

SPECIFICATIONS
FOR
OAKLAND COUNTY WATER RESOURCES COMMISSIONER
VILLAGE OF LAKE ORION
PHASE 1
PUMP STATION IMPROVEMENTS
VILLAGE OF LAKE ORION, MI

ISSUED FOR BIDS
JUNE 20, 2024



HRC JOB NO. 20200802



555 Hulet Drive • P.O. Box 824
Bloomfield Hills, Michigan 48303-0824

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**VILLAGE OF LAKE ORION PHASE 1 PUMP STATION IMPROVEMENTS
OAKLAND COUNTY, MICHIGAN**

Proposals will be received virtually by the Office of the Oakland County Water Resources Commissioner, ("Owner") via www.bidnetdirect.com on Tuesday, July 30, 2024 at 2:00 pm, local time for the construction of certain facilities and structures, including the following approximate primary items and quantities:

Rehabilitation of four (4) sanitary pump stations with equipment and capacity as shown on the Drawings and in the Specifications. Work includes but is not limited to demolition of the existing equipment within two (2) ejector stations and two (2) centrifugal stations, and all other equipment shown on the demolition drawings, installation of new pumping equipment, air compressors, air storage tanks, motors, air manifolds, valves, piping, pipe fittings, ventilation blowers, level transducers, electrical panels and wiring/conduit, control panels mounted on a new equipment rack with concrete foundation, new DTE electric meters, generator transfer receptacles, power distribution cabinets, manual transfer switches, and main service disconnect switches, new sump pumps, piping & valves, new lighting, new epoxy floor coating, new buried bypass pump connections and valves, and the installation of new low pressure force main by horizontal directional drilling methods across the lake at two (2) locations.

PROPOSALS TO BE RECEIVED AT THE FOLLOWING DATE AND TIME:

July 30, 2024, at 2:00 PM local time

PROPOSALS TO BE OPENED AT THE FOLLOWING DATE AND TIME:

July 30, 2024, at 2:30 PM local time

Bidders shall review and comply with the Information for Bidders, which is incorporated by reference, and carefully review all Contract Documents, as defined in the Information for Bidders. Bids submitted after the exact time specified for receipt will not be considered.

Starting Thursday, June 20, 2024, Bidding Documents must be obtained online from the Michigan Inter-Governmental Trade Network (MITN) website via BidNet Direct (www.bidnetdirect.com). For questions about MITN, refer to <https://www.oakgov.com/government/purchasing/bidder-registration/bid-solicitation-public-search>

All information regarding the bidding for this project must be obtained on the BidNet Direct/MITN website only.

A pre-bid meeting is scheduled for Tuesday, July 9, 2024, at 1:00 pm, local time at the L0-8, 50 Bellevue Avenue, Lake Orion MI 48362. Parking shall be limited to 1 vehicle per prospective bidder. All Prospective Bidders are strongly encouraged to attend the Pre-Bid Meeting, however, the meeting is not mandatory.

Questions, comments, or concerns of any Bidder regarding bidding or the Contract Documents or the project, **must be submitted through the BidNet Direct/MITN website** no later than 2:00 PM on Tuesday, July 23, 2024. No inquiry received after this deadline will be given consideration.

Addenda issued to Bidders prior to the date of receipt of proposals shall become a part of the Contract Documents and all proposals shall include the work described in each Addenda issued. Addenda will only be made available through the BidNet Direct/MITN website. It is the responsibility of the Prospective Bidder to check this website prior to the bid submission deadline to ensure all addenda issued have been acknowledged.

IMPORTANT: Bids will be received electronically on the BidNet Direct/MITN website on or before the time and date given above. The bid opening will be conducted virtually via Microsoft Teams at the time listed above and meeting information listed below.

Website: <https://teams.microsoft.com/>

Meeting ID: 227 059 555 885

Passcode: 7DYKvE

Phone: 248-333-6396

Phone Conference ID: 473 502 803#

A certified cashier's check or bid bond for a sum not less than five percent (5%) of the amount of the proposal will be required for each proposal. **A pdf version of this Certified Check or Bid Bond must be included with your Electronic Bid Submission Response.** The successful bidder will be required to furnish the original certified bid check, satisfactory performance, labor and material, and maintenance and guarantee bonds in the amount of 100% of the project prior to award.

The Owner reserves the right to accept any proposal, to reject any proposal and to waive irregularities in the proposals.

Jim Nash
Oakland County Water Resources Commissioner

1. SCOPE OF WORK

The work under this Contract shall consist of the items listed in the Proposal, including all incidentals necessary to fully complete the project in accordance with the Contract Documents.

2. RECEIPT AND OPENING OF BID PROPOSALS

- A. Proposals will be received virtually by the Office of the Oakland County Water Resources Commissioner, ("Owner") via www.bidnetdirect.com.
- B. Bids must be submitted only on forms provided by Owner. All blank spaces for bid prices must be filled in, in ink or typewritten, and the bid form must be fully executed when submitted and not modified in any way.
- D. Bids shall be made in full conformity with all the instructions, requirements and conditions set forth in the Information for Bidders and in the Drawings, Specifications and other Contract Documents. Bids are firm, and no bid may be withdrawn for a period of 120 days after opening of bids. Withdraw of the bid will result in the forfeiture of the Bidder's Bid Bond.
- E. **Any bid received after the exact time specified for receipt will not be considered.** This material requirement is not subject to waiver by Owner.

3. ~~ESCROW BID DOCUMENTS~~

~~The three (3) lowest Bidders will be required to place their Bid Documents in escrow within one (1) business day of the Bid opening in accordance with the attached Escrow Bid Documents Provision Specification. In addition, Owner reserves the right to require additional Bidders to place their Bid documents in escrow also, as provided in the attached Escrow Bid Documents Specification. Such additional Bidders will be notified within 24 hours of the Bid. Contractors bidding on this project are required to maintain all bid notes, take offs, and other Bidding Documents required for inclusion in the Escrow Bid Documents. Failure to submit the Escrow Bid Documents as required may result in a rejection of the Bid.~~

4. DEFINITIONS

Certain terms used in the Contract Documents shall have the meanings indicated in the General Conditions and Supplementary Conditions which are part of the Contract Documents.

5. INSPECTION OF SITE, INSPECTION OF CONTRACT DOCUMENTS, PLANNING AND ANALYSIS

- A. Before submitting a proposal, each Bidder is responsible for inspecting the site of the proposed work, and the surrounding premises, to arrive at a clear understanding of the conditions under which the work is to be performed.
- B. Before delivery of its proposal, each Bidder is held to have compared the conditions of the site where work is to be performed with the Contract Documents and to have satisfied itself as to the conditions of the site and surrounding premises, including any obstructions, all excavating, filling in, and quantities, and any other conditions affecting

- the carrying out of the work, including the weather conditions of the project area. Each Bidder must obtain first-hand information concerning the available facilities for receiving, transporting, handling and storing construction equipment and materials and concerning other local conditions that may affect its work. Each Bidder must acquaint itself with the character and extent of the operations of the Owner and any other contractors in the area of the work, so that the Bidder can plan its work accordingly.
- C. Bidders must estimate the quantity of materials, labor and equipment required for the work by examination of the site and a review of the Contract Documents including Addenda, and by carefully considering all other relevant factors. Bidder warrants that by submitting its Bid, it had no misunderstanding concerning the quantities or nature of the work to be performed, and the Bidder will assert no such claim asserting such a misunderstanding.
 - D. No allowances or extra payment will be made to Contractor because of costs or expenses occasioned by Contractor's failure to comply with the provisions of this section, or by reason of error or oversight on the part of the Bidder, or on account of interference by the activities of the Owner or any other contractor where those activities are apparent, or are made known to the Bidders during the bidding process.
 - E. For bidding purposes, the Bidder is responsible for evaluating the compatibility of proposed construction methods with the Contract Documents, and soil and site information. Bidders must carefully study and compare all portions of the Contract Documents and must notify the Engineer, in writing, prior to the deadline for pre-bid questions, of any concerns, questions, apparent ambiguities, conflicts, incompatibilities, apparent errors, or other discrepancies evident in the Contract Documents.
 - F. The successful Bidder must complete the work under whatever conditions it may create by its own actions or inactions, sequence of construction, construction means and methods, or other conditions it may create or cause to be created at no additional cost to Owner.

6. UNDERGROUND CONDITIONS

- A. The Engineer historical geotechnical data which are available to the Contractor.
- B. Bidders only may rely on technical data contained in such reports except where indicated otherwise in the Contract Documents. Evaluations, analyses, recommendations, or conclusions contained in such reports shall not be relied upon in formulating any Bid for the work. This data is offered to the Bidders as information about underground and site conditions only at the locations at which any soil borings, sampling, or other data collection were made. The Owner does not represent or warrant that the underground conditions encountered at or near the site during construction will generally or specifically conform to underground conditions described in the data in these borings or any accompanying descriptive report.
- C. Each Bidder and the Contractor awarded the project shall draw their own conclusions as to site, underground or soil conditions from their own experience, independent knowledge and investigation of the site, and they should each secure such other and additional information and data as they consider necessary or desirable to check and

supplement the provided underground data for specific locations. The Contractor is required to complete the work under any job or field condition which was present and/or ascertainable prior to Bidding.

- D. All Bidders that seek to conduct any additional underground or site exploration or testing must do so at their own expense as necessary. Such Bidders must contact the Owner and obtain its written permission before proceeding.
- E. Any additional exploration conducted by Bidders must be performed in a manner which precludes unnecessary disruption of the soils or which impedes construction operations and must be performed in compliance with the Mineral Well Act, Act No. 315 of the Public Acts of 1969, as amended, MCL 319.211, et. seq. Any Bidder performing exploration work must restore all areas of exploration to its original condition. By entering the site to conduct such investigation and testing, the Bidder agrees to indemnify, defend and hold harmless all of the persons identified in the indemnity provisions of the General and Supplementary Conditions to the full extent of the indemnity obligation set forth in those Contract Documents.

7. AWARD OF CONTRACT

- A. The Contract, if awarded, will be awarded to the lowest, responsive, and responsible bidder, subject to the final approval by the Oakland County Water Resources Commissioner. The Contract will be awarded subject to receipt of funds to finance the project and acquisition of easements, during which time the proposal guarantees of the lowest three responsive, responsible Bidders will be held.
- B. The party to whom the Contract is awarded will be required to execute the Agreement and obtain the Performance Bond, Labor and Material Bond and Maintenance and Guarantee Bond and shall provide proofs of insurance coverage in accordance with the Contract Documents within ten (10) calendar days of the delivery date of the Notice of Award to the successful Bidder. The necessary Agreement and Bond forms shall accompany the Notice of Award. If the Contractor awarded the project fails to execute the Agreement, submit Performance Bond, Labor and Material Bond and Maintenance and Guarantee Bond and provide proofs of insurance coverage in accordance with the Contract Documents within ten (10) calendar days of the delivery date of the Notice of Award, the Owner may declare the Contractor in default, in which case the Proposal Guarantee accompanying the Proposal will be forfeited to the Owner.

8. INTERPRETATION OF CONTRACT DOCUMENTS

- A. Neither Owner nor the Engineer will give verbal instructions prior to the award of the Contract. Any verbal statements regarding the Contract by any person are not authorized and do not constitute representations, warranties, modifications, agreements, or promises, express or implied, and may not be relied upon by Bidders.
- B. Bidders seeking explanations regarding the project or the Contract Documents must submit written requests to the Engineer, and if explanations are necessary, a reply will be made in the form of an Addendum, a copy of which will be forwarded to all parties that have taken out Contract Documents. The determination of the necessity of explanations will be in the sole discretion of the Engineer and Owner and no obligation to provide a reply or addendum will be implied.

- C. Questions, comments, or concerns of any Bidder regarding bidding or the Contract Documents or the project, must be submitted in writing and in advance of the opening of bids per the time period specified in the Advertisement.
- D. Addenda issued to Bidders prior to the date of receipt of proposals shall become a part of the Contract Documents and all proposals shall include the work described in each and every Addenda issued.

9. NAME AND STATUS OF BIDDER

- A. The name and legal status of the Bidder, that is, as a corporation, limited liability company, partnership, limited partnership or individual, must be stated in the Proposal.
- B. The place of residence of Bidder, or the office address in the case of a firm or company with county and state, must be stated in the Proposal.
- C. Unless the legal status of the Bidder is an Individual, the signature(s) of the signing official(s) must be accompanied by the appropriate Resolution or Certificate Form found at the end of the Proposal, properly executed, authorizing the official(s) to sign both the Proposal Form and the Contract. Failure to submit this form is basis for rejecting the Bid.

10. QUALIFICATION OF BIDDERS AND SUBCONTRACTORS

- A. Except as otherwise reserved herein, Owner will only award the Contract to a responsible Bidder. A finding that the Contractor is not responsible in connection with this project shall not necessarily preclude the Bidder from bidding and performing work on other projects for the Owner.
- B. Factors to be considered in determining whether Owner's standard of responsibility has been met shall include, but not be limited to, whether the Contractor has:
 - 1) The appropriate financial, material, equipment, facilities, and personnel resources and expertise available, or the ability to obtain them, necessary to indicate it is capable of meeting all contractual requirements;
 - 2) A satisfactory record of performance;
 - 3) A satisfactory record of integrity;
 - 4) Qualified legally to contract with Owner and has supplied all necessary information in connection with the inquiry concerning responsibility.
 - 5) If Contractor has been deemed non-responsible in the past, provided a detailed explanation of its remedial actions subsequent to the determination to address any concerns expressed by the authority making the declaration such that the authority would consider awarding a contract to the Contractor, notwithstanding past concerns about Contractor's performance.
- C. The Contractor must supply information requested by Owner concerning the

- responsibility of the Bidder. If the Bidder fails to supply the requested information, the Owner must base the determination of responsibility upon any available information or may find the Bidder non-responsible if such failure is unreasonable. A finding that the Bidder has failed to make a required disclosure or submitted false information may result in immediate disqualification of the Bidder.
- D. Within 10 days after bids are received by the Owner, the Contractor who has submitted the low bid must, upon request of the Owner, complete and submit to the Owner the following:
- 1) MIOSHA Form 300 – “Log of Work-Related Injuries” for the last 3 years.
 - 2) MIOSHA Form 300A - “Summary of Work-Related Injuries & Illnesses” for the last 3 years.
- E. In addition to meeting the criteria set forth in this Article, and the submission of the required information requested herein, the ability of the Contractor and its identified Subcontractors to proficiently handle technical issues, safety, scheduling, and administrative issues as demonstrated by its past performance on projects for the Owner, as well as projects for other public agencies, will be considered in determining whether a Contractor is a responsible contractor for this project. Past performance issues to be considered include, but are not limited to, the following:
- 1) Failure to adhere to and/or comply with Contractor’s obligations in the Contract Documents
 - 2) Failure to follow administrative procedures and provisions in the Contract Documents
 - 3) Submission of false claims or falsely inflated claims
 - 4) Failure to prosecute the work in accordance with the Plans and Specifications included in the Contract Documents
 - 5) Failure to follow bidding instructions.
- F. The Bidder shall promptly submit upon request by the Owner, any additional information necessary to satisfy the Owner that the Bidder is adequately prepared to fulfill the Contract.
- G. The existence of any judgment, citation, default, finding of non-responsibility or other negative information disclosed by Contractor in its Experience and Qualification Statement or independently discovered by Owner, or Contractor’s failure to provide the certifications required by this Article, will be considered, among all other factors, in determining whether a Contractor is a responsible Bidder for this project. As part of its response, Contractor may submit an explanation of the facts giving rise to the judgment, citation, default, or negative finding, or reasons why the required certifications cannot be provided, and ask Owner to deem the Contractor both responsive and responsible notwithstanding such facts or omissions.

- H. The requirements identified above are not an exhaustive or exclusive list of all qualifications required of the Contractor, its Subcontractors, or personnel. The minimum requirements indicated above are in addition to any other requirements contained elsewhere in the Contract Documents and/or typically considered under state or federal procurement law.
- I. Owner may, when circumstances warrant, accept any Bidder as a responsible Bidder despite its failure to meet all of the minimum standards set out herein. To the extent that special circumstances exist which a Bidder believes render the Bidder a qualified and responsible Bidder for this project, despite the failure to meet one or more of the standards for qualification set out herein, the Bidder may submit a notarized sworn statement explaining the special circumstances and requesting consideration of its Bid. Notwithstanding the foregoing, Owner has no obligation to consider such special circumstances, or to disregard the requirements set forth in this Article and elsewhere in the Contract Documents and deem the Bidder responsible.
- J. Bidder must attend a pre-award conference to satisfy the Owner that the Bidder is adequately prepared to fulfill the Contract.
- K. If a Bidder who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility setting forth the basis of the finding will be prepared by the Owner upon request. A copy of the determination will be sent promptly to the non-responsible Bidder. The final determination will be made part of the bid file.
- L. The Contractor must self-perform at least 51% of the construction trade work as determined by dollar value. This does not include General Conditions.

11. CONTRACTOR AND SUBCONTRACTOR INFORMATION AND LISTING

- A. Bidder must provide a completed Experience and Qualification Statement (DC-118) with its bid. Additional qualification information as requested by Owner shall be submitted within 10 days after bids are received by the Owner including but not limited to a completed Experience and Qualification Statement (DC-118) for each and every Subcontractor who will work on the project.
- B. Bidders shall submit with their bid a list by name, trade and scope of work each and every Subcontractor who will perform Work with a value in excess of 10 % of Bid Total.

12. PRELIMINARY SCHEDULE

- A. Each Bidder shall submit with their bid a Preliminary Schedule demonstrating the Bidder's plan to complete the construction work within the time allowed in the Agreement and to achieve the completion of any milestones identified in the Contract Documents. The requirements of the Preliminary Schedule are described in the General Specification.
- B. Failure to provide the requested schedule may result in the Contractor being declared non-responsive.

- C. The Bidder's Preliminary Schedule shall be based on a Notice to Proceed date identified in the Proposal.

13. ADDITIONAL BIDDING INFORMATION

The Advertisement, which precedes the "Information for Bidders" and the Contract Documents as defined in the General Conditions may contain additional bidding information and is considered a part of these instructions.

14. EQUALS AND SUBSTITUTIONS

Anticipated proposed Equals and Substitutions shall not be the basis for any bid pricing. For the purpose of bidding, Bidders shall base their bid on the design and any specified products. Equals or Substitutions may be submitted for consideration after the award of the Contract. Approval of proposed Equals or Substitutions are discretionary, and Contractor waives the right to make a claim on that basis. Bidders shall not assume that any contemplated Equal or Substitutions will be approved. The Contractor will be responsible for Engineer Fees for review, analysis, tests and/or all other costs necessary to review, analyze and/or implement a proposed Substitution regardless of whether the proposal is approved.

15. ~~OWNER CONTROLLED INSURANCE PROGRAM~~

~~Owner may provide an Owner Controlled Insurance Program ("OCIP") for this project. If provided, Bidders, including Subcontractors and vendors, will include the cost of the insurance required by the Contract Documents, including those in the General Conditions and Supplementary Conditions in their Bid Proposal. Eligible Contractors, Subcontractors and vendors are required to enroll in, and be approved for the OCIP program prior to starting work on the project. If approved and enrolled in the OCIP, the insurance costs and mark up on the insurance of the Contractor, Subcontractors and vendors will be deducted from the Contract Price using a deductive change order for the lines of insurance coverage provided in the OCIP. Determination of the lowest Bidder will be made with the cost of insurance included in the Bid, pursuant to the General and Supplementary Conditions of the Contract. The OCIP information is identified in an Appendix to the Contract Documents. Copies of the OCIP Policy documents are attached to the Contract Documents. In submitting a Bid for this project, Bidders, including Subcontractors and vendors, accept the terms of the OCIP and the coverage shown in the attached policy documents. Any other insurance coverages deemed necessary by Bidder shall be obtained by Bidder at Bidder's exclusive cost and expense and no premiums for additional coverage shall be charged to Owner.~~

16. PROPOSAL GUARANTEE (BID BOND)

- A. Each proposal shall be accompanied by a Bid deposit in the form of a certified check, a cashier's check or Bid Bond executed by the Bidder and a qualified, acceptable Surety Company, payable to the Oakland County Water Resources Commissioner in the amount of Five Percent (5%) of the accompanying Bid, as guarantee on the part of the Bidder that it will, if called upon to do so, enter into a Contract in the form of the Contract Documents, perform the work required by the Contract Documents, at the prices stated, and furnish acceptable surety for its faithful and entire fulfillment.
- B. The Bid deposits of all, except the three (3) lowest Bidders, will be returned within 48

hours after the Bids are opened. The Bid deposits of the apparent second and third lowest Bidders that the Owner has retained will be returned after the signed Contract has been delivered and the required bonds and insurance of the Contractor have been finally approved by the Owner, or after rejection of all Bids.

17. GUARANTEE BONDS

- A. In addition to the Bid Bond, the Contractor shall furnish the Owner the following bonds prior to the Contract being executed:
- 1) A Performance Bond in an amount at least equal to 100% of the Contract Price as security for faithful performance on the Contract.
 - 2) A separate Labor and Material Payment Bond in an amount at least equal to 100% of the Contract Price as security for payment of all persons performing labor and furnishing materials in connection with the Contract.
 - 3) A Maintenance and Guarantee Bond in an amount at least equal to 100% of the Contract Price.

18. BOND REQUIREMENTS

- A. All bonds required of Bidder or Contractor shall meet the following requirements:
- 1) The Bidder or Contractor shall pay the premiums.
 - 2) The form of the bonds shall be as appended herewith (NOTE: the form of Bid Bond is NOT incorporated in the Contract Documents).
 - 3) The surety on the bonds shall be a corporate bonding company named on the current list of Surety Companies acceptable on Federal Bonds as published in the U.S. Treasury Department Circular Number 570. In the event that the surety is ever delisted on the cited Circular, Owner may, in Owner's sole discretion, demand and Contractor shall provide replacement Bonds from a then listed surety at no additional cost to Owner
 - 4) The surety shall be a corporate bonding company authorized and admitted to transact business in Michigan and subject to service of process and personal jurisdiction in Michigan. A copy of the certificate issued by the State of Michigan evidencing such authorization shall be furnished to Owner.
 - 5) The surety shall be a corporate bonding company, which is otherwise satisfactory to Owner. Without limiting the other factors upon which Owner may determine the acceptability of a surety, Owner specifically reserves the right to reject any surety which has denied, delayed or obstructed payment or discharge of the sureties' obligations under a prior bond in favor of Owner.
 - 6) Attorneys-in-Fact who sign bonds must file with each bond a certified copy of a currently effective and dated Power of Attorney.

- 7) The Owner may, but is not obligated to, require the substitution of any of the bonds by Bidder or Contractor upon the occurrence of any of the events referred to herein and in the General Conditions or Supplementary Conditions.
- 8) Providing the bonds required hereunder shall not establish that a Bidder is qualified, responsive or responsible, and shall not limit Owner's right to review Bidder's qualifications and reject any Bid.

19. PRE-BID MEETING & SITE TOUR

All Bidders must attend the pre-bid meeting. Bidders shall refer to the Advertisement (WRC ADV DC-116) found elsewhere in these specifications for pre-bid meeting and site tour requirements.

20. REJECTION OF BIDS

Owner reserves the right to reject any or all Bids. The Owner further reserves the right to waive any non-material irregularity or informality in the Bids. The Owner reserves the right to reject any Bid submitted by any Bidder that the Owner determines is not a responsive or responsible Bidder based on information supplied by the Bidder or on any other information that the Owner receives or acquires on its own, including the past experience of the Owner and/or any other public agency owner with the Bidder. Owner's rights in this regard may be exercised in Owner's sole discretion and Owner shall not have any obligation to exercise or refrain from exercising these rights.

21. OVERTIME COMPENSATION

Refer to the Labor Standards Provisions, EPA Form 5720-4 and the U.S. Department of Labor Memorandum No. 143 for further information. Labor compensation, including Overtime shall be governed by applicable local, federal and state law and regulations.

22. WORK WITHIN VARIOUS MUNICIPALITIES, CONSTRUCTION PERMITS, ROAD PERMITS, ETC.

- A. The Contractor shall conform to the various requirements of the municipality within which work is being performed and shall obtain, at its own expense, all permits required.
- B. In addition, certain public highways and subdivision roads are under the jurisdiction of the Michigan Department of Transportation, Road Commission for Oakland County, and/or the local municipality. Contractor shall obtain, at Contractor's own expense, all permits required by these organizations to use the roads under their jurisdiction.
- C. If the scope of the work requires work to be performed within other private properties/easements, Contractor shall comply with the conditions of these easements at its own expense. Applicable easement documents will be made available before work begins.

23. CONTRACT DOCUMENTS

Each Bidder is obligated to carefully review all materials included or referenced in the Contract

Documents including, without limitation, the General and Supplementary Conditions. The Contract Documents are defined in the General and Supplementary Conditions and the Bidder must familiarize itself with all provisions, terms and conditions of all Contract Documents.

24. OWNER'S RESERVATION OF RIGHTS

A. In addition to Owner's rights in Article 20 - Rejection of Bids above, Owner reserves the following rights in connection with this Invitation to Bid:

- 1) Withdraw the Invitation to Bid at any time, in the Owner's sole discretion.
- 2) Make an award under the Invitation to Bid in whole or in part.
- 3) Disqualify any Bidder whose conduct and/or proposal fails to conform to the requirements of the Invitation to Bid.
- 4) Seek clarifications and revisions of proposals.
- 5) Use proposal information obtained through site visits, management interviews and Owner's investigation of a Bidder's qualifications, experience, ability or financial standing, and any material or information submitted by the Bidder in response to the Owner's request for clarifying information in the course of evaluation and/or selection under the Invitation to Bid.
- 6) Prior to the bid opening, direct Bidders to submit proposal modifications addressing subsequent Invitation to Bid amendments.
- 7) Change any of the scheduled dates.
- 8) Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Bidders.
- 9) Waive any requirements that are not material.
- 10) Negotiate with the successful Bidder within the scope of the Invitation to Bid in the best interests of the Owner.
- 11) Conduct contract negotiations with the next responsible Bidder, should the Owner be unsuccessful in negotiating with the lowest, responsible Bidder.
- 12) Utilize any and all ideas submitted in the proposals received.
- 13) Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full and complete understanding of a Bidder's proposal and/or to determine a Bidder's compliance with the requirements of the solicitation.

EXPERIENCE AND QUALIFICATION STATEMENT OF

(Legal Name of Bidder)

SUBMITTED TO:

**Oakland County Water Resources Commissioner
Building 95 West – One Public Works Drive
Waterford, Michigan 48328-1907**

REGARDING:

VILLAGE OF LAKE ORION PHASE 1 PUMP STATION IMPROVEMENTS

CONFIDENTIAL INFORMATION

IMPORTANT – This Experience and Qualification statement shall be filled out for submittal with the Bid. This statement, to be acceptable, must give full information for every applicable item.

