



AGREEMENT TO PROVIDE SERVICES

By and Between

BEAR LAKE LAKE BOARD

Muskegon County, MI

(BLLB)

Attention: Darrell Van Fossan
Telephone: 616-901-0449
E-mail: darrell.vanfossan.bllb@gmail.com

And

GRAND VALLEY STATE UNIVERSITY

Annis Water Resources Institute
One Campus Drive
Allendale MI 49401

(UNIVERSITY)

Attention: Robert Smart
Telephone: 616-331-6840
E-mail: smartr@gvsu.edu

BLLB wishes to retain UNIVERSITY to perform certain services ("**Services**") in conjunction with the UNIVERSITY Project, "Bear Lake Improvement Project: 2022" as described in the statement of work, attached hereto as **Exhibit A** ("**Statement of Work**"). UNIVERSITY represents that it has sufficient training, expertise, and time to provide the Services and is willing to provide such Services as an independent contractor in accordance with the terms and conditions set forth in this agreement ("**Agreement**"). For the purposes of this Agreement, BLLB and UNIVERSITY may be referred to collectively as the "**Parties**," or each a "**Party**."

The Parties agree as follows:

1. **Scope of Services.** UNIVERSITY shall perform the Services set forth in the Statement of Work (SOW) in Exhibit A of this Agreement, which is attached hereto and incorporated herein by reference.

2. **Payment.** Payment for work under this Agreement will be initiated upon submission of a request for payment to the BLLB Notice Contact. Payments will be made according to the Fixed Price Fee Schedule set out in the Statement of Work at Exhibit A, below. By signing this Agreement, and by

submitting a request for payment to BLLB, UNIVERSITY certifies that: (i) the amount for which payment is requested is correct, just, and proper; (ii) the amount claimed is legally due to UNIVERSITY; (iii) no part of the amount for which payment is requested has been paid; (iv) the request for payment is only for performance in accordance with the terms and conditions of this Agreement; (v) the request for payment is made in good faith; and (vi) the documentation supporting this request for payment is accurate and complete to the best of UNIVERSITY's knowledge and belief.

3. **Reports.** Reports will be the property of BLLB.

4. **Works Made for Hire.** The Parties specifically acknowledge and agree that the Services, the Reports, and any other results of the Services are considered "works for hire," as that term is defined in the Copyright Law of the United States of America.

5. **Independent Contractors.** BLLB and UNIVERSITY are independent contractors, neither has the right or authority to bind the other in any way, and no personnel, employees, agents, or representatives of any party shall be deemed to be employees of the other.

6. **Representations.** Each Party represents and warrants to the other that: (a) it has the legal right and power to enter into this Agreement and to perform its obligations hereunder; (b) the performance of its obligations under this Agreement will not conflict with its charter documents or any agreements, contracts, or other arrangements to which it is a party; (c) it is organized, validly existing, and in good standing under the laws of the applicable jurisdiction and has taken all necessary action to authorize the execution, delivery, and performance of this Agreement; and (d) upon execution and delivery of this Agreement, this Agreement shall constitute a valid and binding obligation of such Party, enforceable in accordance with its terms. UNIVERSITY represents that it will comply with all laws, rules, and regulations applicable to the jurisdiction where the Reports are used, including without limitation any export and import laws.

7. **Other Research and Services.** BLLB further acknowledges that UNIVERSITY has in the past performed

and will in the future perform research and services for BLLB or for third parties and that, subject to the provisions of Section 7, nothing in this Agreement shall limit the right of UNIVERSITY to conduct any research or to provide services of any type to any other party.

8. **Assumption of Risk.** UNIVERSITY hereby assumes any and all risk associated with (i) any documentation, records, or other materials provided by UNIVERSITY to BLLB to facilitate the performance of the Services under this Agreement ("**Research Materials**"); (ii) BLLB's use of Research Materials in the performance of Services; and (iii) use of the Reports by BLLB or any third parties.

9. **Limitation of Liability.** UNIVERSITY's total liability under this Agreement is limited to the total amounts to be paid to UNIVERSITY by BLLB in accordance with the Statement of Work.

10. **Term.** This Agreement shall be effective on 5/1/2022, and shall terminate on 1/31/2023, unless sooner terminated as provided in Section 13 or extended by written agreement of the Parties.

