutive years. Fisheries Division temperature monitoring efforts will follow the measures outlined in this document to ensure the accuracy of stream temperature data including: calibration checks, deployment protocols, QA/QC procedures, and data storage. The resulting information on stream temperature will be used to inform evaluations of proposed redesignation of stream or river thermal classifications (cold, cold-transitional, cool, or warm) as defined in Part 327, Great Lakes Preservation, Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA). This procedure will be shared with entities outside of Fisheries Division who intend to collect stream temperature data for use in the review of existing stream thermal classifications.

EXPLANATION

Stream water temperature is an important variable in predicting fish community composition, system metabolism, and energy use. Water temperature also influences the availability of suitable fisheries habitat during extreme hot and cold periods of the year (Schneider et al. 2000). Continuous monitoring is required to understand how water temperature changes over time in particular stream reaches, especially during extreme weather conditions.

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Stream water temperature is routinely measured by Fisheries Division staff as part of the Stream Status and Trends Program protocols (Wills et al. 2006) and during discretionary surveys. This information helps inform fisheries management decisions on matters such as stocking, harvest regulations, and where additional data collection is needed.

Information on stream water temperature is also used, along with information on fish community, to designate a given stream as cold, cold-transitional, cool, or warm. These classifications, in turn, inform which stream segments will be affected by proposed water withdrawals authorized under Part 327, Great Lakes Preservation, Natural Resources and Environmental Protection Act. Information collected using this procedure can be imported into the StreamCheck tool (see Fisheries Division Stream Classification and Redesignation Policy & Procedure for details) to evaluate whether redesignation of current stream classification is necessary on a case-by-case basis. Through the use of StreamCheck, Fisheries Division may recommend redesignation of a stream's thermal classification to the Director of the Department of Natural Resources. Redesignation could be either to a less restrictive category, which would allow additional allocation of water where it is unlikely to lead to adverse resource effects, or to a more restrictive category if evidence suggests a stream is cooler than predicted. The StreamCheck tool and procedure provides a defensible methodology for stream thermal classification or redesignation.

PROCEDURE

Fisheries Division will follow procedures largely based on existing continuous stream temperature monitoring protocols, including those of the U.S. Forest Service (Dunham et al. 2005), U.S. Geological Survey (Wilde 2006), and U.S. Environmental Protection Agency (USEPA 2014). Fisheries Division shall monitor sites for a minimum of 3 consecutive years when measuring stream temperature for the purpose of stream thermal classification or redesignation of stream thermal classification.

Prior to Deployment:

Accuracy of field thermometers or temperature loggers must be tested prior to field-use following procedures used by the U.S. Geological Survey and described in Chapter 6 Section 1 of the National Field Manual for Collection of Water-Quality Data (Wilde 2006). The "ice bucket" method is a simple, effective, and commonly accepted practice for determining whether temperature loggers are accurately recording water temperature, and involves placing loggers in an ice bath and checking readings against the readings from a National Institute of Standards and Technology (NIST) certified thermometer. Temperature loggers must read within $\pm 0.2^{\circ}\text{C}$ of the calibration thermometer (or $\pm 0.5^{\circ}\text{C}$ for liquid filled thermometers) to be considered accurate. For each logger, calibration check results should be recorded and maintained for the useful life of the logger.

Calibration instructions specific to the individual temperature logger must also be followed, and this is especially important for multi-probe instruments as accurate measurement of temperature is critical for the successful calibration of other parameters such as DO, pH, and specific conductance.

Deployment:

Ideally, at least one air and water temperature logger will be placed at each location to allow for adequate quality control. Air temperature loggers not only help determine if water temperature loggers are dewatered, but also provide information on the relationship between air and water temperature, including vulnerabilities of streams to thermal change. If resources do not allow for air temperature loggers, information on air temperature daily summaries for air temperature and precipitation may be obtained from the National Oceanic and Atmospheric Administration (NOAA) National Centers for Environmental Information (<https://www.ncdc.noaa.gov/cdo-web/datatools/findstation>). Air temperature data should also be recorded or obtained for 3 consecutive years, and match the time period during which water temperature loggers were placed. Maryland Department of Natural Resources (2016) recommends deploying air temperature loggers in a structure adjacent to the stream that provides shade and protection to the logger (e.g., north side of

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a tree or shrub). Air temperature loggers should not be placed where there is direct exposure to sunlight.

The deployment interval and monitoring frequency for all stream water temperature measurements conducted for thermal reclassification shall include a minimum of 3 years of continuous hourly temperature measurements. Fisheries Division's Stream Status and Trends Program TEMPERATURE LOGGER DEPLOYMENT form shall be used to track the deployment and recovery of temperature loggers (Wills et al. 2006).