1.	BUSINESS NAME: (Do not abbreviate and hereinafter referred to as “Contractor”)		
2.	BUSINESS ADDRESS: (Not a post office box)		
3.	CONTACT INFORMATION		
	Contact Person:		
	Email:		
	Telephone:		
	Fax Number:		
4.	LEGAL STATUS: (Fill in appropriate boxes and spaces)		
	A. INDIVIDUAL – (Named in Item 1)		
	Home Address:		
	Age:		
	B. ASSUMED NAME – Registered in		County, Michigan
	Date:		
	Name of Each Individual	Home Address	Age
	C. PARTNERSHIP – Date Organized		
		General	Limited
	Partnership Registered in		County, Michigan
	Name of Each Individual	Home Address	Age
	D. CORPORATION – Date Incorporated		
	Licensed to do Business in Michigan		State
	<input type="checkbox"/> Yes <input type="checkbox"/> No		Date:
	Capitalization: Total Authorized \$		Paid in Cash \$
	Officers	Name	Home Address
	President		
	Vice President		
	Secretary		
	Treasurer		

5.	Years in Business Under Present Name and Legal Status			Years *
	* If less than 10 years, were you previously engaged in present line of work under another name or legal status? <input type="checkbox"/> No <input type="checkbox"/> Yes, as listed below:			
	Previous Name:			Individual
	Address:			Partnership
	Dated:	From	To	Corporation
Years Engaged in Work of the Character Covered by this Statement			Years	
6.	OTHER INTERESTS			
	Are there any inter-related companies, either partnerships or corporations, or other individuals who will in anyway, financial or otherwise, be involved in this Contract? <input type="checkbox"/> No <input type="checkbox"/> Yes, as listed below:			
	Name	Nature of Business		Relationship
	Has any person named in Item 1 or 4 ever been, or still is, a principal, partner, or officer in a contracting organization in addition to the one named herein? <input type="checkbox"/> No <input type="checkbox"/> Yes, as listed below:			
	Individual's Name	Position	Organization Name	Dates
	Did any of the above organizations ever fail to complete work or default on a contract while any person named in Item 1 or 4 was a partner or officer? <input type="checkbox"/> No <input type="checkbox"/> Yes, attach statement as to when, when, why, and who bonded the work			
	Are there any other construction-related companies in which, now or in the past five years, Contractor or any of the individuals or business entities listed above either owned or own 5.0% or more of the shares of, or was or is one of the five largest shareholders or a director, officer, partner or proprietor of said other company? (Attach additional pages if necessary.) <input type="checkbox"/> Yes <input type="checkbox"/> No			
Company Name		Company EIN (If available)		
Company's Primary Business Activity				
Company Address				
Explain relationship with the company and indicate percent of ownership, if applicable (enter N/A, if not applicable):				
Are there any shareholders, directors, officers, owners, partners or proprietors that Contractor has in common with this company? <input type="checkbox"/> Yes <input type="checkbox"/> No				
Individual's Name (Include <i>middle initial</i>)		Position/Title with Company		

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Does Contractor have any construction-related affiliates not identified in the response to questions above? <i>(Attach additional pages if necessary.)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No			
Affiliate Name		Affiliate EIN (if available)	
Affiliate's Primary Business Activity			
Affiliate Address			
Explain relationship with the affiliate and indicate percent of ownership, if applicable <i>(enter N/A, if not applicable)</i> :			
Are there any shareholders, directors, officers, owner, partners or proprietors that Contractor has in common with this affiliate? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No			
Individual's Name <i>(Include middle initial)</i>		Position/Title with Company	
Has Contractor participated in any construction-related Joint Ventures within the past three (3) years? <i>(Attach additional pages if necessary.)</i>			
Joint Venture Name		Joint Venture EIN (if available)	
Identify parties to the Joint Venture			
7.	PAST EXPERIENCE OF BIDDER:		
Largest Gross Amount of Work Done in One Year		\$	Year
Largest Single Contract Completed: Work Performed as:		Prime Contractor	Subcontractor
Joint Venture with:			
Type and Location of Work:		Contract Price \$	
Architect/Engineer or Owner:		Date Completed:	
If above project (listed in Item 7 above) is not the same general type as the present contract, list the largest contract of such similar type completed.			
Type and Location of Work		Contract Price \$	
Architect/Engineer or Owner:		Date Completed:	
Work Performed as:	Prime Contractor	Subcontractor	
Joint Venture with:			
In Schedule A, list work completed during at least the last 5 years that was of similar type and comparable size to the proposed work.			
OR If work of similar type and/or comparable size has not been previously completed, attach a statement giving reason for being qualified to satisfactorily perform the proposed work. So indicate an attachment by checking the box			
8.	PRESENT WORK:		
Do you now have other work? <input type="checkbox"/> No <input type="checkbox"/> Yes, having a total value of \$			
* In Schedule B, list present work and related data.			
Is any of the present work behind schedule? <input type="checkbox"/> No <input type="checkbox"/> Yes – Attached as statement giving reasons for delay and other pertinent data			

SCHEDULE A – COMPLETED WORK

Type of Work	Owner's Name Name/Address & Telephone No. of Point of Contact	Architect or Engineer Name/Address/Telephone No. of Point of Contact	Construction Cost	Date Completed	Prime or Sub

SCHEDULE B – PRESENT WORK

Type of Work	Owner's Name Name/Address & Telephone No. of Point of Contact	Architect or Engineer Name/Address & Telephone No. of Point of Contact	Contract Amount	Completion	
				Date Required	% to Date

9.	EXPERIENCE OF KEY PERSONNEL:		
	Give a brief resume of the construction experience of the Principals named in Items 1 or 4 and the key personnel that will be working on the project (If space is not sufficient attach a supplemental statement.)		
10.	SURETY (Bonding Company)		
	Surety (not the agent) who will bond this Contract:		
	Name:		
	How long has this Surety been bonding your work?	Years	
	* If less than 3 years, give name of previous Surety:		
	What is your maximum bonding limitation?	\$	(This Must Be Stated)
	What amount of present work is bonded?	\$	
	Net amount still available for new work?	\$	
	Individual official of Surety who can verify above and furnish additional information:		
	Name:		
	Address:		
	Telephone Number:		
	Email:		
	If a corporation, will any or all officers be required by the Surety to pledge their own personal assets as a condition for obtaining the bonds required for this Contract?		
	<input type="checkbox"/> No <input type="checkbox"/> Yes, as named below:		
11.	INSURANCE:		
	List the types of insurance applicable to the proposed work, which are currently carried, giving the names of the insurers and the basic limits of the respective coverage.		
	Type	Insurance Company	Limits
	Worker's Compensation		One Person \$
	Public Liability		One Accident \$
	Property Damage		Each Accident \$
			Aggregate \$
	Insurance representative or agent who can verify above and furnish additional information:		
	Name:		
	Address:		
	Telephone Number:		
	Email:		
	Have you ever had an insurance policy of any of the above types canceled? <input type="checkbox"/> No <input type="checkbox"/> Yes – Explain below:		
	Type:	Insurer:	Date:
	Reason:		

12.	SUPERVISION:			
Name of person who will be in responsible charge of the respective phases of the Work.				
A. General Overall Supervision				
Name:			How long in your employ?	
Telephone Number:		Age	How long in this capacity?	
Address:				
Email:				
Construction Experience:				
B. Superintendence on Site				
Name:			How long in your employ?	
Telephone Number:		Age	How long in this capacity?	
Address:				
Email:				
Previous capacity with you, if other than above:				
Last jobs on which he acted in similar capacity:				
Type and Location		Architect/Engineer or Owner	Construction Cost	Date Completed
			\$	
			\$	
Largest job, if other than above, on which he acted in similar capacity:				
Type and Location		Architect/Engineer or Owner	Construction Cost	Date Completed
			\$	
			\$	
Oakland County job, if any, or different from above in similar capacity:				
Type and Location:			Dates employed:	
Will he perform any other specific work at site than that of Job Superintendence? <input type="checkbox"/> No <input type="checkbox"/> Yes – Explain below:				
13.	CONSTRUCTION EQUIPMENT:			
Do you permanently maintain an equipment yard <input type="checkbox"/> Yes <input type="checkbox"/> No?				
Yes – Located at:				
What facilities are there provided other than storage?				
No – State where equipment is temporarily stored:				
What major items of construction equipment will be available for use on the proposed work? List separately equipment now owned and that which will be purchased or rented.				
If the type of work is such that it may be done in separate crews working concurrently at different locations, then separately list that equipment that will be available for each crew.				

13.	CONSTRUCTION EQUIPMENT: (continued)			
	Type of Equipment	Size	Make	Years Old

14.	SUBCONTRACTORS:			
	Approximate total value of subcontractors		\$	
	Complete the table below for each Subcontractor who will perform Work in excess of 10% of Bid Total.			
	Name of Subcontractor & Trade	Part of Work	Used Before?	
			Yes	No
Have firm commitments and prices been obtained for required equipment and materials Do you permanently maintain an equipment yard <input type="checkbox"/> Yes <input type="checkbox"/> No? If No, Explain:				
Have all proposed Subcontractors and Suppliers been made aware of the time allowed for completion of the Work and the related liquidated damages provision Do you permanently maintain an equipment yard? <input type="checkbox"/> Yes <input type="checkbox"/> No? If No, Explain				

15.	INTEGRITY - CONTRACT BIDDING - Within the past ten (10) years, has Contractor, an affiliate, related or any predecessor company or entity:	
15.1	Been suspended or debarred from any government contracting process or been disqualified on any government procurement?	Apple Yes Apple No
15.2	Been subject to a denial or revocation of a government prequalification?	Apple Yes Apple No
15.3	Had any bid rejected by a government entity for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?	Apple Yes Apple No
15.4	Had a proposed subcontract rejected by a government entity for lack of qualifications, responsibility or because of the submission of an informal, non-responsive or incomplete bid?	Apple Yes Apple No
15.5	Had a low bid rejected on a government contract for failure to make good faith efforts on any Minority-Owned Business Enterprise, Women-Owned Business Enterprise or Disadvantaged Business Enterprise goal or statutory affirmative action requirements on a previously held contract?	Apple Yes Apple No
15.6	Agreed to a voluntary exclusion from bidding/contracting with a government entity?	Apple Yes Apple No
15.7	Initiated a request to withdraw a bid submitted to a government entity or made any claim of an error on a bid submitted to a government entity?	Apple Yes Apple No
	For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to Contractor, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with the numbered responses. As part of your response, provide details, including the basis for any such finding and the general substance of any basis upon which you assert the finding was erroneous. If you do not know the basis, you may simply state "unknown".	
16.	INTEGRITY - CONTRACT AWARD - Within the past five (5) years, has Contractor, an affiliate, or any predecessor company or entity:	
16.1	Defaulted on or been suspended, cancelled or terminated for cause on any contract?	Apple Yes Apple No
16.2	Been subject to an administrative proceeding or civil action seeking specific performance or restitution (except any disputed work proceeding) in connection with any government contract?	Apple Yes Apple No
16.3	Entered into a formal monitoring agreement, consent decree or stipulated settlement as specified by, or agreed to with, any government entity?	Apple Yes Apple No
16.4	Failed to complete a construction project due to financial difficulty?	Apple Yes Apple No
16.5	Had its surety called upon to complete any contract whether government or private sector?	Apple Yes Apple No
16.6	Has any officer or principal of submitting Contractor ever been an officer or principal of another organization when it failed to complete a construction contract?	Apple Yes Apple No
16.7	Forfeited all or part of a standby letter of credit in connection with any government contract?	Apple Yes Apple No
17.	CERTIFICATIONS/LICENSES - Within the past five (5) years, has Contractor, an affiliate, or any predecessor company or entity:	
17.1	Had a revocation or suspension of any business or professional permit and/or license?	Apple Yes Apple No
17.2	Had a denial, decertification, revocation or forfeiture of Michigan certification of Minority-Owned Business Enterprise, Women-Owned Business Enterprise or a federal certification of Disadvantaged Business Enterprise status, for other than a change of ownership?	Apple Yes Apple No
	For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to Contractor, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with the numbered responses. As part of your response, provide details, including the basis for any such finding and the general substance of any basis upon which you assert the finding was erroneous. If you do not know the basis, you may simply state "unknown".	

18.	LEGAL PROCEEDINGS/GOVERNMENT INVESTIGATIONS Within the past five (5) years, has Contractor, an affiliate, a related or any predecessor company or entity or any of the principals of the foregoing:	
18.1	Been the subject of or involved in a criminal investigation, whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or federal law?	🍏 Yes 🍏 No
18.2	Been the subject of: (1) An indictment, grant of immunity, judgment or conviction (including entering into a plea bargain) for conduct constituting a crime; or (2) Any criminal investigation, felony indictment or conviction concerning the formation of, or any business association with, an allegedly false or fraudulent Minority-Owned Business Enterprise, Women-Owned Business Enterprise, or a Disadvantaged Business Enterprise?	🍏 Yes 🍏 No
18.3	Received any OSHA or MIOSHA citation, with resulted in a final determination classified as serious or willful?	🍏 Yes 🍏 No
18.4	Had a government entity file a willful prevailing wage or supplemental payment violation?	🍏 Yes 🍏 No
18.5	Been removed from any construction project for safety violations?	🍏 Yes 🍏 No
18.6	If so, was the removal admitted to be wrongful by the project owner, or found to be wrongful by a court of law, arbitration tribunal or administrative tribunal?	🍏 Yes 🍏 No
18.7	Had a Michigan State Labor Law violation deemed willful?	🍏 Yes 🍏 No
18.8	Entered into a consent order with the Michigan Department of Environment, Great Lakes and Energy or a federal, state or local government enforcement determination involving a violation of federal, state or local environmental laws?	🍏 Yes 🍏 No
18.9	Other than previously disclosed, been the subject to any citations, notices or violation order; a pending administrative hearing, proceeding or determination of a violation of: (1) Federal, state or local health laws, rules or regulations (2) Federal, state or local environmental laws, rules or regulations (3) Unemployment insurance or workers compensation coverage or claim requirements (4) Any labor law or regulations, which was deemed willful (5) Employee Retirement Income Security Act (ERISA) (6) Federal, state or local human rights laws (7) Federal, state or local security laws?	🍏 Yes 🍏 No
19.	CLAIMS AND SUITS.	
	Has Contractor, an affiliate, or any predecessor company or entity ever failed to complete any work awarded to it? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Are there any judgments, claims, arbitration proceedings or suits pending or outstanding against Contractor, an affiliate, or any predecessor company or entity or any of their respective officers? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	Has Contractor, an affiliate, or any predecessor company or entity filed any lawsuits or requested arbitration with regard to construction contracts within the last five years? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to Contractor, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with the numbered responses. As part of your response, provide details, including the basis for any such finding and the general substance of any basis upon which you assert the finding was erroneous. If you do not know the basis, you may simply state "unknown".	

20.	FALSE CLAIMS	
	<p>Has Contractor, an affiliate, or any predecessor company or entity been found to have submitted false claims to any governmental agency by any court of the United States or any State Court? <input type="checkbox"/> Yes <input type="checkbox"/> No (If the answer to any of the questions below is yes, please attach details.)</p> <p>For each "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to Contractor, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with the numbered responses. As part of your response, provide details, including the basis for any such finding and the general substance of any basis upon which you assert the finding was erroneous. If you do not know the basis, you may simply state "unknown".</p> <p>Note: Information regarding a determination or finding made in error, which was subsequently corrected or overturned, and/or was withdrawn by the issuing government entity, is not required.</p>	
21.	LEADERSHIP INTEGRITY	
	<p>If Contractor is a Joint Venture Entity, answer "N/A - Not Applicable" to questions in this section. Within the past five (5) years has any individual previously identified or any individual currently or formerly having the authority to sign, execute or approve bids, proposals, contracts or supporting documentation on behalf of Contractor, an affiliate, a related or any predecessor company or entity with any government entity been:</p>	
21.1	Sanctioned relative to any business or professional permit and/or license?	🍏 Yes 🍏 No
21.2	Suspended, debarred or disqualified from any government contracting process?	🍏 Yes 🍏 No
21.3	The subject of or involved in a criminal investigation, whether open or closed, or an indictment for any business-related conduct constituting a crime under local, state or federal law?	🍏 Yes 🍏 No
21.4	Charged with a misdemeanor or felony, indicted, granted immunity, convicted of a crime or subject to a judgment for: (1) Any business-related activity, including but not limited to fraud, coercion, extortion, bribe or bribe-receiving, giving or accepting unlawful gratuities, immigration or tax fraud, racketeering, mail fraud, wire fraud, price-fixing or collusive bidding; or (2) Any crime, whether or not business-related, the underlying conduct of which related to truthfulness, including but not limited to the filing of false documents or false sworn statements, perjury or larceny.	🍏 Yes 🍏 No
	<p>For each "Yes," provide an explanation of the issue(s), the individual involved, the relationship to Contractor, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer(s) below or attach additional sheets with the numbered responses.</p>	

22.	FINANCIAL AND ORGANIZATIONAL CAPACITY	
22.1	Within the past five (5) years, has Contractor or any affiliate received any formal unsatisfactory performance assessment(s) from any government entity on any contract? If "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to Contractor, the government entity involved, relevant dates, any remedial or corrective action(s) taken and the current status of the issue(s). Provide answer below or attach additional sheets with the numbered responses.	<input type="checkbox"/> Yes <input type="checkbox"/> No
22.2	Within the past five (5) years, has Contractor or any affiliate had any liquidated damages assessed over \$25,000? If "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to Contractor, relevant dates, the owner contracting party involved, the amount assessed and the current status of the issue(s). Provide answer below or attach additional sheets with numbered responses.	<input type="checkbox"/> Yes <input type="checkbox"/> No
22.3	Within the past five (5) years, has Contractor or any affiliate had any liens, claims or judgments over \$25,000 filed against Contractor which remain undischarged or were unsatisfied for more than 90 days? (Note: Including but not limited to tax warrants or liens. Do not include UCC filings.) If "Yes," provide an explanation of the issue(s), the Business Entity involved, the relationship to Contractor, relevant dates, the Lien holder or Claimants' name(s), the amount of the lien(s) and the current status of the issue(s). Provide answer below or attach additional sheets with the numbered responses.	<input type="checkbox"/> Yes <input type="checkbox"/> No
22.4	In the last seven (7) years, has the Contractor or any affiliate initiated or been the subject of any bankruptcy proceedings, whether or not closed, or is any bankruptcy proceeding pending?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	If "Yes," provide the Business Entity involved, the relationship to Contractor, the bankruptcy chapter number, the court name and the docket number. Indicate the current status of the proceedings as "initiated," "Pending" or "Closed." Provide answer below or attach additional sheets with the numbered responses.	

23.	<p>FINANCIAL STATEMENT:</p> <p>A financial statement reflecting the condition of the business as of the last day of the operating year shall be furnished. This statement shall be prepared and signed by an authorized person having full knowledge of the financial condition. Any statement reflecting the financial condition as of a date 12 months or more prior to the bid submission shall be supplemented by a later interim statement. Particular attention is directed to the additional explanatory detail required for those items marked with an asterisk. The forms herein shall be used unless an independent certified public accountant's signed statement is submitted showing substantially the same information.</p> <p>Certification of Person Who Prepared Financial Statement on the Forms Herein</p> <p>I, _____ being the _____ <div style="text-align: right;">(Title & Capacity)</div> having full knowledge of the books and accounts of the party first named herein, do hereby certify that the financial statement as shown on the following sheets and any indicated attachments, fairly and truly sets forth the financial condition of the party first named herein, at the close of business on: _____ (Date) that being the last day of the operating year.</p> <p>A Supplemental Interim Statement, as of _____ (Date) is also submitted since the above referenced statement is 12 months or more prior to the bid submission</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 30%;">Date Certified</td> <td style="width: 30%;"></td> <td style="width: 20%;">Signed:</td> <td style="width: 20%;"></td> </tr> </table> <p>Financial Statement by Certified Public Accountant</p> <p>In lieu of furnishing the financial statement on the forms herein, submitted herewith as part of this Questionnaire is a Certified Public Accountant's signed statement of the financial condition of the party first named herein, prepared by _____ (CPA), at the close of business on: _____ (Date) that being the last day of the operating year.</p> <p>A Supplemental Interim Statement, prepared by the above, as of _____ (Date) is also submitted since the above referenced statement is 12 months or more prior to the bid submission.</p> <p>Additional explanatory information may be obtained directly from:</p> <p>Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>Telephone Number: _____</p> <p>Email: _____</p>	Date Certified		Signed:	
Date Certified		Signed:			

23.	FINANCIAL STATEMENT		Name:		
			Condition as of close of business (Date)		
		ASSETS		LIABILITIES	
1. Cash		In Bank *		13. Accounts Payable	Accrued Payrolls
		On Hand			To Subcontractors
		Certified Bid Checks			Other
				Past Due *	
2. Accounts Receivable		Completed Contracts		14. Notes Payable Within 12 Months	To Banks – Regular
		Earned Estimates – Net			For Materials
		Retained Percentages			For Equipment
		Other Current			Other *
		Past Due *			
3. Notes & Interest Receivable		Within 90 days		15. Taxes	Inc-Fed-City-Etc.
		After 90 days			Real & Personal Property
		Past Due *			Other *
4. Stocks & Bonds, Etc.		Listed-Market Value		16. Loans Due Within 12 Months	Officers – Partners
		Unlisted-Present Value			Others *
5. Material in Stock		For Current Work		17. Other- Within 12 Months	Equipment
		Other Uses *			
6. Other Current Assets		18. Total Current Liabilities Total Current Liabilities			
7. Total Current Assets		19. Due on Equipment – After 12 Months			
8. Equipment (Book Value)		20. Due on Real Estate – After 12 Months			
9. Furniture & Fixtures		21. Other Long Term			
10. Real Estate		For Business Use		22. Reserve	
		For Investment			
		Personal-Homestead			
11. Other Assets		23. Paid-in Capital Stock		Common	
				Preferred	
12. TOTAL ASSETS		24. Surplus or Net Worth			
Line of Credit Established		25. TOTAL LIABILITIES			
Amount		Contingent Liabilities			
		Notes Rec. discounted or sold			
Bank – Name and Address		Accounts Rec. pledged or sold			
		As bondsman			
		As guarantee on contracts, etc.			
Security Required by Bank		Other			
		Total Contingent Liabilities			

* Additional explanatory detail for each starred item must be given on following pages

ADDITIONAL EXPLANATORY DETAIL OF FINANCIAL STATEMENT
(Starred * Items on Sheet)

1.	Cash in Banks				Total \$	
	Name of Bank	Location		Deposit in Name of		Amount
2.	Accounts Receivable– Past Due				Total \$	
	Receivable from – Name and Address			For What	When Due	Amount
	Reason for Delay and When Payment Expected:					
5.	Materials in Stock – Other Uses				Total \$	
	Material	Quantity	Amount	Material	Quantity	Amount
6.	Other Current Assets				Total \$	
	Description		Amount	Description		Amount
11.	Other Assets				Total \$	
	Description		Amount	Description		Amount
13.	Accounts Payable – Past Due				Total \$	
	Payable To – Name and Address		For What	When Due	Amount	
14.	Notes Payable Within 12 Months				Total \$	
	Payable To – Name and Address		What Security	When Due	Amount	
15.	Taxes – Other				Total \$	
	Nature	When Due	Amount	Nature	When Due	Amount

JIM NASH
OAKLAND COUNTY WATER RESOURCES COMMISSIONER

REQUIREMENTS FOR SIGNING STATEMENT

The statement shall be signed below in accordance with the following requirements applicable to the legal status of the party first named herein.

A.	Individual – the signature of the individual
B.	Individual Doing Business Under Assumed Name – the assumed name to be stated, followed by the signature of the individual.
C.	Partnership – the company name to be stated, followed by the signature of at least one of the partners.
D.	Corporation – the full corporate name to be stated, followed by the signature and title of corporate officer authorized and qualified to sign for the corporation, and the corporate seal affixed.

CERTIFICATION

The undersigned hereby certifies: That the foregoing is a true statement of experience, qualifications and financial condition as to this date of the party first named herein, and is submitted to the Oakland County Water Resources Commissioner to aid the Water Resources Commissioner in determining the qualifications and responsibility of the party first named herein to be awarded a contract, and that any surety, company, vendor, or other parties named herein are hereby authorized to directly furnish the Oakland County Water Resources Commissioner with any additional information as may be deemed necessary by him to verify or clarify any statement made herein.

Company/Corporate/Assumed Name:

Corporate Seal:

Signature:

Printed Name:

Title:

State of:

Notary Seal and Signature:

County of:

Subscribed and Sworn Before Me This Date:

Printed Name of Notary:

**PROPOSAL FOR THE VILLAGE OF LAKE ORION
PHASE 1 PUMP STATION IMPROVEMENTS**

NAME OF BIDDER: _____

CONTACT NAME: _____

ADDRESS: _____

DATE: _____ TELEPHONE NO. _____

CONTACT NAME EMAIL: _____

TO: Oakland County Water Resources Commissioner
Building 95 West – One Public Works Drive
Waterford, Michigan 48328-1907

The undersigned, as Bidder, hereby declares this bid is made in good faith without fraud or collusion with any persons bidding or proposing to supply materials or labor, and that it has examined the Contract Documents including but not limited to the Agreement, Contract Drawings, Advertisement, Information for Bidders, Proposal, Specifications, General Conditions, and the Supplementary Conditions and has also examined the soil boring logs, and other geotechnical information referenced in the Information For Bidders, and is familiar with the location of the work described herein and is fully informed as to the nature of the work and the conditions relating to its performance.

The Bidder acknowledges that it has not received or relied upon any representations or warranties of any nature whatsoever from the Office of the Oakland County Water Resources Commissioner, its agents, representatives, or employees, as to any conditions to be encountered in accomplishing the work specifically, but not exclusively, including underground conditions, and that its bid is based solely upon the Bidder's own independent judgment.

The following documents shall be submitted with the Bid:

Item Number	Description
1.	Proposal, completed and signed acknowledging all addenda
2.	Proposal Guarantee/Bid bond (5%)
3.	Preliminary Schedule based on the Time noted in the Agreement and an anticipated Notice to Proceed date of: September 1, 2024.
4.	Completed Form DC-118 Experience and Qualification Statement
5.	Signed Vendor Certification that it is not an "Iran Linked Business"

The Bidder hereby certifies that it has examined the Drawings, Specifications, Geotechnical Data, and other data provided by the Owner for bidding purposes. Further, the undersigned certifies that it has reviewed the proposed construction methods and finds them compatible with the conditions, which it anticipates from the above listed information, provided for bidding.

The Bidder shall complete the work under any job or field condition which was present and/or ascertainable prior to bidding. In addition, it shall also complete the work under whatever conditions it

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may create by its own sequence of construction, construction methods, or other conditions it may create, at no additional cost to the Owner.

The Bidder declares that it has familiarized itself with the location of the proposed work and the conditions under which it must be constructed; also, that it has carefully examined the Plans, Specifications, and Contract Documents (including the Geotechnical Data), which it understands and accepts as sufficient for the purpose, and agrees that it will contract with the Oakland County Water Resources Commissioner to furnish all labor, material, tools and equipment necessary to do all the work specified and prescribed for the completion of the above mentioned Contract for the following named unit prices:

BID SHEET

Item No.	Description	Quantity	Unit	Unit Price	Amount
1	Mobilization, 5% Max	1	LS		
2	Color Audio-Video Recording of Construction Areas	1	LS		
3	Traffic Maintenance & Control	1	LS		
4	Soil Erosion & Sedimentation Control	1	LS		
5	LO - 7 Improvements, Complete	1	LS		
6	LO - 7 Dewatering	1	LS		
7	LO - 8 Improvements, Complete	1	LS		
8	LO - 8 Dewatering	1	LS		
9	LO - 9 Improvements, Complete	1	LS		
10	LO - 9 Dewatering	1	LS		
11	LO - 10 Improvements, Complete	1	LS		
12	LO - 10 Dewatering	1	LS		
13	New Force Main, 4" HDPE, HDD, LO-9	370	LF		
14	New Force Main, 4" HDPE, HDD, LO-10	530	LF		
15	Bypass Pump Connections and Valves	4	EA		
16	CIPP Lining Installation	80	LF		
17	Epoxy Coating	200	SF		
18	Permit Fee Allowance	1	LS	\$5,000	
19	DTE Service Allowance	1	LS	\$20,000	
20	SCADA Programming Services Allowance	1	LS	\$258,000	

21	Cathodic Protection Allowance	1	LS	\$15,000	
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TOTAL BASE BID \$ _____
(Items 1 thru 21)

TAXES

The foregoing unit prices include all applicable Federal, State and Local taxes.