11. **Termination.** This Agreement may be terminated, in whole or in part, for any reason or for no reason, by either Party at any time upon fifteen (15) days' notice to the other Party. Additionally, BLLB may terminate this Agreement in accordance with Section 18. Upon termination by either Party, BLLB will compensate UNIVERSITY for (a) all work completed or in progress as of the date of termination, and (b) any obligations incurred by UNIVERSITY as of the date of termination that cannot be revoked or cancelled as of that date.

12. **Survival.** The respective obligations of the Parties set forth in this Agreement that by their nature would continue beyond the termination of this Agreement, including but not limited to obligations concerning payment obligations, title to equipment, confidentiality, use of either Party's name, compliance with laws, and governing law, shall survive the termination of this Agreement.

13. **Dispute Resolution.** If there is a disagreement between the Parties relating to the terms of this Agreement that is not resolved in the normal course of business, either Party may give the other Party written notice of such dispute. Within twenty (20) days after delivery of such notice and thereafter as necessary, the Parties' agents shall meet or conference to exchange relevant information and attempt in good faith to resolve such dispute. If any such dispute cannot be resolved thereby, the Parties shall, before formal legal proceedings are instituted, undertake nonbinding, voluntary, facilitative mediation under the jurisdiction of the United States District Court for the Western District of Michigan, before a mediator agreed upon by the Parties, to attempt in good faith to resolve the dispute, and such mediation shall be conducted at a mutually convenient site agreed upon by the Parties. The Parties agree that any dispute failing resolution in accordance with the foregoing provisions shall be brought before any court of competent jurisdiction of the State of Michigan or, if the dispute includes issues reserved to the exclusive jurisdiction of the federal district courts, before the United States District Court for the Western District of Michigan, and the Parties irrevocably agree to submit to the jurisdiction of either such court.

14. **Force Majeure.** Neither Party shall be liable for any loss or damage suffered or incurred by the other Party that arises from delay in the performance of, restriction of the Party's ability to perform, or failure to perform the Party's obligations under this Agreement to the extent that and for so long as the delay, restriction, or failure results from any circumstance or occurrence that is beyond the reasonable control of that Party, including but not limited to acts of nature, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, strike, lock-out or other form of industrial action other than an action relating solely to that Party's own workforce (a "**Force Majeure Event**"); provided the Force Majeure Event arises without the fault or negligence of that Party. If a Force Majeure Event affects either Party (the Party experiencing the Force Majeure Event, the "**Affected Party**"), the Affected Party shall promptly notify the other Party of the nature and extent of the Force Majeure Event. The obligations of the Affected Party shall be postponed only for so long as and to the extent necessitated by the Force Majeure Event; provided that if any Force Majeure Event continues for a period exceeding three (3) months, the other Party shall have the right to terminate this Agreement immediately upon written notice to the Affected Party. The Affected Party will use its commercially reasonable best efforts to avoid, remove, or lessen the effects of any Force Majeure Event on its obligations under this Agreement and to resume performance of its obligations under this Agreement as soon as possible. Nothing in this agreement will suspend or modify the obligation of either party to pay any money under this Agreement.

15. **Use of Party's Name.** Neither Party will use the name, symbols, marks, or logotypes of the other Party in any publicity,

advertising, website, or news release without the prior written consent of the other. This restriction shall not apply to materials used solely for financing purposes, to publicly-available documents identifying the existence of this Agreement, or to regulatory filings required of either Party.

16. Modification; Severability; No Waiver. No amendment or modification of any terms, provisions or conditions of this Agreement shall be binding or enforceable unless in writing and signed by both of the Parties. If any provision of this Agreement shall be rendered or deemed unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent necessary to permit its enforcement in a manner most closely approximating the intention of the Parties as expressed herein. If the unenforceable provision is determined by either BLLB or UNIVERSITY to be material to this Agreement and cannot be adequately modified to BLLB's or UNIVERSITY's satisfaction, BLLB or UNIVERSITY may terminate this Agreement immediately upon written notice to the other party. No waiver by either Party of any right or remedy under this Agreement, or delay in the exercise of any such right or remedy, will constitute a waiver of any other right or remedy.