The U.S. Environmental Protection Agency (USEPA 2014) recommends that water temperature loggers be deployed in locations with as many of the following prioritized characteristics as possible:

- Representative of the characteristics of the reach from which the biological data were collected (e.g., not downstream of warm or cold water sources)
- Well-mixed horizontally and vertically (e.g., in a run at a depth two-thirds of the distance from the water surface to the stream bottom)
- Of sufficient depth to keep the sensor submerged year-round
- Stable, accessible, and easy to relocate
- Protected from physical impacts associated with high flow events (e.g., the downstream side of a large landmark rock or log)
- Low human activity to reduce vandalism and accidental snagging

The U.S. Environmental Protection Agency (USEPA 2014) does not recommend deploying water temperature loggers in locations that have the following characteristics:

- Are areas of high use, visibility, or fishing access
- Have heavy beaver activity
- Have backwater pools, eddies, or standing water that might stratify during low flow conditions.
- Are influenced by localized warm or cool water sources, such as:
 - o a tributary confluence
 - o an impoundment (including beaver ponds)
 - o a lake outlet
 - o point-source discharges
 - o streamside wetland areas
 - o hot springs
 - o groundwater seeps

Inspection and Retrieval:

Logger inspection, calibration checks, and data download should happen as frequently as feasible, as recommended in equipment instructions, and at a minimum once per year. In addition to checking accuracy prior to deployment, temperature loggers should be checked annually during the 3-year period and at the time of retrieval using a calibrated independent temperature logger or thermometer. Temperature loggers with readings outside of the allowed tolerance described in Wilde (2006) should be replaced. Data downloads should be noted in the TEMPERATURE LOGGER DEPLOYMENT form found in Wills et al. (2006), along with the results of periodic calibration checks.

At time of retrieval, a post-deployment calibration check should be conducted. Water temperature should be recorded upon retrieval to compare to logger data. As with deployment, calibration check results should be recorded and maintained for the useful life of each logger.


Quality Assurance/Quality Control:

After retrieval, if data have not been downloaded on-site, loggers should be returned to the appropriate office and data should be downloaded to spreadsheet files. These files should be documented and stored to facilitate later use and sharing with appropriate databases, taking all steps

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to preserve metadata and maintain data integrity. Following data download, unit calibrations should be checked to note any differences in the pre- and post-calibration factors. Loggers should then be either prepped for storage or redeployed.

Data must be visually checked for errors caused by dewatering during low flow conditions, movement during high flow conditions, sediment burial, vandalism, or equipment malfunction. Water temperature data must be graphically checked against air temperature. If air and water temperatures appear to be nearly identical, this indicates that the water temperature logger was dewatered. If the graph shows daily fluctuations with flat tops, the logger might have been buried in sediment. If discrepancies occur, use the graph to specify the time and duration of errors in the raw data files. All data should be retained by the appropriate Fisheries Division office and catalogued for future use after each continuous monitoring period. In addition, data should be shared with EGLE who may enter data into EPA's Water Quality Exchange/STORET database or elsewhere. Only temperature data that pass the visual check will be used; all other questionable data records will be removed from further analysis. In cases where large quantities of data are discarded, the logger calibration status shall be reviewed.



James Dexter, Chief

_9/07/2021

Date

EXHIBIT C

ATTACHMENT 1, Table 1. Project Staff Time Commitments by Task and Associated Budget with Materials and Instrument Fees.