ADDENDA

This Proposal is based on the following Addenda in the table below:

Addendum Number	Date Issued

SUBCONTRACTORS AND MAJOR EQUIPMENT MANUFACTURERS/SUPPLIERS

The Bidder agrees, in accordance with the Information For Bidders, that it is concurrently with this bid, furnishing the Owner the required information relative to the qualifications of Bidder and Subcontractors required to be identified pursuant to the Information For Bidders. Bidder also agrees that Bidder will provide all other information as required with this bid and/or within the times specified in the Information For Bidder or other Contract Documents. Bidder acknowledges that this bid may be rejected if Bidder fails to provide any of the required information with this bid and/or within the times outlined in the Information For Bidders or other Contract Documents.

BID GUARANTEE

The Bidder encloses a certified or cashier's check or bid bond in the amount of Five Percent (5%) of the accompanying total bid.

_____ Certified Check
 _____ Cashier's Check
 _____ Bid Bond

The Bidder hereby declares that this bid was prepared by qualified personnel of its employ who inspected the Plans and Specifications, read and interpreted the Geotechnical Data and other information furnished by the Owner, and developed the Bidder's intended construction methods.

If this Proposal is accepted by the Owner and the undersigned shall fail to contract as aforesaid and to furnish the required surety bonds within ten (10) calendar days of the delivery date of the Notice of Award to the successful Bidder, then the undersigned shall be considered to have abandoned the Contract, and the Certified Check, Cashier's Check or Bid Bond accompanying this Proposal shall be forfeited to the Oakland County Water Resources Commissioner.

If the Bidder enters into the Contract in accordance with this Proposal, or if its Proposal is rejected, then the accompanying bid guarantee shall be returned to the Bidder.

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By submission of the Bid, each Bidder certifies, and in the case of a joint BID each party thereto certifies as to its own organization, that this Bid has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other Bidder or with any competitor.

In submitting this bid it is understood that the right is reserved by the Oakland County Water Resources Commissioner to reject any and all bids, to waive non-material irregularities and/or informalities, and to evaluate the responsiveness and responsibility of each Bidder. The Owner reserves the right to reject any bid submitted by any Bidder that the Owner determines is not a responsive and responsible Bidder based on information supplied by the Bidder or on any other information that the Owner receives or acquires on its own, including the Owner's past experience with the Bidder. The Owner further reserves the right to reject any bid submitted by any bidder, based on the sole preference of the Owner.

The Bidder shall indicate its legal status as provided herein.

LEGAL STATUS OF BIDDER

(The Bidder shall fill out the appropriate form below and strike out the other three listed below and complete the appropriate Resolution or Certificate.

A **Corporation** duly organized and doing business under the laws of the State of _____ for whom _____ whose signature is affixed to this Proposal, is duly authorized to execute Contracts.

A **Limited Liability Company** duly organized and doing business under the laws of the State of Michigan for whom _____ whose signature(s) is (are) affixed to this Proposal, is (are) duly authorized to execute Contracts.

A **Partnership or Joint Venture**, all members of which, with addresses, are:

_____	_____
_____	_____
_____	_____
_____	_____

An **Individual**, whose signature is affixed to this Proposal.

Signed and Sealed this _____ day of _____, 20____.

Authorized Signature of Bidder: _____

Print Name: _____

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OAKLAND COUNTY WATER RESOURCES COMMISSIONER

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05/27/2020

Title: _____

WITNESS By: _____

A. IF BIDDER IS A CORPORATION, COMPLETE THE FOLLOWING:**RESOLUTION OF THE BOARD OF DIRECTORS
OF _____**

The undersigned, being all of the members of the Board of Directors of _____, a _____ (state) Corporation (the "Corporation") do hereby certify that the following is a true and correct copy of the resolutions duly adopted by the Corporation on the ____ day of _____, 20____, that the same have not been modified or rescinded and are in full force and effect and that the resolutions have been adopted in accordance with the laws of the state of incorporation, the Articles of Incorporation and the Bylaws of the Corporation and either no shareholder consent is required or any necessary shareholder consent has been obtained:

RESOLVED, that any one or more of the officers of the Corporation referred to below be and hereby are authorized and empowered on behalf of the Corporation to transact any and all business with the County of Oakland, State of Michigan, acting by and through its statutory agent, the Oakland County Water Resources Commissioner which the Corporation could, in any way, transact and are further authorized to execute, acknowledge and deliver on behalf of the Corporation and in its name to the Water Resources Commissioner.

1. A Proposal and Bid Sheet for construction of all or part of the _____ Project in form and content as such officer deems necessary and appropriate and as approved by the Water Resources Commissioner.
2. All other agreements, instruments or documents as such officer deems necessary or appropriate in conjunction with the aforementioned project.

RESOLVED FURTHER, that the following are the true and correct names, signatures and titles of the officers of the Corporation referred to above:

NAMES	SIGNATURES	TITLES
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

RESOLVED FURTHER, that the acts of said person(s) or any of them, shall at all times be given full faith and credit without the necessity of inquiry by the Water Resources Commissioner as to any of the circumstances attending the same and that the acts and doings of authorized person(s) or any of them in respect to the subject matter hereof are hereby fully ratified, approved, adopted and confirmed; and

RESOLVED FURTHER, that the authorizations herein set forth shall remain in full force and effect until written notice of their modification or discontinuance shall be given to and actually received by the Water Resources Commissioner at its offices.

IN WITNESS WHEREOF, the Board of Directors of _____ have executed this Resolution as of the ____ day of _____, 20____.

BOARD OF DIRECTORS

JIM NASH
OAKLAND COUNTY WATER RESOURCES COMMISSIONER

B. IF BIDDER IS A LIMITED LIABILITY COMPANY, COMPLETE THE FOLLOWING:

RESOLUTION OF MEMBERS
OF _____, L.L.C.

The undersigned, being all of the members of _____, L.L.C. a _____ (state) limited liability company (the "Company") do hereby certify that the following is a true and correct copy of the resolutions duly adopted by the Company on the _____ day of _____, 20____, that the same have not been modified or rescinded and are in full force and effect and that the resolutions have been adopted in accordance with the laws of the state of incorporation, the Articles of Organization and the Operating Agreement and that no further member consent is required or any necessary member consent has been obtained:

RESOLVED, that any one or more of the members of the Company referred to be and hereby are authorized on behalf of the Company to transact any and all business with the County of Oakland, State of Michigan, acting by and through its statutory agent, the Oakland County Water Resources Commissioner which the Company could, in any way, transact and are further authorized to execute, acknowledge and deliver on behalf of the Company and in its name to the Water Resources Commissioner.

1. A Proposal and Bid Sheet for construction of all or part of the Village of Lake Orion Pump Station Improvements Project in form and content as the members deem necessary and appropriate and as approved by the Oakland County Water Resources Commissioner

2. All other agreements, instruments or documents as the members deem necessary or appropriate in conjunction with the aforementioned project.

RESOLVED FURTHER, that the acts of said member(s) or any of them, shall at all times be given full faith and credit without the necessity of inquiry by the Oakland County Water Resources Commissioner as to any of the circumstances attending the same and that the acts and doings of authorized person(s) or any of them in respect to the subject matter hereof are hereby fully ratified, approved, adopted and confirmed; and

RESOLVED FURTHER, that the authorizations herein set forth shall remain in full force and effect until written notice of their modification or discontinuance shall be given to and actually received by the Water Resources Commissioner at its offices.

IN WITNESS WHEREOF, the Members have executed this Resolution of _____, L.L.C. as of the _____ day of _____, 20____.

_____, L.L.C.

A _____ LIMITED LIABILITY COMPANY

MEMBERS:

C. IF BIDDER IS A LIMITED PARTNERSHIP, COMPLETE THE FOLLOWING:**CERTIFICATE OF GENERAL PARTNER**

_____, being the sole General Partner of _____ Limited Partnership, a _____ limited partnership (the "Partnership") hereby certifies that the following is a true and correct copy of the resolutions duly adopted by the Partnership on the ____ day of _____, 20____, that the same have not, in any way, been modified or rescinded and are in full force and effect and that the resolutions have been adopted in accordance with the laws of the state of formation the Certificate of Limited Partnership and that either no further partner consent is required or any necessary partner consent has been obtained:

RESOLVED, that _____, the sole General Partner, is hereby authorized and empowered on behalf of the Partnership to transact any and all business with Oakland County, acting by and through its statutory agent, the Oakland County Water Resources Commissioner which Partnership could, in any way, transact and is further authorized to execute, acknowledge and deliver on behalf of the Partnership and in its name to the Water Resources Commissioner.

1. A Proposal and Bid Sheet for construction of all or part of the Village of Lake Orion Pump Station Improvements Project in form and content as such General Partner deems necessary and appropriate and as approved by the Water Resources Commissioner.
2. All other agreements, instruments or documents as such General Partner deems necessary or appropriate in conjunction with the aforementioned project.

RESOLVED FURTHER, that the following are the true and correct names of all general and limited partners of the Partnership:

NAMES	PARTNER
_____	General
_____	Limited
_____	Limited

RESOLVED FURTHER, that the acts of General Partner shall at all times be given full faith and credit without the necessity of inquiry by the Oakland County Water Resources Commissioner as to any of the circumstances attending the same and that the acts and doings of the General Partner in respect to the subject matter hereof are hereby fully ratified, approved, adopted and confirmed; and

RESOLVED FURTHER, that the authorizations herein set forth shall remain in full force and effect until written notice of their modification or discontinuance shall be given to and actually received by the Water Resources Commissioner at its offices.

IN WITNESS WHEREOF, the sole General Partner of _____ Limited Partnership, hereby executes this Certificate of General Partner as of the ____ day of _____, 20____.

GENERAL PARTNER

D. IF BIDDER IS A PARTNERSHIP OR JOINT VENTURE, COMPLETE THE FOLLOWING:**CERTIFICATE OF PARTNERS**

The undersigned do hereby certify that they are all the partners of _____, a _____ Co-Partnership or Joint Venture ("Partnership"), that the following is a true and correct copy of the resolutions duly adopted by the Partnership on the _____ day of _____, 20____, that the same have not, in any way, been modified or rescinded and are in full force and effect and that the resolutions have been adopted in accordance with the laws of the state of formation the Certificate of Co-Partnership and that either no further partner consent is required or any necessary partner consent has been obtained:

RESOLVED, that the undersigned are hereby authorized and empowered on behalf of the Partnership to transact any and all business with the County of Oakland, State of Michigan, acting by and through its statutory agent, the Oakland County Water Resources Commissioner which the Partnership could, in any way, transact and are further authorized to execute, acknowledge and deliver on behalf of the Partnership and in its name to the Water Resources Commissioner.

1. A Proposal and Bid Sheet for construction of the Village of Lake Orion Pump Station Improvements Project in form and content as such partner deems necessary and appropriate and as approved by the Oakland County Water Resources Commissioner.
2. All other agreements, instruments or documents as such partner deems necessary or appropriate in conjunction with the aforementioned project.

RESOLVED FURTHER, that the said partners or any of them, shall at all times be given full faith and credit without the necessity of inquiry by the Oakland County Water Resources Commissioner as to any of the circumstances attending the same and that the acts and doings of the partners or any of them in respect to the subject matter hereof are hereby fully ratified, approved, adopted and confirmed; and

RESOLVED FURTHER, that the authorizations herein set forth shall remain in full force and effect until written notice of their modification or discontinuance shall be given to and actually received by the Water Resources Commissioner at its offices.

IN WITNESS WHEREOF, the partners of _____ hereby executes this Resolution as of the _____ day of _____, 20____.

PARTNERS:

This **AGREEMENT**, hereinafter referenced as "Agreement" or "Contract", is made and entered into this _____ day of _____, 2024 by and between the **Oakland County Water Resources Commissioner**, pursuant Chapter 20 of the Public Act 40 of the Public Acts of 1956, as amended, hereinafter called the "Owner", and _____, a (Michigan Corporation/Limited Liability Company/ Partnership) whose address is _____, Michigan, hereinafter referred to as "Contractor". In this Contract, either the Owner and/or the Contractor may also be referred to individually as a "Party" or jointly as "Parties."

WITNESSETH

WHEREAS, the Owner and the Contractor, for the considerations hereinafter named, agree as follows:

1. THE WORK

- A. Contractor shall perform and complete each and every one of the obligations required by the Contract Documents, including, without limitation, furnishing all labor, materials, goods, services and equipment necessary to complete the Project in strict accordance with the Contract Documents. The Contractor shall perform all Work shown and called for on the Drawings and described in the Specifications entitled **VILLAGE OF LAKE ORION PHASE 1 PUMP STATION IMPROVEMENTS prepared by Hubbell, Roth & Clark, Inc. 555 Hulet Drive, P.O. Box 824, Bloomfield Hills, MI 48303-0824** who is the Engineer. Contractor acknowledges that there may be items of Work for which the Contractor is responsible to furnish or perform under the Contract Documents that are not shown or specified in the Contract Documents but are necessary for the proper execution, operation and completion of the Work and which are reasonably inferable from the Contract Documents and/or which are required to achieve a fully functional Project. Contractor shall provide all such items of Work as part of the Work without delay in its progress and without any increase in the Contract Times or Contract Price. The Contract Documents are defined in the General Conditions. Terms used in this Agreement shall have the same meaning as those terms defined and used in the General Conditions, which are attached hereto and incorporated herein by reference as if fully restated herein. The priority of Contract Documents is set forth in Article 1 of the General Conditions.
- B. In order to induce the Owner to enter into this Agreement, the Contractor makes the following material representations:
- 1) Contractor has carefully considered all material aspects of the Contract Documents, Work, the Contract Drawings, locality, access routes, availability of materials, and all local conditions and federal, state, local laws and regulations that may affect the cost, progress, performance, or furnishing of the Work;
 - 2) Contractor has carefully studied the Project, all real property encompassing and surrounding the Project, all reports of investigations and tests of subsurface and latent physical conditions at the Project or otherwise affecting the cost, progress or performance of the Work;
 - 3) Contractor has made or caused to be made all examinations, analyses, schedules, investigations and tests, borings and studies as it deems necessary

for the performance of the Work for the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, borings, reports or similar data are required by Contractor for such purposes;

- 4) Contractor acknowledges and agrees that the Contract Times and Contract Price are sufficient in all respects to allow the Contractor to complete the Work in strict accordance with the Contract Documents, including any work inferred therefrom;
- 5) Contractor has given Engineer written notice of all conflicts, errors, omissions and/or discrepancies that it has discovered, or reasonably should have discovered, in the Contract Documents and the written resolution thereof by Engineer, is acceptable to Contractor;
- 6) Contractor acknowledges that the Work, construction, reconstruction, and services will occur during all seasons of the year, including winter and wet weather months and under winter and wet weather conditions; notwithstanding these conditions, Contractor acknowledges that it has informed itself of the weather history of the area of the Site, including without limitation, conditions documented by N.O.A.A. for a 100-year history, and agrees to complete the Work and the Project within the Contract Times without exceeding the Contract Price; and
- 7) Contractor's Proposal is true and accurate in all respects and includes all Work necessary to complete the Project within the Contract Times and without exceeding the Contract Price.

2. THE TIME

- A. Contractor shall be prepared to begin the Work within 10 consecutive calendar days of the execution of the Agreement. Notwithstanding anything to the contrary herein, the Contractor shall not begin the Work unless and until the Owner issues a written notice to proceed ("Notice to Proceed"). The above requirement shall not constitute a representation or guarantee of the date that Owner will issue a Notice to Proceed. Owner shall have 45 calendar days following the execution of this Agreement to issue the Notice to Proceed, during which time the Contractor shall not be entitled to any increase in or change to the Contract Times or Contract Price. The Parties agree the Contract Times are considered essential elements of the Contract Documents.
- B. Contractor agrees to achieve **Substantial Completion of the Work within 370 calendar days** of the Notice to Proceed and **Final Completion of the Work within 400 calendar days** of the Notice to Proceed. Specific interim completion deadlines are addressed in the Contract Documents.
- C. If the Contractor is delayed by a Force Majeure Event, as defined in the Contract Documents, and if such delay affects the Critical Path, then only the approved Schedule and the Contract Times shall be adjusted, subject to and in strict conformance with the requirements of the Contract Documents, and only to the extent necessary to address such delay (but the total extension of all Critical Path Activities may not exceed the period of time required by the Contractor, using its best efforts, to mitigate the effect of

- the delay). An extension of time shall be the Contractor's sole remedy for any delay caused by a Force Majeure Event. The Contractor shall use its best efforts to mitigate the effects of any delay, whether or not it is caused by a Force Majeure Event. Such best efforts shall not include the obligation to accelerate the Work. Acceleration of the Work is addressed separately in the Contract Documents.
- D. Immediately upon (and not more than 24 hours following the commencement of) the occurrence of a Force Majeure Event, the Contractor shall notify the Owner and Engineer in writing, setting forth the cause of the delay, a description of the portions of the Work affected, and additional relevant details. Contractor's failure to submit the notice of Force Majeure Event required herein shall constitute a waiver of any claim for an extension of time by the Contractor. In the case of a continuing delay caused by a Force Majeure Event, only one notice is necessary.
- E. No adjustments shall be made to the Schedule for any suspension, delay or interruption (i) to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor, (ii) to the extent the delay could have been mitigated by the Contractor, or (iii) for which an equitable adjustment is provided or excluded under any other provision of the Contract Documents. The Owner's exercise of any of its rights under the Contract Documents or the Owner's requirement of correction or re-execution of any Defective Work shall not, under any circumstances, be construed as interference with the Contractor's performance of the Work.
- F. The remedies provided in Article 2 of this Agreement and the General Conditions, respectively, shall be the sole and exclusive remedies (in lieu of all other remedies whatsoever) of the Contractor for any delay, interference, or hindrances in the performance of the Work, loss of productivity, impact damages and similar claims and damages, whether or not contemplated by the Parties. In no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any delay, including, without limitation, all direct costs, indirect costs, overhead costs (including field or home office overhead, using Eichleay formula or otherwise), taxes, interest, general and administrative expenses, profit and all effects, direct, indirect and consequential resulting from the delay including acceleration[(actual or constructive), hindrance, disruption, interference, diminished bonding capacity, loss of productivity, impairment, manpower inefficiencies, lost opportunity, and "ripple effects", impact damages or other similar remuneration (collectively "Delay Damages"). Except only for time extensions for a delay caused by a Force Majeure Event and as specifically provided in the Contract Documents, or for specified recoverable costs in cases of an Owner Delay (as that term is defined in the Contract Documents), the Contractor hereby expressly waives, covenants and agrees not to assert any claims against the Owner for Delay Damages which it or any Subcontractor or Supplier may incur as a result of any of the foregoing causes, delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any Force Majeure Event or any act or omission of the Owner, its representatives or agents, it being understood and agreed that their sole and exclusive remedies shall be those set forth herein and the Contract Documents.

3. LIQUIDATED DAMAGES

- A. The Contractor and the Owner agree that all time limits stated in the Contract Documents are essential conditions of the Contract Documents, and the Contractor's performance (strictly, not substantially) in accordance with the Schedule is the essence of this Agreement and therefore are material terms.
- B. The Contractor acknowledges and recognizes that:
- 1) the Owner is entitled to full and beneficial use of the completed Work following expiration of the Contract Times, and
 - 2) the Owner has scheduled the commencement of its activities based upon the Contractor achieving certain Work by intermediate milestone dates and Substantial and Final Completion of all of the Work within the Contract Times.
- C. The Contractor further acknowledges and agrees that if the Contractor fails to complete certain Work by specified milestone dates and/or fails to achieve Substantial Completion or Final Completion of any portion of the Work within the Contract Times, Owner will sustain extensive damages and serious loss as a result of such failures that may be difficult to calculate. Accordingly, Owner and Contractor agree the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages, and not as a penalty, the sum of **one thousand dollars (\$1,000.00) per day** commencing upon the day following the expiration of any of the following: a required milestone date; the date of Substantial Completion, and/or the date of Final Completion of the Project and continuing until the required Work for any of the foregoing deadlines is completed. Liquidated damages in the amount as stated above also shall apply to any failure to open a road on time as outlined in the Summary of Work.
- D. Because of the impracticality and difficulty of ascertaining and calculating the Owner's actual damages, such liquidated damages are hereby agreed to be a reasonable pre-estimate of and reasonable just compensation for the damages the Owner will incur as a result of the delayed completion of the Work. The Owner may deduct liquidated damages from any unpaid amounts then and thereafter due the Contractor under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the Owner by the date specified by the Owner, but in no event less than fourteen (14) days from the date of the Owner's demand. Interest shall begin to accrue on the date such liquidated damages are due until paid and shall thereafter accrue at seven percent (7%) per annum. The Contractor and Owner agree that the foregoing liquidated damages are intended to compensate Owner only for damages due to the late delivery of the Work and not for any damages that Owner may suffer as a result of other Contractor defaults. Contractor's payment (or deduction) of liquidated damages shall in no way restrict or limit the Owner's ability to recover (or the Contractor's liability for) damages suffered or incurred by the Owner as a result of Contractor's defaults unrelated to the late delivery of the Work under the Contract Documents.

4. ASSIGNMENT OF CONTRACT

Contractor agrees that it shall not assign or transfer this Contract except with the Owner's written consent. Contractor shall not assign either legally or equitably, any of the monies payable to it under this Agreement, or its claim thereto, except with the written consent of the Owner. The Owner may withhold such consent in the Owner's sole and absolute discretion.

5. THE CONTRACT PRICE

- A. The Contract Price shall be the total of all lump sum amounts together with any Unit Price amounts based on the initial estimated quantities identified in the Contractor's Proposal.
- B. The Contract Price shall be increased as a result of changes in scope and actual quantity determinations as provided under the provisions of the Contract Documents and reduced by such sums as the Owner may lawfully deduct and retain, including without limitation, liquidated damages under the provisions of Article III of this Agreement.
- C. Upon completion of the Work, Owner will issue a Change Order adjusting the Unit Price quantities to reflect the actual quantities of the Work performed under the Contract Documents and adjusting the total Contract Price accordingly. Progress payments shall be made in accordance with the provisions of Article 4.

6. PAYMENT PROCEDURES

- A. Schedule of Values
 - 1) Within ten (10) calendar days of the Notice to Proceed, Contractor shall prepare and submit to the Engineer, a schedule of values for only the Lump Sum "Lsum" bid item, ("Schedule of Values") which includes quantities and prices of items which, when added together, equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as a basis for determining the proper amount of progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work. The Schedule of Values shall conform to all requirements of the Contract Documents. Upon completing its review, the Engineer will return the Schedule of Values to Contractor identifying any exceptions to the form or content of the proposed Schedule of Values. Contractor promptly shall revise and resubmit the Schedule of Values to address any exceptions noted by the Engineer. As the Work progresses, Contractor shall modify the Schedule of Values to include any credits or approved change orders, or as otherwise required or allowed by the Engineer. Contractor will modify the Schedule of Values to conform to any requirements requested by the Engineer regardless of whether Contractor agrees or disagrees with the requested modification. Contractor shall incorporate the Schedule of Values into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the quantities completed.

B. Applications for Payments

- 1) Pursuant to the Construction Contract Retainage Act, Act No. 524, Michigan Public Acts of 1980, as amended, MCL 125.1561 et seq., the Owner hereby designates the Engineer as the person to whom Applications for Payment shall be submitted. The Contractor hereby designates _____ as the person who will submit Applications for Payment to the Owner.
- 2) No payment will be made for materials furnished which are not incorporated in the finished Work, unless otherwise agreed by the Owner in writing. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored and secured at the Site or at another location agreed to in writing, the Application for Payment also shall be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
- 3) Materials that may be considered for payment as stored material must be located on Owner's property and/or within the State of Michigan. Contractor also must submit the request for payment for stored materials to Owner at the same time that the Schedule of Values is submitted to the Engineer.
- 4) Materials that are not eligible for payment as stored materials include the following:
 - a) Perishable materials (example: cement, epoxy, etc.).
 - b) Electronic hardware and/or software.
 - c) Raw materials (un-fabricated steel, piping, etc.).
 - d) Materials to be incorporated into the work in less than 30 days or beyond 180 days.
 - e) Contractor's equipment (formwork, shoring, etc.).
- 5) As an aid to the Owner in evaluating estimates for progress payments, the Contractor may be required to submit to the Owner for approval a breakdown of some or all contract unit prices into their essential component parts. The sum of the component parts shall not exceed the total Contract Price on a per unit basis as established in the Proposal.
- 6) Each month, following the Notice to Proceed, Contractor shall prepare and submit to Engineer for review a draft Application for Payment using AIA Documents G-702 and G-703 or such other forms as the Owner may allow, which shall be certified with a reference to the Federal False Claims Act. The Application for Payment shall reflect all Work completed since the prior Application (if any) and shall meet all other requirements of the Contract

Documents. Each Application for Payment must strictly comply with and include all of the following: (1) a notarized Contractor's Declaration (on a form provided by the Owner) declaring that it has not performed any Work, furnished any material, sustained any loss, damage or delay, for any reasons, including soil conditions encountered or created, or otherwise done anything for which it will ask, demand, sue for, or claim compensation from the Owner other than as indicated on the Contractor's Declaration; (2) receipts or other vouchers showing Contractor's payments for materials and labor, including payments to Subcontractors; (3) a current, properly completed notarized Sworn Statement, on the Michigan statutory form, listing each Subcontractor, supplier and laborer having a contract with the Contractor in the current aggregate amount (including adjustments that have been issued as of that date) (Owner reserves the right to require Sworn Statements from Contractor's Subcontractors); (4) Partial Unconditional Lien Waivers and Releases in the form provided by Owner from each subcontractor, supplier and labor identified on Contractor's Sworn Statement, or Subcontractor's Sworn Statement, if requested; (5) written consent of the Contractor's surety; (6) a copy of the then current Project Schedule Update as returned by Engineer with "No Exceptions"; (7) certified payroll reports if, when and as required by Michigan law, and in a form reasonably acceptable to the Owner; (8) Daily Reports for each day covered by the time period relating to the Application for Payment and in the form required by the Contract Documents; and (9) such other evidence requested by Owner to satisfy Owner that the Work for which payment is requested has been completed in conformance with the Contract Documents, and that all amounts which have previously been paid for Work performed have been properly distributed to the various Subcontractors, Sub-Subcontractors, laborer and suppliers. The Contractor's failure to include the documents and information set forth in items (1) through (9) above shall render the Contractor's Application for Payment as invalid and of no effect, until such time as all the Contract requirements for making the application are fully complied with by the Contractor.

- 7) Each month, Contractor, Owner and Engineer shall meet to review and discuss Contractor's draft Application. Contractor is responsible for submitting the draft Application and scheduling the monthly pay application meeting. Following this meeting, the Contractor shall revise its draft Application for Payment in accordance with the comments of the Owner and Engineer.
- 8) Contractor shall submit the revised Application for Payment to the Engineer, together with all other documents required to be submitted with an Application for Payment, covering all Work performed since the proceeding Application for Payment (if any). Contractor must timely invoice for its Work. Contractor shall submit Application For Payment no later than 14 days before a scheduled meeting of the Owner's Drainage Board, if the Work is being conducted for a Drain Board.
- 9) The Application for Payment shall include all accompanying documents and approvals required by the Contract Documents. If the Contractor is not known to be in default of any of its obligations under the Contract Documents, the Application for Payment will be certified and presented by the Engineer to the Owner with a recommendation for approval of the payment. If the Application is

untimely, incomplete, incorrect, fails to include the required documentation, schedules, or certifications, or otherwise fails to conform to the requirements of the Contract Documents, it will not be submitted for approval by the Owner.