17. Assignment. Neither Party may assign or delegate this Agreement or any of its duties or rights hereunder, whether voluntarily or by operation of law, without the prior written consent of the other Party. If either Party attempts to assign or delegate its duties or rights hereunder, the attempted assignment or delegation will be void and deemed to be a material breach of this Agreement.

18. Notices. Any notice, request, approval, consent, authorization, or other communication required or permitted under this Agreement will be in writing and will be considered to have been given if either (a) delivered and receipted by express courier service, charges prepaid, or (b) sent by electronic mail, provided that there is evidence and confirmation of delivery and receipt. Any such communications shall be sent to the appropriate Party at the address indicated above.

19. Entire Agreement. This Agreement is the entire agreement between the Parties regarding the subject matter hereof. No verbal agreement or representation between the Parties either before, during, or after the execution of this Agreement, shall affect or modify any of the terms or obligations herein. If any term or condition of the Statement of Work, or any other work or purchase order that purports to relate to this Agreement, is inconsistent with this Agreement, this Agreement shall supersede such term or condition.

20. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Michigan and without the application of choice of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. BLLB and UNIVERSITY irrevocably agree and consent to the exclusive jurisdiction of state and federal courts located in the State of Michigan for the resolution of claims, disputes, and controversies under this Agreement.

21. Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, which may be executed separately or simultaneously and each of which shall be

deemed to be the original but all of which together shall constitute one and the same agreement. Electronic signatures and electronically transmitted documents are binding.

22. Other Assurances.

Non-Discrimination. The UNIVERSITY and BLLB shall comply with the Elliott Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2101 *et seq.*, the Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 *et seq.*, and all other federal, state, and local fair employment practices and equal opportunity laws and covenants that it shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to his or her hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to

employment, because of his or her race, religion, color, national origin, age, sex, height, weight, marital status, or physical or mental disability that is unrelated to the individual's ability to perform the duties of a particular job or position. A breach of this covenant not to discriminate in employment is a material breach of this Agreement.

Unfair Labor Practices. The UNIVERSITY shall comply with the Employers Engaging in Unfair Labor Practices Act, 1980 PA 278, as amended, MCL 423.321 *et seq.*

Iran Sanctions Act. By signing this Agreement the UNIVERSITY is certifying that it is not an Iran-linked business, and that its contractors are not Iran linked businesses, as defined in MCL 129.312.

The undersigned represent that they are duly authorized to execute this Agreement.

GRAND VALLEY STATE UNIVERSITY

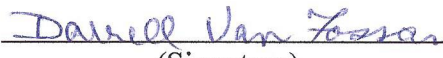
By: 
(Signature)

ROBERT SMART

Its: VPRA

Date: 4/27/22

BEAR LAKE LAKE BOARD

By: 
(Signature)

DARRELL VAN FOSSAN

Its: CHAIRMAN

Date: 4/21/2022

EXHIBIT A

Scope of Services

Bear Lake Improvement Project: 2022

Annis Water Resources Institute (AWRI) – GVSU

AWRI will provide the following services related to monitoring Bear Lake during the 2022 sampling season:

A. Monitoring

The following parameters will be sampled on a monthly basis from May through October at 4 sites and at 2 depths (0.5 m below water surface and 0.5 m above sediment):

- Temperature, DO, turbidity, conductivity, and pH using a YSI Sonde
- Chlorophyll *a* via spectrophotometry
- TP (total phosphorus), SRP (soluble reactive phosphorus), NH₃ (ammonia), NO₃ (nitrate), and TKN (total Kjeldahl nitrogen) using Standard Methods
- Total fecal coliform via Colilert methodology
- Microcystin concentration using ELISA
- Phytoplankton community structure to finest possible taxonomic level (collection via Van Dorn bottles; analysis via light microscopy)

B. Reporting

A final report will be provided to the Bear Lake – Lake Board by 31 January 2023 (assuming sampling is completed in October 2022). The report will summarize the data and results, identify possible threats to Bear Lake, and offer recommendations.

If desired, a presentation will be given to the Lake Board on our findings and results.

C. Compensation

Total compensation for task elements listed above is \$18,238 to be billed on a quarterly basis.

Payment Schedule

BLLB shall pay the UNIVERSITY for basic services rendered under this Agreement on a fee-for-service basis according to the following schedule:

June 30
September 30
December 31
March 31