Project Task Description	Staff Time												Direct Costs for Instrument Installation Materials	K&A Equipment Fees	Staff Total (\$)	Task Subtotals (\$)
	Mark Kieser		John Jacobson		Mike Foster		John Hart		N. Howard/K. McGee		Zach Ostoin					
	Senior Scientist	Senior Engineer, P.E.	Environmental Engineer	Watershed Scientist	Project Scientists	Field Technician										
Hours	(\$220/hr)	Hours	(\$175/hr)	Hours	(\$130/hr)	Hours	(\$105/hr)	Hours	(\$80/hr)	Hours	(\$65/hr)					
1. Data Sheet Development	0.0	0	0.0	0	2.0	260	4.0	420	0.0	0	0.0	0			680	680
2a. 2023 Sensor Calibration, Deployment & One-time Equipment Housing Installation	4.0	880	2.0	350	12.0	1,560	12.0	1,260	24.0	1,920	16.0	1,040	2,250	655	7,010	9,915
2b. 2023 Mid-Season Sensor Check & Data Download	0.0	0	0.0	0	1.0	130	2.0	210	8.0	640	8.0	520			1,500	1,500
2c. 2023 Sensor Recovery, Calibration, and Data Download	2.0	440	0.0	0	8.0	1,040	8.0	840	10.0	800	8.0	520			3,640	3,640
2d. 2024 Sensor Calibration & Deployment	1.0	220	0.0	0	2.0	260	4.0	420	12.0	960	8.0	520	250	655	2,380	3,285
2e. 2024 Mid-Season Sensor Check & Data Download	0.0	0	0.0	0	1.0	130	2.0	210	6.0	480	6.0	390			1,210	1,210
2f. 2024 Sensor Recovery, Calibration, and Data Download	1.0	220	0.0	0	4.0	520	4.0	420	10.0	800	8.0	520			2,480	2,480
2g. 2025 Sensor Calibration & Deployment	0.0	0	0.0	0	2.0	260	4.0	420	10.0	800	8.0	520	250	655	2,000	2,905
2h. 2025 Mid-Season Sensor Check & Data Download	0.0	0	0.0	0	1.0	130	2.0	210	6.0	480	6.0	390			1,210	1,210
2i. 2025 Sensor Recovery, Calibration, Data Download, & Site Equipment Removal	2.0	440	0.0	0	4.0	520	8.0	840	16.0	1,280	10.0	650			3,730	3,730
3a. 2023 Data Compilation & QA/QC	0.0	0	1.0	175	4.0	520	4.0	420	8.0	640	0.0	0			1,755	1,755
3b. 2024 Data Compilation & QA/QC	0.0	0	1.0	175	4.0	520	4.0	420	8.0	640	0.0	0			1,755	1,755
3c. 2025 Data Compilation & QA/QC	0.0	0	1.0	175	4.0	520	4.0	420	8.0	640	0.0	0			1,755	1,755
4a. 2023 Data Analysis & Annual Report	3.0	660	0.0	0	6.0	780	8.0	840	16.0	1,280	0.0	0			3,560	3,560
4b. 2024 Data Analysis & Annual Report	3.0	660	0.0	0	6.0	780	8.0	840	16.0	1,280	0.0	0			3,560	3,560
4c. 2025 Data Analysis & Annual Report	3.0	660	0.0	0	6.0	780	8.0	840	16.0	1,280	0.0	0			3,560	3,560
5a. 2023 Kickoff Meeting	4.0	880	0.0	0	8.0	1,040	8.0	840	0.0	0	0.0	0			2,760	2,760
5b. 2023 Annual Meeting	1.0	220	0.0	0	6.0	780	6.0	630	0.0	0	0.0	0			1,630	1,630
5c. 2024 Annual Meeting	1.0	220	0.0	0	6.0	780	6.0	630	0.0	0	0.0	0			1,630	1,630
5d. 2025 Annual Meeting	1.0	220	0.0	0	6.0	780	6.0	630	0.0	0	0.0	0			1,630	1,630
6a. Full Project Data Analysis	2.0	440	1.0	175	16.0	2,080	24.0	2,520	24.0	1,920	0.0	0			7,135	7,135
6b. Final Report	6.0	1,320	2.0	350	12.0	1,560	20.0	2,100	32.0	2,560	0.0	0			7,890	7,890
<i>Subtotals</i>	34.0	7,480	8.0	1,400	121.0	15,730	156.0	16,380	230.0	18,400	78.0	5,070	2,750	1,965	64,460	69,175
															TOTAL	69,175

ATTACHMENT 1, Table 2. K&A Equipment Fees, Initial Installation Material Costs, and Annual Misc. Hardware Costs.

Monitoring Equipment	Number of Units	Annual Fees/ Instrument (\$)	Direct Costs (\$)	Line Item Costs (\$)
HOBO Water Temperature Pro 2 Data Logger	6	80	--	1,440
HOBO 64K Pendant Temperature/Alarm Data Logger	5	35	--	525
Stilling well hardware for instream placement (one-time)	--	--	1,500	1,500
Air Temp Solar Shields and mounting hardware (one-time)	--	--	750	750
Misc. Hardware Needs (5 sites x 2 years)	--	--	500	500
			TOTAL	4,715

ATTACHMENT 1, Table 3. Project Task/Deliverable Milestone Schedule.

Task Description	2023					2024					2025					2026			
	May	Aug	Oct	Nov	Dec	Jan	May	Aug	Oct	Nov	Dec	Jan	May	Aug	Oct	Nov	Dec	Jan	Feb
1. Data Sheet Development																			
2a. 2023 Sensor Calibration, Deployment & One-time Equipment Housing Installation																			
2b. 2023 Mid-Season Sensor Check & Data Download																			
2c. 2023 Sensor Recovery, Calibration, and Data Download																			
2d. 2024 Sensor Calibration & Deployment																			
2e. 2024 Mid-Season Sensor Check & Data Download																			
2f. 2024 Sensor Recovery, Calibration, and Data Download																			
2g. 2025 Sensor Calibration & Deployment																			
2h. 2025 Mid-Season Sensor Check & Data Download																			
2i. 2025 Sensor Recovery, Calibration, Data Download, & Site Equipment Removal																			
3a. 2023 Data Compilation & QA/QC																			
3b. 2024 Data Compilation & QA/QC																			
3c. 2025 Data Compilation & QA/QC																			
4a. 2023 Data Analysis & Annual Report																			
4b. 2024 Data Analysis & Annual Report																			
4c. 2025 Data Analysis & Annual Report																			
5a. 2023 Kickoff Meeting																			
5b. 2023 Annual Meeting																			
5c. 2024 Annual Meeting																			
5d. 2025 Annual Meeting																			
6a. Full Project Data Analysis																			
6b. Final Report																			