C. Payment Dates

- 1) Owner shall pay the Application for Payment within one of the following time periods, whichever is later, as provided by MCL 125.1562(3):
 - a) Thirty (30) days after the Engineer has certified the Application for Payment for payment.
 - b) Fifteen (15) days after the Owner has received the funds from the applicable department or agency of the federal or state government providing financing for the Project, if any funds are to come from either of those sources.
 - c) Fifteen (15) days following the scheduled Drainage Board meeting and approval by the Drainage Board.
- 2) Contractor's failure to submit a complete and accurate Application for Payment acceptable to the Engineer may delay payment on the Application for Payment.

D. Conditions of Payment

- 1) The Owner's payment (partial or final) shall not be considered as approval or acceptance of the Work or any portion thereof, or of the completeness or accuracy of the Application for Payment.
- 2) If an estimate in an Application for Payment is found to be excessive, future estimates in pay applications shall be adjusted downward to reflect the actual completion status of the Work.

E. Withholding of Payment

- 1) The Owner may withhold payment or, because of subsequently discovered evidence or subsequent review of the Work or the Contractor's Applications for Payment, invoice detail and/or submittals, may nullify the whole or any part of any payment previously made, to such extent as may be necessary in its opinion to protect the Owner from loss or expense due to any of the following:
 - a) The Contractor fails to properly respond to notices issued by the Owner pursuant to the Contract Documents;
 - b) The Contractor is in default of any of its obligations under this Agreement or under any of the Contract Documents, and/or is otherwise in default of any other agreement or contract with the Owner, whether or not related to this Contract;

- c) Any part of such payment that is attributable to Work which is Defective, as determined by the Engineer; provided, however, such payment shall be made as to the part thereof attributable to Work which is performed in accordance with the Drawings and Specifications and is not Defective, reserving, however, such amount as the Engineer shall determine necessary to protect the Owner with respect to Defective Work;
- d) The Contractor has failed, within ten (10) calendar days of receipt of payment from Owner, to make payments not in dispute promptly to Contractor's subcontractors, sub-subcontractors, laborers or suppliers or for material, labor or services used in the Work; Contractor promptly shall notify Owner if any such dispute exists;
- e) Any part of such payment is attributable to Work that the Owner has been notified of a claim or dispute or has received reasonable evidence indicating the existence of such a claim or dispute, unless the Contractor provides reasonable evidence of its ability to resolve the dispute and pay any amount owed;
- f) The Owner has a reasonable belief the Work will not be completed within the Contract Times established under the Contract Documents;
- g) The Owner reasonably believes that the portion of the Contract Price then remaining unpaid will not be sufficient to pay for Work not completed to date or to complete the Work in accordance with the Contract Documents;
- h) An Application for Payment is not in the exact form required by the Contract Documents;
- i) The Contractor has failed to submit and obtain approval for a Schedule, Schedule update, make up schedule or other documents required in the Contract Documents required for a complete and valid Application for Payment;
- j) The Contractor's Payment and/or Performance Bond Surety provides Owner with a notice to withhold further funds according to the terms of the Surety Bonds and/or indemnity agreement with the Contractor;
- k) At the written direction of Contractor's bond company; and
- l) The Owner is otherwise entitled to a setoff against the Contractor.

- 2) If the Owner elects to withhold a portion of a payment otherwise due to the Contractor for any of the reasons identified above, the Owner shall submit a written statement to Contractor describing the disputed items and shall have the right to require the Contractor to prepare and submit to the Owner a revised Application For Payment, as directed by the Owner, to facilitate payment of the undisputed amount, if any, otherwise due to the Contractor. Alternatively, the Owner shall have the right (but not the obligation) to revise the Contractor's Application for Payment to show the amount withheld by the Owner.
- 3) Whenever the Owner reasonably determines, after notice to the Contractor, that there is a basis for concern that payments properly owing to any subcontractor, supplier, surety, or laborer are not being made on a timely basis, the Owner may elect, but shall not be obligated to make, payments to the joint order of the Contractor and such subcontractor, supplier, or laborer, with any such payments satisfying any payment obligation otherwise owing by the Owner to the Contractor. Alternatively, the Owner may, but is under no obligation to make, direct payment to any subcontractor, supplier, or laborer of the Contractor, and such amounts directly paid shall otherwise satisfy any payment obligation owing by the Owner to the Contractor for the Work. The Owner's option to withhold payment from the Contractor, or to make joint payments or direct payments shall not create an intended third beneficiary relationship with any other person or entity, it being agreed and understood the Owner has the right to withhold payment, or to make such joint and direct payments but is not otherwise obligated (nor may it be compelled) to make such joint and/or direct payments.
- 4) The Owner also may elect at any time to require payments be made through a construction escrow, in which event the Contractor shall supply all customary forms and indemnities as may be required to satisfy the conditions to disbursement established by the applicable escrow agent.

F. Retainage from Payments

- 1) Each payment from the Owner to Contractor shall cover the amount due to the Contractor for Work completed through the date of the Application for Payment; provided, however, retainage in the amount of ten percent (10%) of each payment made or due from the Owner to the Contractor ("Retainage") shall be withheld from each payment until the Work on the Project is fifty percent (50%) complete as determined by the dollar amount of approved Applications for Payment. No further Retainage will be withheld once the Work is 50% complete unless the Owner determines that the Contractor is not making satisfactory progress, or for other specific cause relating to the Contractor's performance under the Contract. Retainage shall be withheld in compliance with MCL 125.1563. The provisions of MCL 125.1563 shall govern over any provisions contained herein that are found to conflict with the provisions of the statute.
- 2) The Owner's right to withhold Retainage is in addition to the Owner's right to withhold payment under the Contract Documents to protect the Owner from specific identified problems and claims and other costs for which the Contractor is responsible. The Owner is not required to use Retainage amounts to protect

the Owner from the costs and liability arising from claims and other problems caused by the Contractor or for which Owner may make deductions under the Contract Documents.

- 3) The Owner shall have the right, but not the obligation, to release Retainage related to a subcontractor who achieves Final Completion of its subcontracted portion of the Work under the subcontract substantially earlier than Final Completion of the entire Work, but only upon the written recommendation of the Contractor that such Retainage should be released. This option is entirely discretionary and shall create no obligation for the Owner, nor is this option intended to create any benefit to third parties.
- 4) At the time of Substantial Completion of the Work, the Contractor may make written application for a partial release of Retainage held by the Owner. The Owner shall have no obligation to approve such application but may do so in its sole discretion. Should the Owner agree to such request, considering the Contractor's performance, the performance of Contractor's subcontractors, and other factors as determined by the Owner in its sole and absolute discretion, the amount retained to the date of the request may be reduced by the Owner to a lower lump sum amount. The Owner's agreement to such partial release of Retainage shall not change the percentage retained from future Applications for Payments, if any, after the date of the partial release, if Owner has elected to continue withholding Retainage from Contractor's Applications for Payment.
- 5) All retained amounts and interest earned on retainage not otherwise disbursed will be paid with Contractor's Final Payment. Contractor shall provide Owner with consent from the Surety for any release of retention. In the event of a dispute as described in MCL 125.1564(3), the parties shall abide by the provisions of said statute and agree to submit the dispute to the Engineer to determine the rights of the parties to retained funds and interest earned thereon. The Engineer shall follow the dispute resolution process provided in the statute and its decision shall comport with the requirements therein. This dispute resolution process is not intended to alter, abrogate, or limit any rights with respect to remedies that are available to enforce or compel performance of the terms of the Contract by either party.

7. FINAL PAYMENT – FINAL ACCEPTANCE

- A. Neither Final Payment nor any remaining Retainage shall become due until the Contractor has completed all of the Work on the Project, including any Punch List items, as acknowledged by Owner and Engineer, Owner has issued written acknowledgement of Final Completion, and Contractor has completed and/or submitted to the Owner all of the following: (1) an affidavit in the form approved in the Michigan Construction Lien Act that payrolls, bills for materials and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied; (2) consent of all sureties to Final Payment; (3) final record Drawings, including record Drawings marked by the Contractor with record information set forth in the Contract Documents and the Contractor's coordination drawings; (4) the final versions of all manufacturers' warranties; (5) a final sworn statement from the Contractor in the form set forth in the Michigan Construction Lien Act duly executed and notarized showing all of Contractor's subcontractors,

- suppliers and laborers to be fully paid; (6) Full Unconditional Lien Waivers and Releases in the form provided by Owner from all subcontractors, suppliers and laborers identified on the final Sworn Statements submitted by Contractor and Subcontractors, if required; (7) releases of all required permits; and (8) all other conditions set forth in the Contract Documents.
- B. The Contractor shall submit an Application for Final Payment when all Work is finally complete in accordance with the Contractor's obligations under the Contract Documents. The Contractor's Application for Final Payment shall include a request for payment of the Retainage held by the Owner, if Retainage otherwise has not been released at an earlier point in time.
 - C. Final Acceptance will have occurred after Owner has authorized Final Payment to the Contractor. The date of the Owner's authorization of Final Payment shall be the date of Final Acceptance.
 - D. Contractor's Application for Final Payment shall itemize all timely asserted claims and disputed amounts that remain unresolved at the time of submission. All claims or disputed amounts shall include the designation of the amount that remains in dispute and a reference by date and correspondence number to the specific Notice of Claim and substantiation of the claim submitted by the Contractor in accordance with the Contract Documents. The Final Application for Payment shall indicate only the amount that remains in dispute for each disputed claim and shall not include original claim amounts where a portion of the claim or disputed amount has been resolved.
 - E. The acceptance of the Final Payment (in whole or in part) by the Contractor shall constitute a full and final release of Owner and waiver of all claims against the Owner arising out of or in connection with the Project and/or Contract Documents, except only those specific claims of the Contractor timely made in writing as required by the Contract Documents and itemized in the attachment to Contractor's Final Application for Payment. Notwithstanding anything to the contrary herein, the Contractor's written itemization of reserved claims may not revive claims which were waived by Contractor as a result of its failure to timely assert such claims accordance with the Contract Documents.

8. DISPUTE RESOLUTION

- A. Notwithstanding anything to the contrary herein, and assuming the Parties have completed the Disputed Work procedure in the General Conditions, any remaining unresolved claims by the Contractor against the Owner or the Owner against the Contractor first shall be resolved through a meeting between the Contractor's highest officer familiar with the Project and the Owner's highest level staff member, and such meeting shall occur no earlier than thirty (30) days after Final Completion. At the Owner's option, this meeting may be conducted by a facilitator mutually acceptable to the Parties, or, in the event the Parties are unable to agree on a facilitator, the Parties shall select a facilitator according to the American Arbitration Association Construction Industry Rules for Mediation. The meeting between the Contractor's highest officer and the Owner's highest official is a condition precedent to the Contractor initiating litigation or demanding arbitration (if elected by the Owner).

- B. In the sole and absolute discretion of the Owner, the Owner may elect to arbitrate claims, and thereafter all claims, disputes and other matters in question arising out of or relating to Contract Documents and/or the Project, shall be decided by arbitration. If elected by the Owner, such arbitration shall be administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) shall be final and binding and shall be entered in any Court having jurisdiction thereof. The arbitration shall be conducted in Oakland County, Michigan. The Owner may, but is not obligated to, require the Contractor to join any of the Contractor's subcontractors and/or suppliers to the arbitration, and the Contractor shall insure its contracts with each of its subcontractors and suppliers include the right to join other parties to arbitration. Contractor shall have no right to join subcontractors to the arbitration and subcontractors shall not intervene in the arbitration unless joinder is requested by the Owner.
- C. In the event the Owner does not elect arbitration, any and all disputes shall be resolved by litigation in Oakland County, Michigan, it being agreed the Contractor conducts business in Oakland County, Michigan and the Contractor waives any claim that venue is improper in Oakland County, Michigan.
- D. Notwithstanding anything to the contrary herein, to the fullest extent permitted by law, the Owner's total liability to the Contractor in any action, proceeding, arbitration or judgment shall not exceed the Contract Price adjusted in accordance with the Contract Documents. Contractor waives any and all claims for damages in excess of the Contract Price. Further, in no event shall Owner, or any director, officer, employee, agent, successor or assign of the Owner, be liable to Contractor, or anyone claiming through or related to Contractor, whether based on contract, tort, negligence, warranty, indemnity, strict liability, delay, error or omission, other otherwise, for any consequential, special, incidental, indirect, punitive, exemplary or multiple damage or damages arising from or in connection with loss of use or loss of revenue or profit, actual or anticipated, increased expense of manufacturing or operation, loss of bonding capacity, or cost of capitals, and the Contractor hereby releases Owner, and any director, officer, employee, agent, successor or assign of the Owner, from all such liability. Any action resulting from any alleged breach of contract or claim of negligence of the Owner must be commenced within one year of the date of Substantial Completion (and documented as required by the Contract Documents) or the Contractor will be deemed to have irrevocably waived any such cause of action.
- E. The pendency or possibility of a dispute between the Owner and Contractor shall not interfere with the progress of the Work by Contractor, nor shall the Contractor be permitted to suspend the Work, slow the performance of the Work, and/or terminate the Work except as specifically provided for in the Contract Documents.
- F. The parties acknowledge and agree that during the course of the Project, claims may arise from time to time which have a small dollar value and that it would not be an efficient use of the parties' respective resources to litigate or arbitrate each such claim individually. Therefore, notwithstanding anything to the contrary in this Article 8 or elsewhere in this Agreement, neither party shall have the right, prior to Final Completion or the earlier termination of this Agreement, to initiate arbitration proceedings or file suit, as the case may be, against the other unless the aggregate amount of such Party's claim(s) is at least two hundred thousand dollars (\$200,000.00).

9. MISCELLANEOUS

- A. The Contractor acknowledges that it has not received or relied upon any representations or warranties of any nature whatsoever from the Owner or Engineer, or their respective agents or employees, not set forth in the Contract Documents and that this Contract is entered into solely upon the Contractor's own investigations, careful deliberations and independent business judgment.
- B. If any section, paragraph, sentence, clause or phrase of these Contract Documents shall be held invalid, the same shall not affect any other part of these Contract Documents.

10. GOVERNING LAW

This Agreement is made and entered into in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan. The language of all parts of this Agreement is intended to and, in all cases, shall be construed as a whole, according to its fair meaning, and not construed strictly for or against any Party. As used in this Agreement, the singular or plural number, possessive or non-possessive shall be deemed to include the other whenever the context so suggests or requires.

11. CAPTIONS

The article headings or titles and/or all article numbers contained in this Agreement are intended for the convenience of the reader and not intended to have any substantive meaning and are not to be interpreted as part of this Agreement.

12. SEVERABILITY

Each portion of this Agreement and the Contract Documents shall be deemed severable to the extent practical while maintaining the enforceability and intent of this Agreement. Any portion of this Agreement held to be unenforceable shall be severed from the Agreement with the remaining provisions continuing in full force and effect.

13. NOTICES

All notices required or permitted to be given by one Party to the other under the Contract Documents shall be in writing and sent to that Party at the address specified below by certified U.S. Mail, return receipt requested, or recognized overnight courier service, or shall be hand-delivered or transmitted by facsimile that retains a record of transmission. Notices shall be effective upon the earlier of actual receipt or two (2) business days after posting or delivery to a courier. Notices also shall be deemed to have been duly served if delivered personally in writing to the Contractor's Project Executive or other on-site representative. Either Party may change its address or designee for purposes of this Article by a written notice complying with the provisions of this Article.

If to the Contractor:

Name:

Address:

Contact Number:

Email:

If to the Owner:

Name: Jen Cook, P.E.

Address: One Public Works Drive, Building 95 West

Waterford, MI 48328

Contact Number: 947-955-6560

Email: cookjm@oakgov.com

With a copy to:

Name: John Bergsma, P.E.

Address: 555 Hulet Drive, PO Box 0824

Bloomfield Hills, MI 48303

Contact Number: 248-330-7061

Email: jbergsma@hrcengr.com

14. ~~CONTRACT SUBJECT TO ACQUISITION OF FINANCING AND EASEMENTS~~

~~(Strike if not applicable)~~

~~The Contract is executed and delivered subject to arrangements of financing and easement acquisition for the completion of the Project. If such arrangements are not completed within a reasonable time of execution of the Agreement, then either party may terminate this Agreement without liability.~~

WITNESS

OAKLAND COUNTY WATER RESOURCES
COMMISSIONER

Signature: _____

Print Name: _____

WITNESS

CONTRACTOR: _____

Signature: _____

Print Name: _____

Title: _____

Approved as to form:

Oakland County Water Resources Commissioner Legal Counsel

INSTRUCTIONS FOR EXECUTING AGREEMENT

If the Contractor is a Corporation, the following certificate should be executed:

I, _____, certify that I am the _____ Secretary of the Corporation named as Contractor hereinabove; that _____, who signed the foregoing Agreement on behalf of the Contractor, was then _____ of said Corporation; that said Agreement was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

(signature)

(Corporate Seal)

If the Agreement is signed by the Secretary of the Corporation, the above certificate should be executed by some other officer of the Corporation, under the Corporate Seal. In lieu of the foregoing certificate, Contractor may attach to the Agreement copies of pertinent records of the Corporation that will show the official character and authority of the officers signing, duly certified by the Secretary or Assistant Secretary under the Corporate Seal to be true copies.

The full name and business address of the Contractor should be inserted, and the Agreement should be signed with his official signature. Please have the name of the signing party or parties typewritten or printed under all signatures to the Agreement.

If the Contractor is operating as a partnership, each partner should sign the Agreement. If the Agreement is not signed by each partner, Contractor shall attach a duly authenticated Power of Attorney to the Agreement evidencing the signer's (signers') authority to sign such Agreement for and in behalf of the partnership.

If the Contractor is an individual, the trade name (if the Contractor is operating under a trade name) should be indicated in the Agreement and the Agreement should be signed by such individual. If the Agreement is signed by someone other than the Contractor, Contractor shall attach a duly authenticated Power of Attorney to the Agreement evidencing the signer's authority to execute such Agreement for and in behalf of the Contractor.

BOND NO. _____

LABOR AND MATERIAL BOND

KNOW ALL MEN BY THESE PRESENTS, that _____, ("Contractor"), as Principal, and _____ ("Surety"), as Surety are held and firmly bound unto the **OAKLAND COUNTY WATER RESOURCES COMMISSIONER** ("Owner"), in the _____ sum of _____ Dollars (\$ _____) good and lawful money of the United States of America, to be paid to said Owner, its legal representatives and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, and each and every one of them jointly and severally, firmly by these presents

WHEREAS, Contractor has entered into a certain contract with Owner, dated the _____ day of _____, 20_____, (hereinafter called the "Contract") for the construction of: **VILLAGE OF LAKE ORION PHASE 1 PUMP STATION IMPROVEMENTS (the "Project")** which Contract and the specifications for said Work shall be deemed a part hereof as fully as if set out herein; and

WHEREAS, this Bond is given in compliance with and subject to all the provisions and conditions of Public Act 213 of the Public Acts of 1963, MCLA 129.201 – 129.211, as amended.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH that if the above named Principal, legal representatives, or successors shall pay or cause to be paid to all subcontractors, persons, firms and corporations, as the same may become due and payable, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Contract, then this obligation shall be void and the Surety and the Principal shall have no obligation under this Bond; otherwise the Bond shall remain in full force and effect.

This Bond is given upon the express condition that any changes, alterations, or modifications that may be hereafter recorded or made in the construction and complete installation of the work herein referred to, or the placing of an inspector or superintendent thereon by the Owner shall not operate to discharge or release the Surety thereon.

The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

Notice and Claims to the Surety, the Owner or the Principal shall be mailed or delivered to the address shown on the page on which their signature appears or as otherwise provided in the Contract. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Principal shall promptly furnish a copy of this Bond or shall permit a copy to be made.

JIM NASH
OAKLAND COUNTY WATER RESOURCES COMMISSIONER

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective authorized officers this ____ day of _____, 20____.

Sealed with our seals and dated this ____ day of _____, 20____.

(Witness)

(Principal) (corporate seal)

(Print Name)

(Signature)

(Title)

(Print Name & Title)

(Address)

(Witness)

(Surety) (corporate seal)

(Print Name)

(Signature)

(Title)

(Print Name & Title)

(Address)

Attach Power of Attorney

BOND NO. _____

MAINTENANCE AND GUARANTEE BOND

KNOW ALL MEN BY THESE PRESENTS, that _____, ("Contractor"), as Principal, and _____ ("Surety"), as Surety are held and firmly bound unto the **OAKLAND COUNTY WATER RESOURCES COMMISSIONER** ("Owner"), in the sum of _____ Dollars (\$ _____) good and lawful money of the United States of America, to be paid to said Owner, its legal representatives and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, and each and every one of them jointly and severally, firmly by these presents

WHEREAS, Contractor has entered into a certain contract with Owner dated the _____ day of _____, 20____, (hereinafter called the "Contract") for the construction of the VILLAGE OF LAKE ORION PHASE 1 PUMP STATION IMPROVEMENTS (the "Project") which Contract and the specifications for said Work shall be deemed a part hereof as fully as if set out herein; and

WHEREAS the improvements to be constructed under the Contract are located in Lathrup Village, Oakland County, Michigan and shall be operated and maintained by the Owner;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that Contractor has covenanted to the Owner that for a period of two (2) years from the date of Final Acceptance of the Project, to keep in good order and repair any defect in all the Work performed or materials and equipment supplied by either the Contractor, its subcontractors, or its material and equipment suppliers on the Project, that may develop during said period due to improper materials, defective equipment, workmanship or arrangements, and any other Work affected in making good such imperfections or nonconformities, all without expense to the Owner, excepting only such part or parts of said Work as may have been disturbed without consent or approval of the Contractor after the Final Acceptance of the Project.

Whenever directed to do so by the Owner, by notice served in writing, either personally or by mail, on the Contractor at _____, or its legal representatives, or successors or the Surety at _____, Contractor will proceed at once to make such repairs as directed by the Owner and if Contractor fails to do so within one (1) week from the date of service of such notice, then Owner shall have the right to purchase such materials and employ such labor and equipment as may be necessary for the purpose, and to undertake, do and make such repairs, and charge the expense thereof to, and receive same from the Contractor or the Surety. If any repair must be made at once to protect life and property, then and in that case, Owner may take any immediate steps to repair, barricade defects or other action, without notice to the Contractor. In such accounting, Owner shall not be held to obtain the lowest cost to perform the work, or any part thereof, but all sums actually paid therefor shall be charged to the Contractor or Surety. In this regard, the Owner's judgment is final and conclusive.

In addition to the foregoing, Contractor shall, for a period of two (2) years from the date of Final Acceptance, maintain and keep the Work so constructed in good order and repair, excepting only such part or parts of the Work which may have been disturbed without the consent or approval of the Contractor after the Final Acceptance of the same, and shall whenever notice is given as hereinbefore specified, at once proceed to make the repair as directed in the notice, or shall reimburse the Owner for any expense incurred by making such repairs. Contractor also shall fully indemnify, defend and hold harmless the

JIM NASH
OAKLAND COUNTY WATER RESOURCES COMMISSIONER

Owner from and against any and all liabilities, claims, causes of action, lawsuits, damages, losses and expenses to the extent caused by, arising out of, resulting from or occurring in connection with any injury or damage to any person or property, by or from any of the acts or omissions or through the negligence of said Contractor, its servants, agents, or employees, in the prosecution of the Work, and from any and all claims arising under the Workers' Compensation Act of the State of Michigan. Should the Contractor or Surety take such action, then the above obligations shall be void, otherwise they shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective authorized officers this _____ day of _____, 20____.

Sealed with our seals and dated this _____ day of _____, 20____.

(Witness)

(Principal) (corporate seal)

(Print Name)

(Signature)

(Title)

(Print Name & Title)

(Address)

(Witness)

(Surety) (corporate seal)

(Print Name)

(Signature)

(Title)

(Print Name & Title)

(Address)

Attach Power of Attorney

BOND NO. _____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that _____, ("Contractor"), as Principal, and _____ ("Surety"), as Surety are held and firmly bound unto the **OAKLAND COUNTY WATER RESOURCES COMMISSIONER** ("Owner"), in the sum of _____ Dollars (\$ _____) good and lawful money of the United States of America, to be paid to said Owner, its legal representatives and assigns, for which payment well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, and each and every one of them jointly and severally, firmly by these presents

WHEREAS, Contractor has entered into a certain contract with Owner dated the _____ day of _____, 20____ (hereinafter called the "Contract") for the construction of: **VILLAGE OF LAKE ORION PHASE 1 PUMP STATION IMPROVEMENTS** (the "Project") which Contract and the specifications for said Work shall be deemed a part hereof as fully as if set out herein; and

WHEREAS, the Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference;

WHEREAS, this Bond is given in compliance with and subject to all the provisions and conditions of Public Act 213 of the Public Acts of 1963, MCLA 129.201 – 129.211, as amended.

NOW, THEREFORE, if the Contractor shall save and hold harmless the Owner from all public liability and damages of every description in connection therewith, shall well and faithfully in all things fulfill the Contract according to all the conditions and stipulations therein contained in all respects, and shall save and hold harmless the Owner from and against all liens and claims of every description in connection therewith, then this obligation shall be void and of no effect; but otherwise it shall remain in full force and virtue; and in the event that the Owner shall extend the time for the completion of said work or otherwise modify elements of the Contract in accordance with provisions thereof, such extension of time or modification of the Contract shall not in any way release the sureties of this Bond.

The Surety hereby waives notice of any change, including changes of time, to the Contract or to related subcontracts, purchase orders and other obligations.

Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears or as otherwise provided in the Contract. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their respective authorized officers this ____ day of _____, 20____.

Sealed with our seals and dated this ____ day of _____, 20____.

(Witness)

(Principal) (corporate seal)

(Print Name)

(Signature)

(Title)

(Print Name & Title)

(Address)

(Witness)

(Surety) (corporate seal)

(Print Name)

(Signature)

(Title)

(Print Name & Title)

(Address)

Attach Power of Attorney

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APPENDICES

Contractor's Affidavit
Contractor's Declaration

1. CONTRACT DOCUMENTS

- A. The Contract Documents are defined to include the Agreement, Bonds, Drawings (also known as Contract Drawings), Advertisement, Information for Bidders, Proposal, Specifications, General Conditions, any Supplementary Conditions issued by the Owner prior to the date of Contract Agreement, any Change Orders signed by both parties, and supplements thereto agreed to by both parties. Terms used in the General Conditions have the same meaning as those terms are defined and used in the Agreement and vice versa. In the event of any conflict between the Agreement and the General Conditions, the Agreement shall govern in all material respects. The Contract Documents represent the entire and integrated agreement between the Owner and the Contractor and supersede all prior negotiations, representations, or agreements, either written or oral. The Contract Documents may be amended only by a Modification signed by both the Owner and the Contractor. The Contract Documents shall, if possible, be construed to render each of its provisions valid and enforceable. However, if any part, term or provision of the Contract Documents are held by the final judgment of any court of competent jurisdiction to be illegal, invalid, or unenforceable, the validity of the remaining portions or provisions shall not be impaired or affected, and the rights and obligations of the parties shall be construed as having been written to include terms that provide the maximum protection for Owner enforceable under law, and shall be enforced as if the Contract Documents did not contain the particular part, term, or provision held to be illegal, invalid, or unenforceable.
- B. The intent of the Contract Documents is to describe a functionally complete Project, and it is intended that Contractor shall furnish all labor, materials, tools, equipment and other items necessary for the proper development, execution, administration and completion of the Work in accordance therewith, including all work incidental to or reasonably inferable from the Contract Documents as being necessary to produce the intended results, unless it is specifically indicated in the Contract Documents that such work is to be performed by others, and to complete the Work in a satisfactory manner, ready for use and operation by Owner. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Omissions from the Contract Documents or the misdescription of details of the Work, which are manifestly necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Contractor from performing such omitted work or misdescribed details of the Work but they shall be performed as if fully and correctly set forth and described in the Contract Documents. Hence, statements herein of services to be provided or tasks to be undertaken are not intended to enumerate each item of Work required.
- C. The Contractor acknowledges that the Contract Documents establish a relationship of trust and confidence between Contractor and the Owner, and the Contractor and the Owner accept this relationship, with the knowledge that Owner is placing its trust and confidence in the Contractor. The Contractor acknowledges that the Owner is relying upon the knowledge, skill, and expertise represented by the Contractor in the Proposal.
- D. The Contract Documents are intended to constitute a single agreement and the parties shall make every effort to construe such documents as being consistent and not contradictory, and what is required by one shall be binding as if required by all. If there is a conflict between or among any provisions of the Contract Documents, Contractor shall

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perform the more stringent requirement. If a conflict cannot be resolved by applying this principle, such conflict shall be resolved applying the following order of precedence:

- 1) Field Orders and Work Directives in date order, latest first if executed by the Engineer, Owner and Contractor
 - 2) Change orders in date order, latest first if executed by the Engineer, Owner and Contractor
 - 3) Addenda to the Contract Documents issued after the original documents were released
 - 4) Supplementary Conditions
 - 5) Summary of Work
 - 6) Provisions of Specifications
 - 7) Contract Drawings of Latest Issue
 - 8) Agreement
 - 9) General Conditions
 - 10) Information for Bidders
 - 11) Advertisement for Bids
 - 12) Contractor's Proposal
- E. Notwithstanding anything above, for contractual/administrative issues (as opposed to technical, design, or construction issues) the Drawings and Specifications shall have precedence only over the Contractor's Proposal.
- F. The Drawings and Specifications are complementary and what is called for by one shall be as binding as if called for by both. Should the Drawings, Specifications, and/or other instructions be contradictory in any particular manner or should there be any doubt as to the meaning of either, the Contractor shall initiate a discussion with the Engineer and thereafter request written clarification as required by the Contract Documents. Contractor shall seek such clarification prior to the submission of Contractor's Proposal, and Contractor's Proposal shall be deemed to have included all written clarifications.
- G. Unless the other Contract Documents provide otherwise, with respect to the Drawings and Specifications, the following apply:
- 1) Figures take precedence over scale measurements.
 - 2) Large scale details take precedence over smaller scale details, and special drawing details govern over standard details.

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- 3) Architectural or Civil Drawings take precedence regarding dimensions when in conflict with other Drawings, except for the size of structural members and dimensions shown on Structural Drawings.
- 4) Specifications shall govern over Drawings in matters of material or equipment specified; Drawings shall govern over Specifications in matters of construction or installation detail.
- 5) Existing conditions take precedence over Drawings and Specifications for dimensions.
- 6) Shown dimensions over figured dimensions. Contractor's use of scaled dimensions is at Contractor's sole and exclusive risk.
- 7) When multiple requirements are given for any item, all requirements shall be met.
- 8) Terms such as "as shown," "as indicated" and "as noted" mean there are additional requirements given elsewhere in the Contract Documents.

2. CONTRACT DRAWINGS AND SPECIFICATIONS

- A. The Work to be performed is shown on the accompanying set of original Drawings which are hereby made a part of this Contract, it being mutually understood and agreed that when taken together, the Drawings and Contract Documents, including the Specifications and the General Conditions, are complementary, and what is called for by any one shall be binding as if called for by all.
- B. The original Drawings may be supplemented by other drawings furnished by the Contractor but only if approved by the Engineer in writing or supplied to the Contractor by the Engineer during the progress of the Work as it may deem to be necessary or expedient. All such supplemental drawings or instructions are intended to be consistent with the Contract Documents, true developments thereof and reasonably inferable therefrom.
- C. These original and supplemental drawings constitute the Drawings according to which the Work shall be performed. The Contractor shall keep at the site, in sound and legible condition, an approved or confirmed copy of all Drawings and Specifications, of each issue, and shall always give the Engineer or Owner access thereto.
- D. Locations for items shown on the Drawings or described in the Specifications include all mounting, backing, cementing, wiring, plumbing or other details are included in the Contract Price, regardless of whether such details are specifically indicated in the Drawings or Specifications.

3. DEFINITION OF TERMS

The following definitions apply to the Contract Documents:

Activity: As used in connection with the CPM Schedule, the term “Activity” means a discrete portion of the Work for a Project that can be identified for planning, scheduling, monitoring and controlling the Project. “Critical Path Activities” are Activities on the Critical Path; they must start and finish on the planned early start and finish times. A “Predecessor Activity” is an Activity that must be completed before a given Activity can be started.

Addenda: Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the Bidding Documents.

Application for Payment: The form acceptable to Owner, Engineer, and/or RPR as designated by Owner, which is to be used by Contractor when requesting progress or final payments for Work completed and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

Application for Final Payment: The Application for Payment which Contractor submits to the Owner after Contractor has completed each of the requirements for Final Payment as set forth in the Contract Documents.

Bid: The offer or proposal of the Bidder submitted on the prescribed form identifying the prices for the Work to be performed and agreeing to perform the Work in accordance with the Contract Documents.

Bidder: A company submitting a Bid to perform the Work.

Bidding Documents: The Advertisement, Invitation to Bid, Information for Bidders, the Proposal and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

Boulder: A Boulder is defined as a solid mineral mass with a volume of less than 1.00 cubic yards. All boulder removal includes proper disposal as required and is incidental to the Work of the Project. It is not eligible for separate or added compensation.

Bulletin: Bulletin is defined as instrument providing clarification, supplemental information, documentation, or other such communication which neither involves Contract Time or Construction Cost adjustments to the Contract, nor changes the general character of the Work as a whole. Further, Bulletin provides means to transmit written information in a manner which is succinct, easily prepared and issued, and simply documented for future reference, as required. Bulletin does not represent, or suggest, a material change to the Contract. The Owner Engineer, and/or RPR as designated by Owner, may act as the issuing party. If the Contractor takes exception to the content of the Bulletin, it may respond accordingly, as provided in the Contract regarding requirements for disputed Work. This additional communication method is provided for reasons of clarity and convenience only and does not in any way replace or alter other existing requirements of the Contract.

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Change Order: A written instrument issued by the Owner, on a Change Order form furnished by the Owner, and signed by the Owner Contractor, and/or the RPR as designated by Owner, modifying (1) the scope of the Work, (2) the Contract Sum or any other cost or fee, or (3) the Contract Time and/or updated CPM Schedule. If one or more of the foregoing items (1) to (3) is not specifically addressed in a Change Order, the parties shall be deemed to have agreed that such item is unaffected by the Change Order.

Construction Agreement: The written instrument, also known as the Agreement, contained in the Contract Documents, between Owner and Contractor concerning the Work.

Construction Contract: The written instrument, which is evidence of the entire and integrated written agreement between the Owner and Contractor covering the Work required by the Contract Documents.

Construction Cost: The total cost to Owner of those portions of the entire Project designed or specified by the Engineer. Construction Cost does not include compensation and costs of the Engineer or other design professionals and other consultants, the cost of land, rights-of-way, or compensation for or damages to properties, or Owner's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

Contractor: The person or entity with whom Owner enters into a written agreement covering the Work required to be performed or furnished with respect to the Project.

Contract Documents: Documents that establish the rights and obligations of the parties engaged in construction, which include the Construction Agreement between Owner and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award), the notice to proceed, bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all written amendments, Change Orders, Work Directives, Field Orders, and the Engineer's written interpretations and clarifications issued on or after the effective date of the Construction Agreement. Submittals, Shop Drawings returned without exceptions and the reports and drawings of subsurface and physical conditions are not Contract Documents.

Contract Sum: The total of all moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement. The terms Contract Sum and Contract Price may be used interchangeably.

Contract Time(s): The Contract Time is the number of calendar days described in the Construction Agreement in which (or, alternatively, the date set forth in the Construction Agreement by which) Substantial Completion shall be achieved, subject to any extensions granted in executed Change Orders or otherwise specifically permitted by the Contract Documents. Any references to Contract Time shall be interpreted to mean Construction Time. Contract Time also may refer to the days or the dates identified in the Construction Agreement for Contractor to complete the Work so that it is ready for final payment as evidenced by Engineer's and/or RPR's written recommendation of final payment.

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CPM Schedule: The term "CPM Schedule" means and refers to the manpower loaded, logic-based progress schedule for the Project using critical path method (or similar, pre-approved method) scheduling technique to create and maintain a current and accurate schedule depicting the actual and expected progress of the Work. All Critical Path items must be shown on the CPM Schedule, regardless of the duration.

Critical Delay: A delay is a "Critical Delay" if and only to the extent it adversely affects the Critical Path of the Work. When two (2) or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delay(s) would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Times shall be adjusted, such concurrent Critical Delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.

Critical Path: The term "Critical Path" means the longest continuous chain of activities through the network schedule that establishes the minimum time to achieve Final Completion of the Work.

Day: The term "day" as used in the Contract Documents means calendar day unless otherwise specifically designated.

Daily Report: The term "Daily Report" as used in the Contract Documents means the written report prepared by the Contractor, daily and submitted to the Owner on a weekly basis, with copies attached to each Application for Payment.

Defective Work: Work not conforming to the requirements of the Contract Documents, including substitutions not properly "Returned Without Exceptions" and authorized, shall be considered "Defective".

Documents: Data, Reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner for use by the Contractor pursuant to this Agreement as well as Data, Reports, Drawings, Specifications, and other deliverables provided by Contractor where the Contract Documents require Contractor to both design and construct certain aspects of the Work, such as tunnel liners and temporary earth retention systems.

Drawings: That part of the Contract Documents prepared or approved by Engineer or prepared or approved by Contractor's design professionals which graphically show the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

Emergency: An event or condition that creates an imminent and immediate risk of significant damage to persons or property (including the Project and/or completed Work). An event or condition only creates a necessity for Emergency Work if a significant injury to persons or property is likely to occur if the Contractor stops Work and requests instruction from the Engineer. A condition that might pose a threat to persons or property sometime in the future does not create a necessity for Emergency Work.

Engineer: Unless otherwise specifically identified as a design professional under contract with

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Contractor, Engineer as used herein shall refer to a design professional hired by the Owner to prepare Drawings and Specifications for the Project, and to assist the Owner in interpreting the Drawings and Specifications during construction. If designated by Owner, the Engineer also shall serve as construction contract administrator of the Project for the Owner with the authority and responsibilities set out in the contract between the Owner and Engineer. Additional services also may be provided at the request of the Owner if needed. Contractor understands and agrees that Engineer's obligation under its contract with Owner are obligations to the Owner only, and Engineer shall have no independent obligation to Contractor to provide services or to take any action or refrain from taking action on behalf of Contractor.

Field Order: A written order issued by Engineer and/or RPR as designated by Owner, which directs minor changes in the Work but which does not involve a change in the Contract Sum or Contract Time.

Final Acceptance: Final Acceptance of the Work will have occurred when Owner has acknowledged Final Completion of the Work, and the Contractor has satisfied (1) all close-out obligations set forth in the Contract Documents to qualify for Final Payment, including, but not limited to, the conditions set forth in the Agreement and (2) the Owner has authorized final payment to the Contractor. The date of the Owner's authorization of Final Payment shall be the date of Final Acceptance.

Final Completion: Final Completion of the Work or a designated portion thereof will have occurred when the Work is fully and finally completed in accordance with the Contract Documents to the satisfaction of Owner, Engineer, and/or RPR as designated by Owner, and Owner issues a written acknowledgement of such completion. Following the receipt of the Owner's written acknowledgement of Final Completion, the Contractor shall be entitled to apply for Final Payment.

Force Majeure Event: The term "Force Majeure Event" means, and is limited to, the following: (1) strikes, lockouts, or picketing (legal or illegal) of an area-wide, trade-wide, owner-wide, or industry-wide nature (a strike, lockout or picket (legal or illegal) specific to the Project site, or directed at the Contractor or one or more of Contractor's Subcontractors or suppliers shall not be considered an area-wide, trade-wide or industry-wide strike, and does not constitute Force Majeure); (2) governmental action (other building laws, regulations or like actions) and condemnation; (3) riot, civil commotion, insurrection, and war; (4) fire or other casualty not the fault of the Contractor, accident, acts of God or the public enemy; (5) extremely unusual adverse weather conditions not reasonably expected for the location of the Work and the time of the year in question, such as tornados, earthquakes, floods and similar events where the Contractor is restricted from accessing the Project site by such adverse conditions for more than one-half the consecutive working days per month (historically severe weather, including, but not limited to temperature extremes, excessive precipitation, and excessive wind shall not be considered Force Majeure weather and must be accounted for in the Bid and all Schedules); (6) abnormal unavailability of fuel, power, supplies or materials that is not the fault of the Contractor; or (7) the passage or unexpected interpretation or application of any statute, law, regulation, or moratorium of any governmental authority that has the effect of delaying the Work, excluding any building statute, law, or regulation as to which any public or advance notice was available prior to its adoption or issuance. "Force Majeure" does not include the unavailability of any building material, equipment, or supply which is necessary for the Project or Work, nor of any supplier, Subcontractor, laborer or other entity or person required for the completion of the Work, except where a sole source material, equipment, or supply is specified in the Contract

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Documents and no other source of such material, equipment, or supply is available in sufficient time to avoid a delay to the Critical Path of the Project Work.

General Conditions: That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

Laws and Regulations: Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, authorities, and courts having jurisdiction.

Lump Sum Price: Lump Sum Price also shall include a "Stipulated Sum" or a Fixed Price" and shall mean the total amount to be paid by the Owner to the Contractor, for the full and complete performance of the Work, or for an identified and defined portion, or element thereof. The Owner shall pay Contractor the Lump Sum Price upon completion of the Work, or according to the payment terms of the Contract.

Notice of Award: A written notice from the Owner to the Contractor awarding the Contract to the Contractor.

Notice of Intent to Award: A written notice sent by the Owner expressing its intention to award the Contract to a particular Bidder. A Notice of Intent to Award is for informational purposes only and does not create any liability or obligation of Owner, either to issue or award the Contract, or for any other cause.

Notice to Proceed: A written communication from the Owner to the Contractor informing Contractor of the date that the Contractor may begin Work on the Project. The Contract Time shall begin to run from the date of the Notice to Proceed. Owner may withdraw a Notice to Proceed and issue a new Notice to Proceed if deemed necessary in Owner's sole discretion. If a Notice to Proceed is withdrawn, the Contract Time shall begin to run from the date of the new Notice. Withdrawal of a Notice to Proceed or the issuance of a new Notice to Proceed shall not create a basis for Contractor to request a time extension or additional compensation.

Observer: A field representative authorized by the Owner.

OCIP: Owner Controlled Insurance Program

Owner's Safety Representative: An individual from the Owner's staff or a third party appointed by the Owner that will represent the Owner in connection with safety matters on the site.

Owner: The Oakland County Water Resources Commissioner, County Agency for the County of Oakland, and/or the statutory Drainage District including its members, employees, agents and representatives.

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Owner Delay: An "Owner Delay" is an actual delay to the Contractor's performance of the Work to the extent caused by one or more of the following: (1) Modifications (excluding minor changes in the Work and interpretations), (2) the Owner's failure (or that of any other person for whom the Owner is responsible to the Contractor) to provide in a reasonable manner any product, service, data or information requested by the Contractor, in writing, that is reasonably necessary for the Contractor to perform the Work and is the Owner's obligation to provide (so long as the Owner and any other responsible person are given adequate time to respond); (3) the failure or inability of the Owner to provide access to the Project Site or critical portions thereof due to a failure to obtain a necessary easement or other cause for an unreasonable and unanticipated period of time; or (4) unreasonable and unanticipated interference by the Owner or persons for whom it is responsible with the Contractor's performance of the Work which continues after written notice to the Owner of such interference. Contractor shall not claim an Owner Delay as a result of a condition the Contractor discovered or should have discovered prior to Contractor's submission of its Proposal and/or prior to the Contractor beginning the Work (or any part of the Work).

Project: The project referenced and described in the Agreement and Contract Documents.

Punch List: A list of incomplete or non-conforming items of Work that do not impact Substantial Completion, which do not interfere with the use or occupancy of any part of the Work for its intended purpose and which, unless delayed by the need to order materials that could not reasonably have been anticipated by the Contractor, collectively are capable of being completed within sixty (60) days. Contractor must complete the items on the Punch List prior to Owner's Final Acceptance of the Work.

Record Drawings: The Drawings issued for construction on which the Engineer and/or RPR as designated by Owner, shall show changes due to Addenda or Change Orders or other information which the Engineer and/or RPR considers significant. The Record Drawings shall be prepared and updated during the prosecution of the Work. The Engineer and/or RPR as designated by Owner, shall maintain said Record Drawings in good condition and shall use colored pencils or other methods reasonably acceptable to the Owner to mark-up said set with "record information" in a legible manner to show: (1) deviations from the Drawings made during construction; (2) details in the Work not previously shown; (3) changes to existing conditions or existing conditions found to differ from those shown on any existing Drawings based on information provided by the Contractor or Observer; (4) the actual installed position of various components of the Work; and (5) such other information as the Owner may reasonably request.

Resident Project Representative ("RPR"): The authorized representative of Owner or Engineer assigned to assist Owner and Engineer with certain construction administration, observation, or other tasks at the Site or elsewhere during the Construction Phase. As determined by the Owner, the RPR will either be an agent or employee of the Engineer or Owner and under the direct supervision of the party contracting for the RPR's services. As used herein, the term RPR includes any assistants of RPR agreed to by Owner.

Request for Information ("RFI"): A written communication from the Contractor to the Engineer and/or RPR as designated by Owner, requesting clarification of design Drawings, Specifications, or other Contract Documents, or requesting information needed to perform the Work and not included in the Contract Documents. Contractor also shall submit an RFI if Contractor discovers a conflict or inconsistency in the design documents that cannot be

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resolved by a thorough review of the Contract Documents or application of the priority of documents provisions set out herein.

Returned Without Exceptions: Where used in conjunction with the response of Engineer or Owner to submittals, requests, applications, inquiries, reports, and claims by Contractor, the meaning of the term "returned without exceptions" shall indicate that the Owner or Engineer has, as indicated: (1) reviewed with no exceptions noted, (2) reviewed with exceptions noted and resubmission not required, (3) reviewed with exceptions noted and resubmission required, or (4) rejected with resubmission required. In no case shall review or "approval", "accepted" or "returned without exceptions" by Owner or Engineer be interpreted as a release of the Contractor from responsibilities to fulfill the requirements of the Contract Documents. The Owner and Engineer do not adopt items "approved," "accepted" or "returned without exceptions" as design documents. The Owner and Engineer shall have no liability or responsibility for the failure of an item or procedure to fit or function as intended or to conform to the requirements of the Contract Documents.

Rock: A solid mineral mass with a total volume of greater than 1.00 cubic yard. Rock removal will be paid for on a Time and Materials basis. Solid masses with a volume of less than 1.00 cubic yard are incidental to the Work and all costs to remove and dispose of the Rock properly by Contractor is included in the Contract Price.

Samples: Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portions of the Work will be judged. Samples shall be protected and remain available until after Final Completion

Safety Director: A qualified or competent person, whichever is required pursuant to MIOSHA safety and health standards for the work being performed, appointed by Contractor to oversee safety on the job site.

Schedule: The term "Schedule" means and refers to the CPM Schedule required by the Contract Documents.

Schedule of Submittals: A schedule, prepared and maintained by the Contractor, of required submittals and the time requirements for Engineer's review of the submittals.

Schedule of Values: A schedule, prepared and maintained by the Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Application for Payment.

Site: Land or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for Contractor's use.

Shop Drawings: All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to Engineer for review and response. Shop Drawings illustrate some portion of the Work. Engineer shall transmit a final reviewed copy of the Shop Drawings to Owner and RPR.

Specifications: That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and

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certain administrative details applicable thereto.

Subcontractor: An individual or entity having a direct Contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

Submittal: A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

Substantial Completion: The time at which the Work (or a specified part thereof) has progressed to the point, where, in the opinion of Owner, Engineer, and/or RPR as designated by Owner, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended and Contractor has (1) submitted the final versions of all operations and maintenance manuals, and/or other information that may be required by the Contract Documents, embodying such corrections and modifications from initial versions as the Owner shall reasonably request, (2) completed all training and start up requirements in the Contract Documents; and (3) completed all other requirements for Substantial Completion as may be defined elsewhere in the Contract Documents and as evidenced by the Owner's issuance of an acknowledgement of Substantial Completion. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

Supplementary Conditions: That part of the Contract Documents which amends or supplements the General Conditions.

Unit Price: A Unit Price is an all-inclusive total amount to be paid by the Owner to the Contractor for the full performance of each unit of an element of the Work, identified and described in the Contract Documents as Unit Price work items.

Work: The entire completed construction or the various separately identifiable parts thereof including but not limited to all labor, materials, and equipment required to be provided under the Contract Documents to construct the Project. Work includes and is the result of performing or furnishing labor, services (including design services), and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents. The scope of the Work also shall include any or all deviations in the Contract Documents required to meet job conditions and to complete the Work in conformance with the intent of the specific Contract requirements. The Work shall not include activities to be performed, or labor, services, materials, supplies and equipment to be supplied, by Owner hereunder.

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Work Directive: A written directive to the Contractor issued on or after the effective date of the Construction Agreement and signed by Owner, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Directive will not change the Contract Sum or the Contract Times but may be issued when the parties expect that the change directed or documented by a Work Directive may be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Sum or Contract Times. A Work Directive also may be issued when the Contractor and the Owner are in a dispute as to whether there is a change in the Contract Documents, or whether a change is compensable to the Contractor, or requires a credit to the Owner. In such case, the Work Directive requires the Contractor to proceed with the Work addressed therein, without any determination or evidence of any intent to enter into a Change Order, or right to an increase in the Contract Sum or additional time.

4. ENGINEER'S STATUS

- A. The Engineer has authority to recommend to the Owner that the Work be stopped, whenever such stoppage may be necessary to ensure the proper execution of the Contract.
- B. The Engineer also shall have authority to reject all Work and materials that do not conform to the Contract, and to decide questions that arise in the execution of the Work.
- C. The Engineer shall serve as the construction contract administrator for the Owner and all communications between the Owner and Contractor shall be through and/or by the Engineer. The Engineer also shall fulfill the roles specifically prescribed to the Engineer elsewhere in the Contract Documents, and as may be assigned in writing by the Owner.
- D. The Engineer shall not have authority to bind the Owner but shall only communicate Owner's decisions and/or instructions.
- E. The Engineer shall review and approve or take other appropriate action upon the design calculations and drawings submitted by Contractor's design professionals as required by the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Engineer's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Contractor. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, all of which remain the responsibility of the Contractor as required by the Contract Documents.
- F. At the Owner's discretion, the authority, rights and responsibilities granted or assigned to Engineer in this Article and throughout the Contract Documents may be assigned to an RPR under direct contract with the Owner. In those instances in which the Owner elects to (1) assign certain authority or responsibilities to such RPR or (2) authorize the RPR to receive certain information or documentation from the Contractor, including, but not limited to, test results or submittals, Owner will identify to Contractor which provisions in these General Conditions, the Supplementary Conditions or the other Contract Documents fall within the responsibilities of the RPR rather than the Engineer, or those provisions which are deemed a joint responsibility of the RPR and Engineer.

- G. Notwithstanding the above, Contractor's duties and responsibilities as set forth in the Contract Documents, including those of Contractor's design professionals, shall at no time be in any way diminished by reason of any approval by the Engineer, RPR, or Owner of any design documents, construction documents, or other submittals required by the Contract Documents to be furnished by Contractor, nor shall Contractor be released from any liability by reason of such approval by the Engineer, RPR, or Owner, nor shall such review relieve the Contractor of responsibility for compliance with the requirements of the Contract Documents it being understood that the Owner, Engineer, and RPR at all times are ultimately relying upon the skill and knowledge of the Contractor and its design professionals in preparing such design documents, construction documents, and all other deliverables of Contractor to be provided hereunder.

5. OBSERVER'S STATUS

- A. The Engineer may appoint on the job Observers who shall be under the direction of the Engineer. The Observers of the Work will inform the Engineer as to the progress of the Work, the way it is being done, and the quality of the materials being used. The Observer may call to the attention of the Contractor any failure to follow the Drawings and Specifications that may be observed but will have no obligation to the Contractor to do so. The Observer shall have the authority to reject materials or suspend the Work until questions on the performance of the Work can be referred to and decided by the Engineer but will have no obligation to the Contractor to do so. The Observer shall have no authority to direct the Contractor's Work or workmen, to supervise the Contractor's operations or to change the Plans or Specifications, unless otherwise noted in the Contract Documents.
- B. In no instance shall any action or omission on the part of the Observer constitute a direction to perform changed or extra Work, create any obligation for the Owner to provide additional compensation to the Contractor, nor release the Contractor from the responsibility of completing the Work in accordance with the Contract Documents.
- C. In an effort to assist Contractor to comply with the Drawings and Specifications, the Engineer is authorized, but not required to, issue a "Notice of Non-Compliance" to Contractor, advising Contractor of possible elements of Work that may not be in conformance with the Contract Documents, and/or which require correction. Engineer shall take such actions in its sole discretion.

6. CONTRACTOR'S RESPONSIBILITY

- A. The Contractor shall assume full responsibility for the Work and take all precautions for preventing injuries to persons and property on or about the Work; shall bear all losses resulting to it on account of the amount or character of the Work or because the conditions under which the Work is performed are different, or because the nature of the ground in which the Work is performed is different from that which was estimated or expected, or on account of the weather, floods, elements, or other causes. The Contractor shall assume the defense of and save harmless the Owner, its individual officers and agents and all other parties to whom Contractor owes an indemnity obligation under the Contract Documents from (at times, "Indemnified Parties"), all

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claims relating to design services provided, labor provided and materials furnished for the Work; to inventions, patents, and patent rights used in doing the Work; to injuries to any persons or property received or sustained by or from the Contractor, its agents or employees in doing the Work or arising out of the Work performed or to be performed and to any act, or neglect of the Contractor, its design professionals, agents or employees; and as otherwise provided in these Contract Documents.

- B. The mention of any specific duty or liability of the Contractor in this or in any part of the Contract Documents shall not be construed as a limitation or restriction upon any general liability or duty imposed on the Contractor by the Contract Documents, or in law or equity.
- C. When engineering or design services are required under the Contract Documents, Contractor shall cause such services to be provided by properly licensed design professionals, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professionals. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Engineer. The Owner and the Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Engineer have specified to the Contractor all performance and design criteria that such services must satisfy.
- D. The agreements between Contractor and its design professionals shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to the Owner.
- E. Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and Sub-Subcontractors of any tier and their respective agents and employees, and other persons or entities, including design professionals, performing any portion of Contractor's obligations under the Contract Documents. Reference in the Contract Documents to the Work, obligations, acts or omissions of the Contractor shall be interpreted to apply to those of its Subcontractors, Sub-Subcontractors of any tier, material suppliers, design professionals and their respective agents and employees irrespective of whether such other entities are specifically identified in such reference.
- F. Contractor shall obtain from each of its design professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (1) are consistent with the Project Specifications set forth in the Contract Documents, except to the extent specifically identified in such certificate, (2) comply with applicable professional practice standards, and (3) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project as they are in effect at the commencement of the Project; and (b) that the Owner and the Engineer shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.
- G. Contractor shall supervise and direct the Work, using the Contractor's best skill and

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- attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Engineer and shall not proceed with that portion of the Work without further written instructions from the Engineer. If the Contractor is then instructed in writing to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.
- H. Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- I. The Contractor shall submit Daily Reports to the Owner on a weekly basis. The Daily Report shall, at a minimum, include the following:
- 1) A description of the Contractor's Work activities for the day; a work force count by trade for Contractor and Contractor's Subcontractors;
 - 2) A listing of any deliveries;
 - 3) A listing of all equipment on the Project and the use of each piece of equipment for that day;
 - 4) A listing of all persons who visited the Project;
 - 5) Any safety violations or suspected safety violations;
 - 6) A description of any event or other matter that has or may adversely impact Contractor's ability to perform the Work in accordance with the Contract Documents and its actual or anticipated impact on the Work.

In addition to any other applicable requirements in the Contract Documents, Contractor's right to submit a claim for any Critical Delay or other matter that adversely impacts the Work is conditioned on Contractor's submission of its Daily Report describing the matter, and Contractor waives and releases any claim in connection with a matter that is not adequately described in Contractor's Daily Reports. Contractor's Daily Reports shall not serve as a substitute for, or relieve Contractor of its obligation to provide, formal written notice to Owner as required elsewhere in the Contract Documents of any Critical Delay or other matter that has or may adversely impact Contractor's ability to perform the Work in accordance with the Contract Documents, and the Contractor waives any claim that does not strictly comply with such requirements and agrees that Owner's actual or constructive notice of the claim will have no effect on the claim or Contractor's waiver of it.

7. PERMITS AND REGULATIONS

- A. The Contractor shall secure, at no cost to the Owner, all permits and licenses necessary for the prosecution of the Work. The Contractor shall keep itself fully informed of all laws, ordinances, and regulations in any manner affecting those engaged or employed in the Work, or the materials used in the Work, or in any way affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.
- B. At all times, the Contractor shall observe and comply with and shall cause all its agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders, and decrees. Provided, that if the Drawings and Specifications are at variance therewith, the Contractor shall promptly notify the Engineer in writing and any necessary changes shall be adjusted as provided in the Contract Documents.
- C. The Contractor shall comply with the requirements of the Part 91 of P. A. 451 of 1994, as amended, the Soil Erosion and Sedimentation Control Act. The work, consisting of measures and practice to minimize erosion damage to the work area while the Contract is in force, including, but not limited to, the installation and maintenance of silt fence, sediment traps, or other measures that may be required, shall comply with P.A. 451. Owner is an authorized public agency and will perform Soil Erosion and Stormwater Operator inspections for the Project at no cost to the Contractor.
- D. During construction, the Contractor shall provide a flagman as may be required for the safety and convenience of the public. Traffic controls required shall be in accordance with the Michigan Manual of Uniform Traffic Control Devices, latest Edition, by MDOT. The cost shall be considered incidental.

8. SUBCONTRACTS

- A. The Contractor is responsible for the performance of all Work by Subcontractors and retained design professionals, if any, and to ensure that all Subcontractors and design professionals comply with each requirement of the Contract Documents that is applicable to their Work or services. If the Contractor shall cause any part of the Work under this Contract to be performed by a Subcontractor or design professional, the provisions of this Contract shall apply to such Subcontractor and/or design professional and their respective officers and employees in all respects as if it and they were employees of the Contractor, and the Contractor shall not be in any manner thereby relieved from its obligation and liabilities; and the Work, services and/or materials furnished by the Subcontractor or design professional shall be subject to the same provisions as if furnished by the Contractor.
- B. The Contractor shall include in all subcontracts or design service agreements such terms and conditions as necessary to require compliance by Subcontractors and design professionals with all requirements of the Contract Documents, including without limitation, Insurance Provisions, Dispute Resolution Provisions, and all requirements set out in the Information for Bidders.
- C. The Contractor may not subcontract portions of the Work for which the Contractor was

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required to list a Subcontractor under the provisions of the Information for Bidders and did not list any Subcontractor, or listed its own name, to perform the Work without the written consent of the Owner. Such consent shall not be unreasonably withheld.

- D. Assignment or subletting any portion of this Contract shall not operate to release the Contractor or its surety hereunder from any of the Contract obligations.
- E. The Contractor shall not employ any Subcontractor or design professional that the Engineer or Owner may object to as not responsible, insufficiently qualified, or otherwise unacceptable in the sole and absolute discretion of the Owner. Neither Owner nor Engineer shall have any liability as a result of their objection to a Subcontractor or design professional, and Contractor shall defend, indemnify and hold harmless the Owner and the Engineer to the full extent set out in the indemnity clause in the Contract Documents in the event that any person or entity makes a claim or files any form of legal action based on such objection to a Subcontractor or design professional and/or the subsequent replacement of that Subcontractor or design professional in relation to this Project.

9. OTHER WORK - COORDINATION

- A. The Owner may perform other Work related to the Project at the Site by Owner's own forces, have other Work performed by utility owners or let other direct contracts therefore which shall contain General Conditions similar to these. If the fact that such other Work is to be performed was not noted in the Contract Documents, written notice thereof will be given to Contractor prior to starting any such other Work; and, if Contractor believes that such performance will involve additional expense to Contractor or requires additional time and the parties are unable to agree as to the extent thereof, Contractor may make a claim in strict conformance with the requirements of the Contract Documents.
- B. Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner, if Owner is performing the additional Work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such Work, and shall properly connect and coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Article are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If any part of Contractor's Work, for proper execution or results, depends upon the work of any such other contractor or utility owner (or Owner), Contractor shall inspect and promptly report to Engineer in writing, any delays, defects, or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Contractor's failure to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects

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and deficiencies in the other work.

- D. If Owner contracts with others for the performance of other work on the Project at the Site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Specifications, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the Specifications. Unless otherwise provided in the Specifications, neither Owner nor Engineer shall have responsibility, nor shall the Engineer have any authority, in respect to such coordination.

10. GENERAL REQUIREMENTS FOR MATERIALS AND WORKMANSHIP

- A. Unless otherwise stipulated in the Specifications, all equipment, materials, and articles incorporated in the Work covered by this Contract are to be new and of the best grade of their respective kinds for the purpose. The Contractor shall, if required, furnish such evidence as to kinds and quality of materials as the Engineer may require.
- B. The Contractor shall furnish suitable tools and building appliances and employ competent labor to perform the Work, and any labor or tools or appliances that are not, in the judgment of the Engineer, suitable or competent to produce the intended result may be rejected by the Engineer, and such labor or tools or appliances shall promptly be replaced by the Contractor with such labor, tools or appliances as will be determined to be without exceptions by the Engineer.
- C. If not otherwise provided, material or Work called for in this Contract shall be furnished and performed in accordance with well-known established practices and standards recognized by architects, engineers, and the trade. In the absence of specific installation instructions in the Specifications, the manufacturers' recommendations shall govern.
- D. If any type of machinery, equipment, or tools are specifically needed to prosecute the Work in an orderly, workmanlike manner, the Engineer may so direct the Contractor to procure same, before Work is continued.

11. TESTING AND SAMPLING

- A. Where called for in the Specifications, samples of materials in the quantity named shall be submitted to the Engineer and returned without exceptions or modified to address any exceptions taken. Where tests are required, testing shall be made at the expense of the Contractor, except as specifically and expressly otherwise called for in the Specifications. For materials covered by ASTM or Federal Specifications, unless otherwise stipulated, the required tests are to be made by the manufacturer and its certificate submitted to the Engineer. The times for those activities shall be reflected in the Schedule of Submittals.

12. EQUIPMENT CERTIFICATION

- A. The Contractor shall establish and maintain documented procedures to control, calibrate, and maintain inspection, measuring, and test equipment that the Owner will

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use to inspect the Work. The Contractor also shall provide documentation of the required training of personnel performing the Work.

- 1) The Contractor shall identify all inspection, measuring, and test equipment to be utilized in the scope of the Work per Owner's Specifications and/or the requirements of the Contract Documents.
- 2) The Contractor shall identify inspection, measuring, and test equipment with a suitable indicator or approved identification record to show the calibration status (a serial number traceable to the device calibration record meets the intent of the requirement).
- 3) A qualified in-house laboratory or a qualified commercial/independent laboratory shall conduct calibration of inspection, measuring, and test equipment every six months, or sooner as needed. The Contractor shall maintain records as evidence of control. Accuracy will be as recommended by the manufacturer in its published literature, or if not published it will be +/- 1% or better.
- 4) The performance limits of all equipment being used must meet or exceed the requirements of the respective test. See specific Specifications for further details.
- 5) Subcontractors will be held to the same standard as provided in this Article 13.

B. Documentation will be submitted upon request to the Owner.

13. LINES AND GRADES

- A. The Owner will establish principle reference lines or lot lines, benchmarks and all other lines and levels necessary to the location and construction of the Work under the Contract. The Contractor shall give the Owner and Engineer 72 hours (3 business days) notice when construction stakes will be required.
- B. The Engineer will set suitable stakes and marks showing the locations and elevations of the various parts of the Work and will furnish the Contractor with "cut sheets" referring to the reference points. No Work shall be undertaken until such stakes and marks shall have been set by the Engineer. The Contractor shall take due and proper precautions for the preservation of these stakes and marks and shall see to it that the Work at all times proceeds in accordance therewith and shall provide all labor and material to set required batter boards and locate the Work accurately with reference to the above points.
- C. The Owner will provide one set of line and grade stakes for sewer and water main construction. The cost of additional staking will be charged to the Contractor.

14. PROTECTION OF WORK AND PROPERTY

- A. The Contractor shall continuously maintain adequate protection of all its Work from damage and shall protect all public and private property abutting the Site from injury or loss arising in connection with this Contract. Contractor shall, without delay, make good any such damage, injury or loss, and shall defend and save the Owner and all other Indemnified Parties harmless from all such damages or injuries occurring because of the

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Work. Contractor shall furnish and maintain all passageways, barricades, guard fences, lights, and danger signals, provide watchmen and other facilities for protection required by public authority or by local conditions or as directed by the Engineer, all at no additional cost to the Owner.

- B. In an Emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Owner, shall take such action as may be necessary to prevent such threatened damage, injury, or loss. The Contractor shall immediately notify the Engineer of all Emergency conditions (confirmed in writing within 24 hours) and shall follow the instruction (if any) of the Engineer; however, the Contractor shall not allow the endangerment of life, or of the Work or of adjoining property while attempting to notify the Engineer or waiting to determine whether the Engineer will provide any instructions.
- C. In all cases, the Contractor shall respond to all non-Emergency claims from property owners or the public within three (3) days. Contractor shall immediately notify Engineer of all non-Emergency claims and shall follow the instruction (if any) of the Engineer.
- D. The Contractor shall assume full responsibility for loss or damage to the Work during the entire construction period resulting from caving earth and from storms, floods, frosts, and other adverse weather conditions, and from all other causes whatsoever not directly due to the acts or neglect of the Owner, including fire, vandalism and malicious mischief, and shall turn the finished Work over to the Owner in good condition and repair, at the time of the Final Payment. This provision shall not modify definition of Force Majeure, as defined in the Contract Documents. For the purpose of this Article, the decision of the Engineer, with respect to existing conditions and for the need for corrective action by the Contractor, shall be final.

15. RESPONSIBILITY FOR ADJOINING STRUCTURE AND TREES

- A. The Contractor shall assume full responsibility for the protection of all pavements, curbs, bridges, railroads, poles, buildings, and any other surface structure and all water mains, sewers, telephone, gas mains, and other underground services and structures along and near the Work which may be affected by its operations, and shall indemnify, defend, and save harmless the Owner and all other Indemnified Parties against all damages or alleged damages to any such structure arising out of its Work. The Contractor shall bear the cost of repair or replacement of any such structure damaged as a result of its operations.
- B. No trees or shrubbery of any kind shall be removed or destroyed by the Contractor unless otherwise specifically stipulated in the Contract Documents. The Contractor will be held fully responsible for any damages caused by its Work to trees and shrubs adjoining the Work. Ample precautions shall be taken by the Contractor to protect such trees and shrubs as are to remain in place by surrounding them with fences or other protection before construction Work begins. Shrubby that must be removed shall be preserved and replaced in a manner acceptable to the Owner, or as specified by the Contract Documents.

16. MAINTENANCE OF SERVICE

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- A. Drainage through existing sewers and drains shall always be maintained during construction and all nearby gutters shall be kept open for drainage. Where existing sewers are encountered in the line of the Work which interfere with the construction, the flow in the sewers, including both dry weather flow and storm flow, shall be maintained by constructing a satisfactory flume or by any other means allowed in writing by the Engineer.
- B. All detours shown on the Drawings or required because of the Contractor's operations shall be built and maintained at the Contractor's expense and fully comply with the requirements of authorities having jurisdiction over the Project.
- C. Safety precautions shall be followed at all street openings; substantial barricades shall be erected as deemed necessary to prevent accidents to vehicular or pedestrian traffic and red flags by day and red lights by night shall be diligently posted by the Contractor at all points of possible danger. In case detours or other traffic instructions are necessary, suitable warning or direction signs shall be erected and maintained by the Contractor. In all cases, the detour roadways shall be maintained and kept free from undue dust and ice conditions and reasonably graded.
- D. Barricades, flags and other traffic control devices shall be in accordance with the current edition of the Michigan Manual of Uniform Traffic Control Devices.
- E. During the progress of the Work, the Contractor shall accommodate both vehicular and foot traffic and shall provide free access to fire hydrants, water, and gas valves. Except as otherwise specified herein or as noted on the Drawings, street intersections may be blocked but only one-half at a time, and the Contractor shall lay and maintain temporary driveways, bridges, and crossings that are, in the opinion of the Engineer, necessary to reasonably accommodate the public.
- F. In the Contractor fails to comply with these provisions, the Owner may, with notice, cause the same to be done, and will deduct the cost of such work from any money due or to become due the Contractor under this Contract, but the performance of such work by the Owner, or at its insistence, shall serve in no way to release the Contractor from its general or particular liability for the safety of the public or the Work.

17. STORAGE OF MATERIALS

Materials and equipment distributed, stored, and placed upon or near the Site of the Work shall at all times be so located so as not to interfere with the prosecution of Work or the work of other contractors under contract with Owner, if any; street drainage; fire hydrants or access thereto; or unreasonably inconvenience the public from access to or use of their property. All storage of materials and equipment shall comply with the manufacturer's recommendations, unless otherwise set forth in the Contract Documents. The Contractor shall comply with all related local ordinances and obtain any necessary permits.

18. RELATION TO OTHER CONTRACTORS

The Contractor shall prosecute the Work so as not to interfere with or injure the work of other contractors or workmen employed on adjoining or related work. Contractor shall promptly make good any injury or damage which may be done to such work by Contractor, its employees, agents or anyone for whose conduct it is responsible. Should a contract for adjoining work be awarded to another contractor and should the work of one of these contracts interfere with that of the other, the Owner shall work with both contractors to coordinate their respective work to minimize and mitigate any delay to their respective schedules.

19. SAFETY AND PROTECTION

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor's safety program shall comply with the provisions of MIOSHA Construction and Health Standards. Contractor shall provide the Owner's Safety Representative with a copy of Contractor's written safety plan prior to the commencement of the Work. The Owner's Safety Representative shall have no duty to review the plan and shall assume no duty by doing so. Contractor also shall comply with the Owner's safety and security requirements for the Project, as contained in the Contract Documents. The Contractor shall comply with all safety policies, directions and requirements and shall not claim or assert entitlement to additional time or compensation for such compliance.
- B. The Contractor shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury, or loss to the following:
 - 1) All persons on the Work Site and all other persons who may be affected thereby
 - 2) All Work, materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody or control of the Contractor
 - 3) Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction
 - 4) The property of the Owner or other separate contractors

All damage, injury or loss to any of the above-mentioned property caused directly or indirectly, in whole or in part by the Contractor and/or Contractor's Subcontractors,

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suppliers or any parties employed by any of them, shall be remedied by the Contractor, at its sole expense.

- C. Prior to any excavation, the Contractor shall contact MISS DIG for the location of underground pipeline and cable facilities and shall also notify representatives of other utilities located in the vicinity of the Work. MISS DIG requires three (3) working days advance notice for the staking of utilities.
- D. Contractor shall notify owners of adjacent properties when prosecution of the Work may affect them.
- E. Contractor shall erect and maintain, as required by law, or authorities having jurisdiction, all safeguards for the safety and protection of persons and property, including but not limited to, the posting of danger signs and other warnings against hazards, promulgate safety regulations, and notify owners and users of adjacent utilities of potentially dangerous conditions. At the end of each working day, the Contractor shall be responsible for checking and confirming that the construction area is made as safe as possible for the public, that open trench areas are fenced and/or barricaded, that traveled roadways along the construction areas are secured with barricades, flashers, etc., and that equipment is stored and material stockpiled adequately away from roads, and that adequate sight distances are maintained.
- F. When the storage of hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel. Persons involved in these activities shall be properly trained and licensed. Contractor is responsible for confirming such persons have proper qualifications. Explosives are banned from the Work Site. If Contractor wishes to use explosives, it shall obtain written permission to do so from the Owner, submitting a plan to safely do so. Owner will determine in its sole and unfettered discretion, what additional insurances and safeguards will be required of the Contractor to allow the use of explosives. Contractor shall not be entitled to any increase in the Contract Sum or Contract Times due to conditions imposed by Owner to allow explosives on Site.
- G. Owner's Safety Representative as defined above shall not have control over, or charge of, and shall not be responsible for safety precautions and programs in connection with the Work. Nonetheless, Owner's Safety Representative shall have the right, among others, to review and provide comment on Contractor's written safety plan, observe the implementation of Contractor's safety program while the Work is in progress, require Contractor's Safety Director to report on Contractor's safety measures and accident reporting procedures, and to stop the Work in the event Contractor is engaged in an unsafe practice and/or is failing to comply with applicable safety rules and regulations while prosecuting the Work. Any actions taken by Owner or its Safety Representative relative to safety on the Project site shall not constitute the assumption of, nor relieve Contractor of its obligation to comply with its contractual and statutory obligations to provide a safe workplace as provided in the Contract Documents. Contractor acknowledges and understands that Owner is relying on Contractor's experience, knowledge and expertise in all matters pertaining to safety. The issuance by Owner's Safety Representative of any instruction or directive to improve safety at the site shall not be cause for Contractor to claim entitlement to additional time or compensation.

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- H. Contractor shall designate a Safety Director as defined above. The responsibilities of the Safety Director shall include, but not be limited to the following:
- 1) Formulate, administer, and make necessary changes in Contractor's accident prevention program.
 - 2) Make regular monthly reports to Contractor and the Owner's Safety Representative of the safety process.
 - 3) Maintain accident record system, make accident reports, investigate accidents, and check to see corrective action is taken.
 - 4) Assist in training employees in safety.
 - 5) Make personal safety inspections and supervise safety inspections made by safety committees and others for the purpose of discovering and correcting unsafe work practices before they cause accidents.
 - 6) Make certain that Contractor, its subcontractors and employees comply with applicable federal, state, and local safety laws or ordinances.
 - 7) Initiate and conduct activities that will stimulate and maintain the interest of employees of Contractor and its subcontractors in safety.
 - 8) Work with safety committees, if any.
- I. Contractor certifies that Contractor, its employees, agents, subcontractors, and assigns will strictly follow all Michigan Occupational Safety & Health Administration ("MIOSHA") safety and health standards relevant to the Work performed for the Owner, its drainage districts, municipal customers, private systems, or other customers, at any and all times while the Work is being performed.
- J. If the Safety Director or other qualified or competent person is not present on the job site, then Work must not proceed until such person is present.
- K. Prior to the commencement of the Work, Contractor shall provide the Engineer and the Owner's Safety Representative with the name of the Safety Director and a list of other qualified or competent persons who can serve in the capacity of the Safety Director should the Safety Director be absent from the site.
- L. If at any time, any of the information provided to the Owner or Owner's Safety Representative regarding the identity of the Safety Director or any other qualified safety representatives of the Contractor changes, the Contractor shall notify the Owner or Owner's Safety Representative in writing prior to the performance of any further Work on a job site.
- M. In any Emergency affecting the safety of persons or property, the Contractor shall act immediately, at the Contractor's discretion, to prevent threatened damage or loss. The Contractor shall immediately stop any activity or operation affecting safety until the

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condition is corrected. If the Project is found not to follow safety standards, the Contractor must take immediate action to bring the Project into compliance and complete the remedial action as soon as possible.

- N. Contractor hereby guarantees, as minimum standards to the Owner, that all materials, supplies and equipment listed in the Proposal, Agreement or purchase order meets the requirements, specifications and standards as provided for under the Michigan Occupational Safety and Health Act, P.A. No. 154 of 1974, as amended, and in force at the date hereof and all other applicable ordinances, codes, standards, etc. including the Michigan Right to Know Law.
- O. Contractor shall coordinate Safety and Protection programs with the authorities having jurisdiction over the construction sites (i.e.: MDOT, RCOC, etc.).
- P. Contractor also shall comply with all OCIP requirements and with the OCIP Safety Manual, if applicable to the Project.
- Q. Prior to the start of construction, Contractor shall submit a copy of its Confined Space Entry Program, complying with OSHA/MIOSHA requirements, to the Owner's Safety Representative for review and approval.

20. CONTRACTOR'S SUPERVISION AND ORGANIZATION

- A. The Work under this Contract shall be under the direct charge and direction of the Contractor. The Contractor shall give efficient project management and superintendence to the Work, using its best skill and attention. The Contractor shall, always during the prosecution of the Work, employ and maintain a competent full-time on-site superintendent and a full-time on-site project manager and any and all necessary foremen and assistants on the Site of the Work through Final Completion of the Work. Contractor shall hire separate employees to fulfill the responsibilities of the superintendent and project manager. The superintendent shall represent and have full authority to act for the Contractor and all directions and communications given to the superintendent shall be binding as if given to the Contractor.
- B. The Contractor shall not employ a proposed superintendent or project manager to whom the Owner or Engineer has made reasonable and timely objection. The Contractor also shall not replace key personnel, including but not limited to, the project manager and site superintendents, except as provided herein, without written consent of the Engineer, which shall not unreasonably be withheld or delayed.
- C. The Owner reserves the right to require the Contractor, or any Subcontractor, to remove and replace any superintendent, project manager, foreman, or other supervisory or management personnel, with or without cause. Cause for such removal and replacement shall include, but not be limited to: (1) failure or refusal to carry on the Work in accordance with the Contract Documents; (2) failure or refusal to carry on the Work in accordance with the instructions of the Owner; (3) possession on the jobsite of a firearm, or knife with a blade over 2" in length, or other illegal weapon; (4) possession or use of alcoholic beverages on the Project Site, use or storage of fireworks at the Project Site, or possession or use of illegal substances, non-prescribed narcotics and/or paraphernalia; (5) failure to follow safety policies or procedures; (6) conduct unbecoming a professional;

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- (7) threats, bullying, verbal abuse, use of racial slurs or other inappropriate language; (8), actions that may hazard others; or (9) sexual harassment of others, on or off the Site. Contractor shall not be entitled to any additional time or compensation resulting from the removal and replacement of such personnel.
- D. The Contractor shall employ only competent, efficient workers and shall not use on the Work any unfit person or one not skilled in the Work assigned to them. Contractor shall always enforce strict discipline and good order among its employees. Whenever the Engineer shall notify the Contractor, in writing, that any employee on the Project is, in the opinion of the Engineer, careless, incompetent, disorderly, or otherwise unsatisfactory, such employee shall be discharged from Work on this Project or any other project for Owner and shall not be re-assigned to the Project or any other project of the Owner except with the written consent of the Engineer.
- E. The Contractor shall establish and maintain an office on the Site of the Work, or at some convenient location adjacent thereto, during the prosecution of the Work. At all times during working hours, the office shall be staffed with a representative of Contractor authorized to receive and execute any and all orders, when given by the Engineer; and such orders, when issued and received by said representative, shall be deemed to have been given to and received by the Contractor.
- F. The Contractor shall maintain at the Site for the Owner and Engineer one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals, Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Engineer, Owner, and RPR and shall be delivered to the Engineer and/or RPR as designated by Owner for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

21. INSPECTION OF WORK AND MATERIALS

- A. The Owner, the Engineer, the RPR, and their respective employees shall at all reasonable times have the right to enter the Site, or any location where Contractor is storing materials for the Project, to inspect the Work and materials, and to ascertain whether Contractor is prosecuting the Work in accordance with the Contract Documents. Contractor shall furnish all reasonable facilities and grant ample time for such inspection. All materials shall be subject to mill and shop inspection as provided by the Specifications.
- B. The Contractor shall promptly remove from the Site all materials rejected by the Engineer as failing to meet Contract requirements, whether incorporated in the Work or not, and shall promptly replace and re-execute its own Work in accordance with the Contract without expense to the Owner. Contractor also shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.
- C. If the Contractor does not remove such rejected Work and materials promptly, after receipt of written notice, the Owner may remove them and store the material at the expense of the Contractor.

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- D. If a portion of the Work is covered contrary to the Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Engineer, be uncovered for the Engineer's examination and be replaced at the Contractor's expense without change in the Contract Time.
- E. If a portion of the Work has been covered that the Engineer has not specifically requested to examine prior to its being covered, the Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.
- F. The Contractor shall promptly correct Work rejected by the Engineer or failing to conform to the requirements of the Contract Documents or damaged before Substantial Completion from any cause, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or damaged Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense.
- G. The Contractor shall give the Owner 72 hours (3 working days) written notice prior to the commencement of each major item of construction so that the Owner has ample time to schedule inspection.

22. SUBMITTALS

- A. The Contractor shall submit to the Engineer full information as to the materials, equipment, and processes that the Contractor proposes to furnish. This information shall be complete so that the Engineer may intelligently judge if the proposed materials, equipment, and processes will meet the Contract requirements. The Engineer shall review and return the submittals with or without exceptions, and in no event shall the Engineer's review be treated or deemed an approval, or as acceptance of a substitute or of an equal without fully complying with the processes required in the Contract Documents.
- B. Where called for in the Specifications, the Contractor shall submit the Submittals to the Engineer for review not less than two (2) hard copies and an electronic PDF file of Details, Specifications, Cuts and Shop Drawings of such equipment and structural work as may be required. By submitting the Submittals, the Contractor represents to the Owner and Engineer that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Each Submittal must bear a stamp or specific written certification that the Contractor has satisfied the Contractor's obligations under the Contract Documents with respect to the Contractor's review of that Submittal, and that the Contractor approves the Submittal.

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- C. The Engineer will check and review the Submittals with reasonable promptness and within any time limits set forth in the Schedule of Submittals and will return them as hereinafter described, indicating by notation, or by written instructions, or other directions, any corrections, which in the judgment of the Engineer, may be necessary to meet the requirements of the Contract Documents. The Contractor shall then review such notations, instructions, or directions, and if the Contractor concurs therein, shall make or have made such corrections, and shall, when so noted on the Submittals or requested by the Engineer, resubmit corrected Submittals to the Engineer as soon as possible, for final check and review. Should the Contractor question or disagree with such notations, instructions, or directions, the Contractor shall direct the Engineer's attention to same for further clarification before resubmitting them. Corrections or changes indicated on submittals shall not be construed as an order for a change in the Work or to perform extra work and shall not constitute a change or alteration to the Contract Documents.
- D. The return of information covering materials, equipment, and processes by the Engineer shall in no way release the Contractor from its responsibility for the proper design, installation, and performance of any material, equipment, or arrangement, or from its liability to replace same should it prove defective or unsuitable.
- E. Prior to commencing any Work, the Contractor shall provide a Schedule of Submittals indicating the dates upon which the Contractor anticipates providing each submittal and the dates upon which the Contractor anticipates obtaining a return of the submittal without exceptions. This Schedule of Submittals shall identify by Section, Subsection, and Article each item required by the Contract Documents to be submitted for review, record, or information. For products to be used in the Project the Schedule of Submittals shall include and identify the planned dates for material ordering; shop drawing, product data, and sample preparations; dates submittals are planned for; adequate time for the Engineers review; time required for fabrication and delivery of item; and the date on which the material is required on Site to comply with the installation activity shown on the Project Schedule. This Schedule of Submittals shall allow sufficient time for review and consideration of the submittals and for correction of any exceptions identified by the Engineer. The Schedule of Submittals shall be updated monthly to reflect the progress of submittals and returns without exception, adjustments for delays, and submittals where the Engineer has indicated an exception and required changes to the submittal.
- F. The submission and returned without exceptions of the Schedule of Submittals and updates shall be a condition precedent to payment on any Application for Payment submitted under the terms of the Contract Documents. In addition, Engineer may refuse to recommend payment and Owner may refuse to make payment for any Work performed by the Contractor either (a) prior to obtaining a shop drawing submittal from the Engineer, with a status of "Returned Without Exceptions or Reviewed with Exceptions Noted and Resubmission Not Required" with authorization to proceed as indicated or (b) if Contractor fails to obtain or provide any required reviews approvals, clearances, or permits required for the Work.
- G. No Work shall be undertaken, nor invoiced for, until the Engineer has returned the Submittals either Returned Without Exceptions or Reviewed with Exceptions Noted and Resubmission Not Required with authorization to proceed. Submittals shall be revised

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as necessary until returned by the Engineer without exceptions, or exceptions as noted with authorization to proceed.

- H. The Engineer's review shall not relieve the Contractor of responsibility for errors in the Submittals or other submissions, as the Engineer's review is for the limited purpose of checking for conformance with the Owner's objectives and goals. Review of such submittals will not be conducted for the purpose of determining their accuracy and completeness of details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor.

23. REQUEST FOR INFORMATION

- A. A Request for Information (RFI) is a written communication from the Contractor to the Engineer and/or RPR as designated by Owner requesting clarification of design Drawings, Specifications, or other Contract Documents, or requesting information needed to perform the Work and not included in the Contract Documents. Contractor also shall submit an RFI if Contractor discovers a conflict or inconsistency in the design documents that cannot be resolved by a thorough review of the Contract Documents or application of the priority of documents provisions set out herein.
- B. Each RFI shall include a realistic date by which the Contractor needs a response to the RFI in order to avoid delay to the Project. The Contractor shall allow ample time for review and response to the RFI given the nature and complexity of the issue. RFIs shall be submitted a minimum of five working days before a response is necessary, but for complex issues or issues requiring extensive review or research, additional time may be required. RFIs shall be submitted immediately upon determination by the Contractor that clarification or information is needed. Contractor shall not submit multiple RFI's at the same time to overwhelm the Engineer or impact the Engineer's ability to perform its duties regarding the Work on the Project.
- C. The Contractor shall not submit RFIs requesting information that is contained in the Drawings, Specifications or other Contract Documents, or seeking information that already was supplied in response to prior RFIs, or for information which is available by applying industry standards, practices, common sense, or good workmanship Contractor shall not submit multiple RFI's that can be answered by a single response and applied at multiple locations; or multiple RFIs requesting the same information in different ways. RFIs which are determined to request information that is available in the Contract Documents, or Engineer is asked to interpret and decide matters concerning the requirements of the Drawings and Specifications which the Engineer determines to be clear and unambiguous or otherwise violate these provisions will be rejected and returned to the Contractor by the Engineer. RFIs also may be rejected by the Engineer after responding to the RFI if Engineer subsequently discovers the RFI was submitted in violation of these provisions.
- D. If Contractor submits RFIs that are rejected by the Engineer pursuant to this provision, Owner may, in Owner's sole discretion, back charge Contractor for the costs of review and analysis of the RFI by the Owner and Engineer. The failure of the Owner to implement such back charges shall not constitute an acknowledgement of the validity of

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the RFI, nor a waiver of the right to implement a back charge for the costs of review and analysis of the RFI.

- E. A response to an RFI is a document providing clarification, supplemental information, documentation, or explanation of inquired aspects of the Contract Documents, which involves neither adjustments in Contract Times nor Contract Price, nor material changes to the general character of the Work as a whole. An RFI Response conveys information in writing. The Owner or the Engineer may issue an RFI Response.
- F. A response to an RFI also is not acknowledgement of a change, extra work, or justification for an extension of time. An RFI response is not a work directive or Change Order. Contractor acknowledges that it anticipated that clarifications of the design documents would be necessary, and Contractor has taken the need for such clarifications into account in its Contract Price and Construction Schedule. If Contractor believes the response to an RFI results in a change in the scope of work for the Project, or if the response will impact the cost or time for completion of the Work, Contractor shall submit a Notice of Claim and shall proceed in accordance with the provisions for Change Orders and, if necessary, Disputed Work.

24. ERRORS, CORRECTIONS AND CHANGES IN DRAWINGS AND SPECIFICATIONS

- A. Prior to beginning the Work, or any portion thereof, the Contractor shall examine and check all Drawings and Specifications furnished by the Owner for dimensions, quantities, types of materials, and coordination with other parts of the Work on this or related contracts. By starting Work, or any portion thereof, the Contractor shall be deemed to have waived any objections to the Contract Documents.
- B. No structure, sewer pipe, water main, or fixtures thereto shall be placed or constructed under conditions that may be expected to result in Defective Work. If the soil is not sufficiently stable to properly support a structure, or if the Contractor questions the materials prescribed, the Contractor shall stop Work and immediately notify the Engineer. The Engineer shall review these conditions, and if deemed necessary, make changes in design or suggest changes in construction procedures before Work continues. The Contractor shall not be permitted to take advantage of any such error, omission or discrepancy, as the Engineer will furnish full, revised instructions, and the Contractor shall be expected to carry out such instructions as if originally specified. In no case shall the Contractor proceed with the Work in uncertainty, and any Work performed by the Contractor after the discovery of any error, omission or discrepancy, until authorized, will be at the Contractor's risk and responsibility and sole expense. Contractor is responsible for completing the Work to the satisfaction of the Engineer, notwithstanding any minor omissions in the Contract Documents. Owner shall not be liable for Contractor's failure to review and compare Contract Documents prior to bidding or the start of the Work.

25. CHANGES IN THE WORK

- A. The Owner shall have the right to require, by written order, changes in, additions to, or deductions from the Work required by the Contract Documents provided such change, addition, or deduction does not change the general character of the Work as a whole. Adjustments to the Contract Sum, if any, because of any change, addition, or deduction

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in the Work shall be authorized only by a fully executed Change Order. Any claim for an extension of the Contract Time shall be addressed at the same time. No claim for change, addition, or deduction, or adjustment of the Contract Sum or Contract Times shall be made or allowed unless submitted by Contractor in connection with a request for a written Work Directive from the Owner specifically authorizing such change, addition, or deduction. Drawings, submittal exceptions or comments, responses to Requests for Information, oral instructions, field memoranda, or any other form of communication without a written Work Directive shall not be considered such authority. Disputed Work shall be addressed as set out herein.

- B. Where the written Work Directive reduces the quantity of Work to be performed, Contractor waives any claim for damages or lost profits anticipated on the Work deleted. Such directive also shall not constitute a partial termination. The Contractor shall issue a credit for deleted Work in accordance with the Contract Documents. If the Contractor fails to recognize an appropriate credit for deleted Work, as determined by the Engineer, the Owner shall issue a Change Order adjusting the Contract Price in the amount estimated by the Engineer, and the Contractor may pursue any objection to such Change Order following the procedures for Disputed Work set out herein. If made, Contractor's claim is subject to audit.
- C. Upon the written recommendation of the Engineer, Owner shall authorize a Work Directive requiring changes in, additions to, or deductions from the Work, or otherwise directing the Contractor to proceed with specified work. When the Owner and Contractor agree that additional compensation or time is required due to such work, Owner and Contractor shall negotiate a Change Order in accordance with the below provisions prior to proceeding with the work. If the Contractor and Owner disagree as to whether any given activity constitutes changed or extra Work, or whether an adjustment of the Contract Sum or Contract Times is warranted ("Disputed Work"), the Owner may issue a Work Directive instructing the Contractor to proceed with the Disputed Work. The Work Directive shall not constitute evidence or an admission of any entitlement or intent to issue a Change Order and Contractor may submit a claim for additional time or compensation in accordance with the procedures provided herein. Until a written Change Order is negotiated and executed by Contractor and Owner, Contractor shall strictly comply with the Disputed Work provisions of the Contract Documents.
- D. If the Contractor does not give notice to Owner or Engineer within two (2) working days of its claim for an adjustment to the Contract Price or Contract Time and proceeds with the work without a written Change Order, or a Work Directive specifically directing the Contractor to proceed with the Disputed Work, Contractor shall be barred from asserting such a claim in the future and Contractor hereby waives any compensation for any such task or work performed by Contractor regardless of whether or not Contractor supplied any additional services or materials to the Work.
- E. By signing any Change Order, the Contractor conclusively is agreeing the Change Order includes all costs and any additional time required (known or unknown) relating to or arising from the Work set forth on the Change Order, and the Contractor forever waives and releases the Owner from any costs, requests, demands, and the like which the Contractor failed to include in the Change Order. The Contractor shall include the Work covered by such Change Orders in its Applications for Payment as if such Work were originally part of the Contract Documents.

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- F. Contractor understands and agrees Owner's directive to change, add or deduct Work shall in no way invalidate the Contract and any change in the Work shall not operate to release any surety on any bond furnished by Contractor. Contractor accepts the responsibility to keep its surety informed of all Modifications to the Contract. The obligations of Contractor's surety shall not be reduced, waived or adversely affected by the issuance of such Change Orders, additions or deductions even if Contractor fails to inform surety of same and the Owner shall not be required to obtain consent of the surety to such modifications.
- G. The Contractor, without extra charge, shall make slight alterations as may be necessary to make adjustable parts fit to fixed parts, leaving all complete and in proper shape when done.
- H. The Contractor, without extra charge, shall make other slight alterations, including grade and/or elevations, if the Engineer determines such alterations are needed to complete the Work as long as the alterations do not change the overall scope of the Work, increase the overall cost of completing the Work on the Project, or involve an extension of time. Any alterations in question by the Contractor will be submitted by the Contractor as a Request for Information and responses by the Engineer will be issued as a Field Order.
- I. Quotations from the Contractor for extra Work described in a Work Directive shall be valid for a period of not less than ninety (90) days from the time of issuance.
- J. All changes, additions or omissions in the Work ordered in writing by the Owner shall be deemed to be a part of the Work hereunder and shall be performed and furnished in strict accordance with all the terms and provisions of the Contract Documents.

26. BASIS FOR DETERMINING COSTS OF CHANGES IN THE WORK

- A. Adjustments shall be determined by one or more of the following methods, the Owner reserving the right to select the method or methods at the time the written order is issued:
 - 1) **An acceptable lump sum proposal:** To facilitate checking and acceptance, Contractor's proposal shall include all categories of labor, material, and equipment, shown on quantity take-offs, and shall be itemized with quantities and prices given for the various items. Contractor also shall provide a Time Impact Analysis as described in the Disputed Work Article herein to identify any delays or schedule impact related to the Change order.
 - 2) **Unit price:** If the Work addressed by a Unit Price item is modified, the Unit Price shall apply to the Work and a Change Order shall be issued only for any additional costs demonstrated by the Contractor to result from the changes to the Unit Price Work. Unit Prices are binding for quantities to 50% above or below the estimated quantities in the Contract. At and above 150% of the Unit Price Quantities in the Contract, Owner may request a suitable adjustment in the Unit Price. At or below 50% of the quantities estimated, Owner may, at its sole discretion, increase the Unit Price by the net increase in Contractor's unit cost,

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but not more than 35% of the Contract Unit Price. To obtain an increase in Unit Price, Contractor must submit a Notice of Claim, and proceed as required in the Contract Documents.

- 3) **On a cost-plus-limited-basis:** Not to exceed a specified maximum limit of cost specified in the Change Order.
- B. **"COST"** as herein used shall be the actual and necessary costs incurred by the Contractor by reasons of the change in the Work for labor, materials with sales tax, equipment rental with sales tax and insurance.
- 1) **Labor costs** shall be the amount shown on the Contractor's certified payrolls with payroll taxes added when Contractor provides evidence that such taxes have been incurred. In no case shall the rates charged for labor exceed the rates paid by the Contractor for the same class of labor employed by it to perform Work under the regular items of the Contract.
 - 2) **Material costs** shall be the net price paid for materials delivered to the Site of the Work. If any material required to perform the extra work is later deleted by the written order of the Owner after it has been delivered to the Site or partially used or consumed by the Contractor and consequently will not retain its full value for other uses, the Contractor shall be allowed the actual cost of the deleted material less its fair market value as determined by the Owner.
 - 3) **Equipment rental** shall be the actual additional costs incurred for necessary equipment. Costs shall not be allowed in excess of usual rentals charged in the area for similar equipment of like size and condition, including the costs of necessary supplies and repairs for operating the equipment. No costs, however, shall be allowed for the use of equipment on the Site in connection with other Work. If equipment not on the Site is required for the change in the Work only, the cost of transporting such equipment to and from the Site shall be allowed.

The rental rate established for each piece of Contractor-owned equipment, including appurtenances and attachments to equipment used, will be determined by use of the Rental Rate Blue Book for Construction Equipment Volume 1, 2, or 3, as applicable. The Blue Book edition current at the time the Work is started will apply. The established hourly rental rate will be equal to the "Monthly" rate divided by 176, modified by the applicable rate adjustment factor and the map adjustment factor, plus the "Estimated Operating Costs per Hour."

For equipment not listed in the Rental Blue Book, Volume 1, 2, or 3, the rental rate will be determined by using the rate listed for a similar piece of equipment or by proportioning a rate listed so that the capacity, size, horsepower, and age are properly considered.

In the event that machinery and equipment actually employed on the Project Site is idled for reasons beyond the control of the Contractor, the rental rate for Contractor-owned equipment will be the "Monthly" rate divided by 176, modified by the applicable rate adjustment factor and the map adjustment factor, and then multiplied by 50 percent. No payment will be allowed for operating costs. This

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Article applies only to machinery and equipment necessary for performance of Disputed or Change Order Work and any idled equipment or machinery related to the change.

- 4) **Insurance premiums** shall be limited to those based on labor payroll and to the types of insurance required by the Contract. The amount allowed shall be limited to the net costs incurred as determined from the labor payroll relating to the Work. The Contractor shall, upon request of the Owner, submit verification of the applicable insurance rates and premium computations.
 - 5) **"PLUS"** as herein used is defined as a percentage to be added to the items of "Cost" to cover superintendence, project management, use of ordinary and small tools, and all forms of overhead and administrative expense and profit, and the cost of bond and insurance premiums. The percentage mark-up shall not exceed 15% on Work performed entirely by the Contractor and 15% for Work performed entirely by a Subcontractor. If the latter applies, Contractor shall be entitled to a 5% mark-up with an aggregate total of no more than 20% on Work performed by a Subcontractor.
 - 6) **"SPECIFIED MAXIMUM LIMIT OF COST"** is the amount stated in the written order of the Owner authorizing the change in the Work. The maximum amount that Contractor shall be paid is the "cost" of the work "plus" the percentage or the specified maximum, whichever is the lesser amount.
 - 7) **"Ordinary Tools"** are the tools owned by the Contractor defined as having a cost new, or a net depreciated value of less than \$2,000.00 each, the costs for which are agreed to be included in the "PLUS" as set forth above. The cost of replacement bits, parts, and the like that wear out as a result of use on the Project having a new cost, or a net depreciated value of less than \$2,000.00 each, also shall be included in the "PLUS" as set forth above.
- C. Contractor shall provide a rider from the bonding company indicating that the penal sum of the bond has been increased by the amount of the change order.
- D. The Contractor shall keep complete, accurate, daily records of the net actual cost of changes in the Work or claimed changes in the Work (known as "Daily Work Tickets"). These Daily Work Tickets shall include: the identification of the Work performed; the names and classifications of each worker employed in the Work; the equipment used in performing the Work; and the number of hours each piece of equipment was used for that portion of the Work; the identity, the number of workers, classification of workers, equipment, and hours employed by any Subcontractor who performs any portion of the Work; and the materials utilized on that day and actually installed or used up in performance of the Work. The Daily Work Ticket shall distinguish between Work performed as part of changed Work or claimed changed/extra Work, and other contract Work performed on that day. Contractor shall present such information at the end of each working day for verification by the Observer, in such form and at such times as the Owner may direct. The Observer's execution of such Daily Work Tickets only shall serve to record the quantities reflected in the Daily Work Ticket and shall not bind the Owner or Engineer in any manner, shall not relieve Contractor of any obligations under the Contract Documents, and shall not constitute an acknowledgement of entitlement for any

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Disputed Work. If the Observer disagrees with the quantities reflected on the Daily Work Ticket, or with the division of labor, equipment, or materials between the changed Work and Disputed Work, the Observer may note such disagreement on the Daily Work Ticket. Daily Work Tickets submitted after the end of the day on which the Work was performed shall not be valid and may, in the Observer's discretion, be returned to the Contractor unexecuted. Contractor shall have no right to compensation for Work performed without signed Daily Work Tickets. Any terms written on either side of a Daily Work Ticket or any substitute documentation are not binding on the Owner or Engineer, and Contractor acknowledges that all such terms will be deemed meaningless. The designation of the Daily Work Tickets as "Extra Work Tickets" shall not acknowledge that the Work is extra or not part of the Contract requirements.

E. **Costs Excluded:** The term "Cost" of the Work shall not include any of the following Items:

- 1) Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in Article 27.B.1) above; all of which are to be considered administrative costs covered by the Contractor's mark-up
- 2) Expenses of Contractor's principal and branch offices other than Contractor's office at the Site
- 3) Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments
- 4) Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property
- 5) Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Article 27.B above
- 6) Any Contractor costs incurred by, or associated with the development, preparation, and prosecution of a claim
- 7) Any cost or expense not specifically included in the Cost of Work as set out in the Contract Documents.

27. SCHEDULE CHANGES (OWNER DELAY)

A. A Change Order signed by the Owner is the only method to change the Contract Times. Any claim for an extension or reduction of the Contract Times shall be made in

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accordance with the Contract Documents.

- B. The Contract Times may be extended for a Force Majeure Event and/or Owner Delay in accordance with the terms and conditions of the Contract Documents.
- C. In the event of a Force Majeure delay, Contractor shall only be entitled to an extension of the Contract Times with no additional compensation or modification of the Contract Price.
- D. Strictly in the event of an Owner Delay, the following provisions apply:
 - 1) The Owner may expressly order the Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work on the Project for such period as it may determine to be appropriate for the convenience of the Owner.
 - 2) Upon receipt of written notice from the Owner to suspend, delay, or interrupt the Work, and within the time stated in such notice, the Contractor shall suspend shipment and delivery of material and stop any part or all of the Work and operations hereunder for the periods of time designated by the Owner in the notice. The Contractor shall immediately confer with the Owner relative to:
 - a) Probable duration of the suspension or stoppage;
 - b) Delays and extensions of time resulting therefrom;
 - c) The reduction or elimination of the Contractor's field costs; and
 - d) Prospective costs and expenses which may result directly from the suspension or stoppage; including, but not limited to, the costs to the Contractor of complying with the Owner's directions relative to the preservation of the Work in progress and the protection of existing facilities, materials, and equipment on or in transit to the Project Site.
 - 3) The Owner may, by further written notice, require the Contractor to promptly resume all or any part of the Work and operations required by the resumption notice.
 - 4) Claims of the Contractor for costs and damages resulting from the Owner's suspension, delay, or interruption of the Work shall be determined in accordance with the following:
 - a) If the performance of all or any part of the Work on the Project is otherwise delayed or interrupted by an Owner Delay; and
 - b) If such act causes delays in the Critical Path Activity, then the Project Schedule and the Contract Times shall be adjusted by Change Order but only to the extent necessary to compensate for such delay; then
 - c) Owner shall make an adjustment to the Contract Sum for the following items:

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- i) The cost of equipment necessary for the performance of Contract Work required to remain on the Project Site that could not be used for any Work whatsoever and could not be relocated to perform other Work on other sites, calculated as set out in Article 27.B.3) herein;
 - ii) Field general conditions actually incurred by the Contractor for the cost to maintain the Project Site and the required facilities for the Contractor, Engineer, and Owner, for the duration of the delay, or the increase in the time on the Critical Path, whichever is less.
 - iii) Actual salaried supervision costs for supervision required on Site for an extended period where the supervisor could not be released from the Project and where no Contract Work could be performed.
 - iv) No payment shall be due to the Contractor for home office overhead (including but not limited to Eichleay); equipment not necessary on Site during the delay period or which is used in performing other work during the delay period; consequential damages, including anticipated profits, loss or interference with bonding capacity; mark-up of any sort; insurance; interest; or any other costs not specifically delineated herein.
 - v) Contractor agrees to accept the specified costs as full compensation for any Owner Delay whether agreed or disputed.
 - vi) All costs shall be subject to audit by the Owner.
- 5) The Contractor shall have no further claim whatsoever against the Owner for damage or loss of any kind resulting from suspension of operations or delays or interruptions caused by an Owner Delay.
- 6) Immediately upon (and not more than 48 hours following the commencement of) the occurrence of an Owner Delay, the Contractor shall provide the Owner with a Notice of Claim in the form and substance set forth in the Disputed Work provisions herein. In addition to such information, the Notice of Claim shall describe in detail the claimed delay, a description of the portions of the Work affected, the relief requested, and additional relevant details. Failure to submit this Notice, including all supporting details, shall constitute a waiver of claim by the Contractor. In the case of a continuing cause of Owner Delay, only one Notice is necessary. If the Owner acknowledges the asserted Owner Delay, the parties will process the claim using the Change Order process. If the Owner determines that no Owner Delay has occurred, the claim will be addressed under the Disputed Work provisions. Unless and until Owner recognizes an Owner Delay, Contractor should proceed with the requirements for Disputed Work until the Owner decides.
- 7) No adjustments shall be made for any suspension, delay or interruption to the extent that performance would have been so suspended, delayed or interrupted

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by any other cause, including the fault or negligence of the Contractor; to the extent the delay and associated costs could have been mitigated by the Contractor; or for which an equitable adjustment is provided or excluded under any other provision of this Agreement. The Owner's exercise of any of its rights under this Agreement or Owner's requirement of correction or re-execution of any Defective Work shall not, under any circumstances, be construed as interference with the Contractor's performance of the Work.

- 8) Each Subcontractor shall be bound by the foregoing provisions.
- E. In the Project is delayed, Contractor shall be prepared to accelerate the Work if directed by the Owner, in writing, in order to meet the Contract Times in the Contract Documents. Owner will pay Contractor for accelerating the Work only if necessitated by an Owner Delay or by a Force Majeure event and acceleration is required by Owner; provided Contractor has strictly, not substantially, complied with all claims and/or Disputed Work notices, and other submittal requirements identified in the Contract Documents. Within five (5) days of a written request from the Owner, Contractor shall provide Owner with an acceleration plan and an itemization of all costs for implementing that plan as well as an itemization of all costs that Contractor will claim if completion of the Project is extended because of an Owner Delay.

28. PATENTS

- A. The Contractor shall pay all royalties and license fees and shall hold and save the Owner and any Indemnified Party harmless from all liability of any nature or kind, including cost and expenses, for, or account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by the Owner, unless otherwise specifically stipulated in the Contract Documents. In this respect the Contractor shall defend all suits or claims for infringement of any patent or license right.
- B. In the event that any claim, suit, or action at law or in equity of any kind, whatsoever, is brought against the Owner or any Indemnified Party, involving any such patent or license rights, the Owner shall have the right to, and may retain from, any money due or that may become due to the Contractor, an amount deemed necessary by the Owner to protect the Owner and the Indemnified Parties against loss. Owner will retain such sum until the claim or suit has been resolved and satisfactory evidence of the resolution has been furnished to the Owner.

29. SUBSTITUTES AND OR-EQUALS

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words such as no like, equivalent, or "or-equal" item or no substitution is permitted, alternative or substitute items of material or equipment of other suppliers may be submitted to Engineer for review under the circumstances described below.
- 1) Or-Equal Items: If, in Engineer's sole discretion, an item of material or equipment

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proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Article, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a) In the exercise of reasonable judgment Engineer determines that:
 - i) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - ii) it will reliably perform, at least equally well, the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - iii) it has a proven record of performance and availability of responsive service that equals or exceeds the specified item; and
- b) Contractor certifies that, if approved and incorporated into the Work:
 - i) the Contract Price and Contract Times will not increase;
 - ii) it will conform substantially to the detailed requirements of the item named in the Contract Documents;
 - iii) it will require no changes in substrates, work on which it depends, nor services; and
 - iv) it will not have operating, maintenance or life cycle costs greater than the specified item.

2) **Substitute Items:** If, in Engineer's sole discretion, an item of material or equipment proposed by Contractor does not qualify as an "or equal" item under these provisions, it will be considered a proposed substitute item.

- a) Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute, therefore. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- b) The requirements for review by Engineer will be as set forth herein, as supplemented in the Specifications and as Engineer may decide is appropriate under the circumstances.
- c) Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks

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to furnish or use.

- d) The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design; has a proven record of performance and availability of responsive service that equals or exceeds the specified item; be similar in substance to that specified; be suited to the same use as that specified; and it will not have operating, maintenance or life cycle cost greater than the specified item.
 - i) Will state: the extent, if any, to which the use of the proposed substitute item will impact Contractor's ability to meet the Substantial Completion date; whether or not use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other Work on the Project) to adapt the design to the proposed substitute item; and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;
 - ii) Will identify: all variations of the proposed substitute item from that specified; available engineering, sales, maintenance, repair, and replacement services; and
 - iii) Shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.
- C. Substitute Construction Methods or Procedures: If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute mean, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided above.
- D. Engineer's Evaluation: Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to this provision. If multiple substitutes are submitted by the Contractor, Contractor shall provide an order of priority in which Engineer is requested to review various proposed substitutes. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or a Shop Drawing for an "or equal" indicating that the item was found to qualify as an "Or Equal" subject to these provisions and marked "Returned Without Exceptions." Engineer will advise Contractor in writing of any negative determination or conditions on the use of an Or Equal or Substitution. Contractor waives and releases Engineer and Owner from any claim for delay or costs

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incurred by Engineer's evaluation of substitute items submitted by Contractor.

- E. Special Guarantee: Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- F. Engineer's Cost Reimbursement: Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to this Article. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor also shall reimburse Owner for the charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- G. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or equal" at Contractor's expense.
- H. Conditions on Approval: If deemed appropriate, the Engineer may approve the substitute only with conditions required of the Contractor. Such conditions may include guarantees, no cost modifications to the Work to accommodate the substitution, credits to the Owner for reduced costs, or other accommodations or requirements.
- I. Approval of an "or-equal" of substitute shall not constitute adoption of the "or-equal" or substitute as part of the Engineer's design. The Contractor shall remain responsible for all errors or the failure of the "or-equal" or substitute to perform as anticipated.

30. DISPUTED WORK

- A. Step 1: Notice of Claim
 - 1) The Contractor shall not be entitled to payment of any additional compensation or an extension of time unless the Contractor has strictly complied with the requirements for written Notice of Claim specified herein. Compliance with this Article shall not be required if the claim falls within the scope of the Differing Site Conditions provisions of these General Conditions unless and until the Owner decides as to whether a differing condition described in that Article exists on the Project. Contractor must submit a Notice of Claim when proceeding with Work ordered by a Work Directive where the Contractor intends to seek an adjustment of the Contract Sum or an extension of Contract Times for the Work specified in the Work Directive.
 - 2) If Contractor seeks compensation for Work or materials which it claims is not included in the original scope of the Work or Contract Price, and not subject to a Work Directive, the Contractor shall submit a written Notice of Claim to the Engineer, with a copy to the Owner, within three (3) working days of discovering the basis for the Claim and in any event before the Contractor begins the Work on which the Contractor bases the claim. For Emergency Work, the Contractor shall provide the Notice of Claim as soon as practical, but in no event more than two (2) working days after beginning the Work.
 - 3) Contractor's written Notice of Claim shall be submitted on the appropriate form

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furnished by the Owner and shall be certified with a reference to the Federal False Claims Act. The Notice shall detail the reasons Contractor is seeking additional time and/or money and provide an itemization of estimated costs. The Notice shall also state whether the affected Work impacts the Critical Path for completion of the Project. If such notice is not given, the Contractor shall be deemed to have waived its claim for extra compensation for that claim. A Notice of Claim submitted after the costs have been incurred shall not satisfy the requirements of this Article and the claim shall be deemed waived.

B. Step 2: Maintenance of Executed Cost Records

Contractor shall track all costs incurred and submit Daily Work Tickets for signature as specified in Article 27.D of these General Conditions. Contractor shall furnish all Daily Work Tickets with its Notice of Claim. If the Contractor is unable to provide properly completed Daily Work Tickets on the form supplied by the Owner for each and every day that Contractor seeks to be paid, Contractor may submit other documentation for the missing Daily Work Tickets together with an explanation as to why Contractor did not obtain Daily Work tickets for this work. Substitute documentation may be submitted only for occasional missing days, which Engineer shall have no obligation to accept. Engineer's occasional acceptance of such documentation shall not create a waiver of Contractor's obligation to provide Daily Work Tickets. If the Engineer accepts the substitute documentation, the claim shall be addressed as set out herein. If the Engineer rejects the substitute documentation, and Contractor fails to furnish acceptable alternative documentation within 15 days of the performance of the work, then Contractor will be deemed to have waived its right to compensation for any work not reported on a Daily Work Ticket signed by the Observer.

C. Step 3: Substantiation of Claim

- 1) Within 15 calendar days of completing the affected Work, the Contractor shall submit substantiation of the Contractor's actual costs together with a Time Impact Analysis of the actual impact of the Work on the Schedule. The Time Impact Analysis shall identify the actual impact of the Work on the Critical Path of the Schedule and shall not be based on fragments inserted into the baseline schedule to create theoretical schedule impacts. The Time Impact Analysis also shall identify and include all revisions to schedule logic, added or deleted activities, changes in Activity identification, overlapping of Work items and/or re-sequencing that can be applied to eliminate or reduce the impact on the Schedule. Each claim shall be addressed in a separate Notice of Claim and substantiation of actual costs. Multiple claims shall not be combined into a single notice and costs and time incurred must be set out separately for each claim.
- 2) Failure to provide any portion of the required notification or substantiation of the Claims as required herein shall constitute a waiver of the Contractor's Claim and all costs and time impact related thereto.

D. Step 4: Inspection of Documents

Upon request by the Owner, Contractor shall make available for inspection and copying any and all documents or records in Contractors possession which pertain to the Claim.

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Owner is not required to provide the reasoning or analysis that is the basis for any request for documents.

E. Step 5: Claim Negotiations

- 1) The Engineer shall notify the Contractor of the Owner's general position on Contractor's Claim as soon as reasonably practical. Within three (3) business days of receipt of such notice, Contractor shall identify a representative to meet with representatives of the Owner and Engineer. Such a meeting shall be scheduled within thirty (30) days following issuance of the notice. The meeting date may be deferred for good cause by either party. At the meeting, Contractor shall present and support every aspect of the Claim. Such representative shall have full authority to negotiate and resolve the Claim, including the authority to withdraw the claim in its entirety. Multiple claims, for which the Contractor has provided separate notices and support as set out above, may be addressed in a single meeting. Owner shall furnish a list of questions, concerns or issues with the Claim not less than five (5) days prior to the meeting. The Contractor shall designate such representative or representatives as necessary to address each claim that will be considered in the meeting.
- 2) If the claim or claims are not resolved at the initial negotiation meeting, Contractor shall appoint a second representative at a higher level of authority within Contractor's organization. The Owner likewise will appoint a representative of higher authority to meet with the Contractor's Representative. The higher-level representatives will meet with the Engineer to further negotiate and discuss the unresolved claims within thirty days of the conclusion of the initial meeting unless this date is extended by the Owner. The participants of the original meeting may attend this second meeting if requested by the Contractor and agreed by the Owner.
- 3) If no resolution is reached following the initial negotiation, upon request of the Owner, the Escrow Bid Documents may be jointly reviewed by the Owner, Engineer, and Contractor in order to assist in the analysis and/or resolution of disputed claims. Owner need not justify the request to review the Escrow Bid Documents. When requested by the Owner prior to the second level of negotiations, the Escrow Bid Documents shall be examined during or prior to such meeting and, if necessary, the time for negotiations may be extended by written authorization from the Owner in order to allow sufficient time to review the Documents.
- 4) The failure to participate in the negotiating meeting shall constitute a waiver of all claims to be addressed in the meeting. Owner may record the meeting, if desired, and either party may bring an additional participant to take notes and prepare minutes of the meeting. The meeting shall be considered a confidential settlement discussion and nothing said or done at the meeting shall be admissible in any proceeding whatsoever as evidence of liability or any asserted defense to a claim, other than as necessary to establish whether the Contractor failed to appoint and provide a representative in accordance with the requirements of this Article.

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F. Step 6: Owner's Final Decision

- 1) If the Claim or any part of the Claim is not resolved at the claim meeting, the Engineer will notify the Contractor in writing of the Owner's final decision on the Claim. Within thirty (30) days of receipt of this decision, the Contractor shall either accept the final decision, or provide written objection to the decision. The failure to timely object to Owner's decision shall constitute acceptance of that decision and a waiver of all objections and any right to further compensation or time for the issues raised in the Claim.
- 2) In the event that Owner, in its sole discretion, determines that the Claim brought by Contractor is prohibited by and/or Contractor has waived the right to assert such Claim in the Contract Documents, Owner may deduct from the unpaid Contract Sum or invoice Contractor all fees, charges and expenses of the Engineer, its consultants, Owner's attorneys and other professionals, as well as Owner's staff time arising and/or resulting from the assertion of the prohibited Claim. In addition, the assertion of such Claim(s) shall be considered by Owner in connection with the evaluation of Contractor's overall performance of the Work when awarding future contracts.

G. Intent and Waiver of Claims

- 1) The intention of this provision is to bring any potential claims to the attention of the Engineer and Owner as early as possible in order to allow mitigation efforts and expedited resolution of claims or potential claims. Contractor waives its right to any additional compensation and/or extension of time for any claim that is not submitted in accordance with this Article. This Article applies to all claims for extra Work, changed Work, delay, acceleration, constructive changes or constructive acceleration, disruption to the orderly performance of the Work, and every other claim for additional compensation by the Contractor in relation to the Contract Documents, or to the Work on the Project. The requirements of this Article may not be waived by the express or implied statements, representations, or actions of the Engineer or Owner. The failure to enforce these provisions on one or multiple occasions shall not constitute a waiver of these provisions. Upon request of the Contractor, Owner may, by specific written authorization, extend the time for the Contractor to provide any of the requisite documentation or acts set out herein. Such authorization shall not be implied by actions, inactions or creative interpretation of written documents. Nor shall such authorization be valid unless issued and executed by the Owner. Owner shall have no obligation to extend the time requested by the Contractor, but requests for such extension shall not be unreasonably denied. Under no circumstances shall Owner have any obligation to approve a request for an extension of time made by Contractor after the time to provide notice, documentation or take a specific action has expired (regardless of reasonableness). No extensions will be permitted which prevent the Owner from having sufficient time to respond or react to a claim or which render impractical the Disputed Work or Dispute Resolution provisions of the Contract Documents.
- 2) Nothing in this provision shall relieve the Contractor of any other obligations under the Contract.

H. Step 7: Contract Dispute Resolution

All claims not resolved through the process set out herein shall be addressed after Final Completion through the Dispute Resolution procedure set out in the Contract Agreement.

31. DIFFERING SITE CONDITIONS

- A. If a Contractor discovers one or both of the following physical conditions of the surface or subsurface at the Site, before disturbing the physical condition, the Contractor shall promptly notify the Engineer of the physical condition in writing:
- 1) A subsurface or a latent physical condition at the Site which materially differs from that indicated in the Contract Documents.
 - 2) An unknown physical condition at the Site of an unusual nature materially differing from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract Documents.
- B. Upon Contractor providing the Engineer with a written notice under this Article, Engineer shall promptly investigate the physical condition on behalf of Owner and report the results of such investigation to Owner. If the Engineer determines that the alleged condition is a Differing Site Condition under the Contract, Engineer will consult with the Contractor to review the available options to resolve the Differing Site Condition and provide written direction accordingly.
- C. The Owner shall issue through the Engineer, a written determination as to whether it agrees that the physical conditions do materially differ, and if so, the Owner will issue an appropriate Change Order in accordance with the Change Order provisions set out herein.
- D. Contractor may not make a claim for additional costs or time because of a physical condition as described herein unless the Contractor has complied with the notice requirements of this Article. The failure to provide the required notice constitutes a waiver of Contractor's claim. The Owner may extend the time required for notice under this Article by providing, through the Engineer, written instructions to the Contractor to proceed with the Work while a determination is being made as to whether the physical conditions do materially differ.
- E. If Contractor disputes Owner's determination, Contractor shall provide a Notice of Claim and pursue its remedies as provided in Article 30 herein. The failure to provide a Notice of Claim in conformance with the provisions of Article 30 prior to proceeding with any further Work on the claimed differing condition shall constitute acceptance of the Owner's determination and a waiver of all claims for additional time or money arising from the alleged Differing Site Condition.
- F. This Article is not applicable to any conditions or claims other than the conditions specified in Subsection A.1) or A.2) of this provision.

32. CLEAN UP AND RESTORATION

The Contractor shall, as directed by the Owner, remove at its own expense from the Owner's property, easements and rights-of-way and from all public and private property all temporary structures, rubbish and waste materials resulting from its operation. Unless otherwise stated on the Drawings or Specifications, the Contractor shall restore the job Site to substantially the same condition as existed prior to beginning of Work.

33. USE OF COMPLETED PORTIONS OF THE WORK

The Owner may, at any time during progress of the Work, after written notice to the Contractor, take over and place in service any completed portions of the Work which are ready for service, although the entire Work of the Contract is not fully completed, and notwithstanding the time for completion of the entire Work or such portions may not have expired. The use of any portion of the Work by the Owner under the provisions of this Article shall not constitute Final Acceptance of the Work or any portion thereof or of the Project.

34. FAIR EMPLOYMENT PRACTICES ACT

The Contractor agrees that neither it nor its Subcontractors will discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to its hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of its race, color, religion, national origin or ancestry, nor shall age or sex be a condition of employment except where based upon a bona fide occupational qualification. Breach of these covenants may be regarded as a material breach of this Contract.

35. LABOR HARMONY

It is the Contractor's sole and exclusive responsibility to provide and maintain harmony between and among the tradespersons employed by it, each of its Subcontractors, and any other tradespersons working on the Project. Owner may, but is not required to, implement necessary procedures to restore labor harmony or to enable Work to proceed timely in the event of a labor discord. Contractor shall be responsible to Owner for all costs, expenses, fees, attorney fees or other expenses resulting from Contractor's failure to maintain Labor Harmony.

36. AUTHORITY

No agent of the Owner shall have power to revoke, alter, enlarge, or relax the stipulations or requirements of the Contract Documents, except insofar as such authority may be specifically conferred by the Contract Documents themselves, without the formal written authorization to do so, conferred by the Contract of which the Specifications are a part, or by ordinance, resolution, or other usual official action by the Owner.

37. SANITARY REGULATIONS

Necessary sanitary conveniences for the use of laborers on the Site, properly secluded from public observation, shall be constructed and maintained in sanitary condition by the Contractor, and their use shall be strictly enforced. Contractor shall be responsible for initiating and maintaining all the required sanitary facilities as indicated in the provisions of MIOSHA

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Standards, Part I, "Construction Safety Standards".

38. SUNDAY, HOLIDAY AND NIGHT WORK

Allowable working hours will be controlled by local ordinances, and no Work will be permitted at other hours or on Sundays or holidays, except to save property or life or as specifically authorized or directed by the Owner. In all cases Contractor must comply with local ordinances.

39. SCHEDULING

The schedule requirements are specified in the General Specifications.

40. PROGRESS OF WORK

- A. The Work shall be prosecuted regularly and without interruption, unless the Owner shall otherwise specifically direct, with such force and at such points as to ensure its full completion within the Contract Times.
- B. If the Owner determines that the Contractor has fallen behind in the progress of the Work or is in danger of falling behind at its then-current rate of progress, or is responsible for any Project Schedule delays, Owner may direct Contractor, on written notice, to take all steps Owner deems necessary to improve the rate of progress of the Work, including requiring Contractor to increase its labor force, number of shifts and/or overtime operations, days of Work, or to provide additional equipment or materials. Within forty-eight (48) hours of such written notice from Owner, Contractor shall submit for Owner's review, a recovery plan and schedule to demonstrate how Contractor will implement the required steps to attain the required rate of progress. Contractor will implement the recovery plan immediately upon return of the plan without exceptions. If Owner determines that Contractor's recovery plan will not attain the required rate of progress, Contractor will take the steps Owner directs in that regard and perform the Work accordingly, all without additional cost to the Owner. If Contractor fails to submit or follow a recovery plan as required or perform the Work in accordance with Owner's directives, Owner may, following twenty-four (24) hour notice to Contractor, perform the Work as Owner deems necessary to attain the required rate of progress. Owner may deduct from any payment due to Contractor or collect directly from Contractor on demand all costs, expenses, and damages incurred or suffered by Owner in connection with Contractor's delay in the progress of the Work or to the Project Schedule.

41. TIME OF COMPLETION

The time allowed for completion of the Work contemplated in this Contract shall be the date set forth as the Contract Time(s). Any returns to Contractor of "No Exceptions" of any Project Schedule, Schedule Update, or Schedule Revision, if any, shall not relieve the Contractor of the responsibility to complete the Work within the Contract Time(s).

42. TIME IS ESSENCE OF CONTRACT

It is expressly understood and agreed by the parties that the time specified for the completion of the Work is the essence of this Contract, and the Contractor shall not be entitled to claim complete and final performance of the Contract unless the Work is satisfactorily completed in

every respect, within the time herein specified.

43. ESTIMATED QUANTITIES

The quantities of the various classes of Work to be performed and materials to be furnished under this Contract, which have been estimated as stated elsewhere herein, are approximate and only for the purpose of comparing, on a uniform basis, the Bids offered for the Work under this Contract; and neither the Owner nor its agents are to be held responsible should any of the estimated quantities be found incorrect during the construction of the Work; and the Contractor shall make no claim for anticipated profit, nor for loss of profit, or for additional compensation of any type, or for reimbursement of any cost or expenses of any type, because of a difference between the quantities of the various classes of Work actually performed or materials actually delivered, and the estimated quantities as herein stated, except as described in Article 27.A.2) above.

44. FORFEITURE OF CONTRACT

- A. If Contractor abandons the Work under this Contract, or if the Owner determines that the Contractor is not prosecuting the Work at a reasonable rate of progress, or fails to comply with all or any of the terms and requirements herein set forth, then the Owner shall have the right to take possession of the Work, including Contractor's plant, supply, and materials, at any time after having notified the Contractor in writing to discontinue the Work for said cause or causes. Such action shall not affect the right of the Owner to recover damages resulting from Contractor's forfeiture. Upon receiving such notice, the Contractor shall immediately grant Owner safe and peaceable possession of the Work, including the plants, and shall then cease to have control over any portion thereof or the labor employed thereon.
- B. The Owner may then proceed to complete the Work herein specified by Contract or otherwise; and the entire cost of same shall be charged to the Contractor and deducted from any sum or sums due or to become due under the Contract; the excess cost, if any, to be paid by the Contractor or its sureties, to said Owner.

45. NO WAIVER OF CONTRACT

- A. Neither the acceptance of the whole or any part of the Work by the Owner or its Engineer, or any of its agents, nor any order, measurements, or certificate by the Engineer, nor any order by the Owner for the payment of money, nor any payment for the whole or any part of the Work by the Owner, nor any extension of time, nor any possession taken by the Owner or its agents, shall operate as a waiver for any portion of the Contract or any power therein reserved to the Owner, or any right to damages therein provided; nor shall any waiver of any breach of the Contract be held to be a waiver of any other or subsequent breach.
- B. No failure or course of conduct of the Owner to enforce the terms and conditions of the Contract Documents shall be treated as a waiver of any contract provision, it being agreed and understood the actions and/or inactions of the Owner shall not relieve the Contractor of each of its obligations under the Contract Documents. No waiver may be orally conveyed. No waiver of any provision of the Contract Documents may be expressed or implied in any document other than a Change Order.

46. PAYMENT NOT A WAIVER

Any payment to Contractor or the issuance of any Certificate of Substantial Completion or Acknowledgement of Substantial Completion or Certificate of Final Completion or Acknowledgement of Final Completion shall not constitute acceptance by Owner of the quality of the Work that is the subject of such payment, nor shall it be deemed a waiver with respect to any claims that Owner may have with respect to such Work. Moreover, the payment of any amount to Contractor shall not preclude the Owner from demanding and receiving from the Contractor or its sureties, separately or collectively, such sums as may have been improperly paid the Contractor by reason of any return or certificate which has been untrue or incorrectly compiled. The making of Final Payment shall not constitute a waiver of any claims by Owner including, without limitation, any claims arising from or relating to: (1) liens, claims, security interests or encumbrances arising out of the Contract Documents and which are unsettled; (2) the failure of the Work to comply with the requirements of the Contract Documents; (3) the terms of any express or implied warranties, or special warranties required by the Contract Documents; and (4) an audit of Contractor's or any Subcontractor's or Vendor's books and records. Acceptance of Final Payment by Contractor, a Subcontractor or Vendor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled in the Application for Final Payment.

47. WARRANTY-GUARANTEE

- A. Contractor hereby makes the following guarantees with respect to the Work undertaken by Contractor pursuant to this Contract:
- 1) Contractor's obligation to correct defects, deficiencies or non-conforming Work performed under the Contract, either by the Contractor or its Subcontractors, or the material suppliers, under the guarantees provided herein shall apply to all defects or non-conformities in the Work that appear within the later of two (2) years following Final Acceptance of the Work, such longer period for any component of the Work as specified in the Contract Documents, or any statutory time period; provided, however, that if such defects or non-conforming work are latent in nature; i.e., not reasonably ascertainable prior to or within two (2) years following Final Acceptance of the Work, then Contractor's obligation to correct defects, deficiencies or non-conforming Work shall apply to each such latent defect or non-conforming Work that appears for a period of time equal to the statute of limitation period applicable to such latent defect or non-conforming work, or for the period for which Contractor is contractually obligated to correct said latent defect or non-conforming Work, whichever is longer.
 - 2) The obligations of Contractor herein shall extend to the correction of the defect or non-conforming Work, the removal and replacement of other portions of the Work that are necessary to be removed to gain access to the Work to be corrected, and the repair or replacement of any damage caused by said defect or non-conforming Work. Any corrective work required hereunder shall be accomplished by repairing or replacing the defect or non-conformity. All defective or non-conforming materials which Owner requires to be replaced shall be removed promptly from the Site by Contractor, at its sole cost and expense. If Contractor fails promptly to commence correcting any non-conformity or defect as directed by Owner, Owner may correct such defect or non-conformity and charge the cost thereof to Contractor in the event of a default by Contractor.
 - 3) Any warranty or guarantee shall not act as a limitation on any claim or cause of action otherwise available to the Owner, and shall not shorten any applicable statute of limitation, nor impact any other right or claim the Owner has against the Contractor.

48. MOBILIZATION

- A. **Description:** This item shall consist of preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies, and incidentals to the Project Site; for the establishment of the Contractor's offices, buildings, and other facilities necessary to undertake the Work on the Project; and for other Work and operations which must be performed, or for expenses incurred, prior to beginning Work on the various contract items on the Project Site. Mobilization also shall include pre-construction costs, exclusive of bidding costs, which are necessary direct costs to the Project and are of a general nature rather than directly and are not attributable to other pay items under the Contract. Mobilization shall also include all bonds (i.e. Performance, Labor and Material, and Maintenance and Guarantee) and insurance

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costs.

- B. **Measurement and Payment:** Mobilization will be paid for at the Contract Price on a lump sum basis based on the following schedule:

Percentage of Original Contract Amount Earned	Percentage of Bid Price for Mobilization Allowed
5%	50%
10%	75%
25%	100%

- 1) The Owner may, at his sole discretion, agree to partial payment for mobilization based on actual demonstrated and documented cost.
- 2) The total sum of all payments for mobilization shall not exceed the original Contract amount bid for mobilization, regardless of the fact that the Contractor may have, for any reason, shut down its Work on the Project, moved equipment away from the Project and then back again, or for additional quantities or items of Work added to the Contract.
- 3) Nothing herein shall be construed to limit or preclude partial payments otherwise provided by the Contract.
- 4) When a pay item for mobilization is not included in the proposal, payment for any such Work required is considered to have been included in payments made for other items of Work.

49. HAZARDOUS SUBSTANCES

- A. Owner shall be responsible for any Hazardous Substance, as defined in Michigan Natural Resources and Environmental Protection Act (NREPA), Act 451 of 1994, as amended, uncovered or revealed at the Site which (1) was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, (2) as to which Owner did not otherwise give Contractor any notice of the possible presence of such substance, (3) was not discovered by Contractor if it did a reasonable and competent inspection and investigation of the Site, and (4) which presents a substantial danger, unless certain safety precautions are adopted, to persons exposed thereto in connection with the Work at the Site. Under no other circumstances shall Owner have any responsibility or liability whatsoever for any such hazardous substance, including without limitation any hazardous substance brought to the Site by Contractor, any Subcontractors, suppliers or anyone else for whom Contractor is responsible.
- B. If Contractor discovers any undisclosed and previously unsuspected hazardous substance that falls within the definition set forth in the preceding Article 50.A, Contractor shall immediately: stop all Work in connection with such hazardous substance and in any area affected thereby except in an Emergency and immediately notify Owner and

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- Engineer and thereafter confirm such notice in writing such that Owner is able to comply with any Emergency abatement measures that may be required by law. Owner shall promptly consult with Engineer concerning the necessity, if any, for Owner to retain a qualified expert to evaluate the alleged hazardous condition or take corrective or abatement action, if any. Contractor shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after Owner has obtained any required authorization related thereto if any and delivered to Contractor special written notice: specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to whether Contractor is entitled to any adjustment, or to the amount or extent of an adjustment, if any, in Contract Sum or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by Contractor to be resumed, Owner will issue a Work Directive and Contractor may make a claim therefore as provided in Article 31 herein.
- C. If Contractor improperly stops and/or delays the Work by unreasonably alleging the presence of hazardous substances or conditions, or by unreasonably refusing to adopt certain safety precautions that would allow Work to continue safely, Contractor shall not be entitled to any adjustment of the Contract Times or to any additional compensation of any type, and shall be liable for any loss, cost or damages incurred by Owner, as well as liquidated damages to the extent provided in the Contract Documents.
- D. If after receipt of such special written notice Contractor does not agree to resume such Work based on a reasonable belief that it would be unsafe to do so, supported by appropriate evidence and expert opinion, then Owner may order any portion of the Work that would involve contact with any hazardous substances to be deleted from the Work. If Owner and Contractor cannot agree as to whether Contractor is entitled to any adjustment, or to the amount or extent of an adjustment, if any, in the Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefore as provided in the Contract Documents. Owner may have such deleted portion of the Work performed by Owner's own employees or by any contractor of Owner's choice.

50. INSURANCE AND INDEMNIFICATION

- A. Contractor shall secure the insurance set forth herein. The insurance required of the Contractor is as follows:
- 1) Prior to commencement of the Work, the Contractor shall purchase and maintain during the term of the Project such insurance as will protect Contractor, Owner and Engineer from claims arising out of the Work described in this Contract and performed by the Contractor, Subcontractor(s) or Sub-Subcontractor(s) consisting of:
 - a) Workers' Compensation insurance including Employer's Liability to cover employee injuries or disease compensable under the Workers' Compensation Statutes of the State of Michigan; disability benefit laws, if any; or Federal compensation acts such as U.S. Longshoremen or Harbor Workers', Maritime Employment, or Railroad Compensation

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Act(s), if applicable. Self-insurance plans approved by the regulatory authorities in the State of Michigan are acceptable.

- b) Commercial General Liability policy to cover bodily injury to persons other than employees and for damage to tangible property, including loss of use thereof, including the following exposures:
 - i) All premises and operations;
 - ii) Explosions, collapses and underground damage;
 - iii) Contractual Liability for the obligations assumed in the General and Supplementary Conditions of this Contract;
 - iv) The usual Personal Injury Liability endorsement with no exclusions pertaining to employment; and
 - v) Products and Completed Operations coverage. This coverage shall extend through the Contract guarantee period.
 - vi) The Commercial General Liability Policy shall have "project aggregate" limits, and the certificate shall contain an appropriate notation clearly evidencing such "project aggregate" coverage to the full amount and extent of the minimums required under the General Conditions and/or Supplementary Conditions herein.
- c) A Comprehensive Automobile Liability policy to cover bodily injury and property damage arising out of the ownership, maintenance or use of any motor vehicle, including owned, non-owned and hired vehicles. In light of standard policy provisions concerning (1) loading and unloading and (2) definitions pertaining to motor vehicles licensed for road use versus unlicensed or self-propelled construction equipment, Owner strongly recommends that Contractor obtain the Commercial General Liability and the Comprehensive Auto Liability from the same insurance carrier, though not necessarily in one policy.
- d) The Contractor will purchase for the Owner an Owners and Contractors Protective (OCP) Liability policy to protect the Owner, the Engineer, their respective consultants, agents, employees and such public corporations in whose jurisdiction the Work is located for their contingent liability for Work performed by the Contractor, the Subcontractor(s) or the Sub-Subcontractor(s) under this contract.
- e) The Contractor shall purchase a Builder's Risk-Installation Floater in a form acceptable to the Owner for the life of the Contract on insurable portions of the Project for the benefit of the Owner, the Contractor and Subcontractors, as their interests may appear. Insurable portions of the Project include, but are not necessarily limited to, building of major structures such as pumping stations, sewage treatment plants, bridges, diversion chambers and meter chambers and other property whether in

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place, stored at the job Site, stored elsewhere, or in transit at the risk of the insured(s). The policy shall be procured in the amount of the initial Contract Sum, plus the value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis as of the time of any loss. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the Project, whichever is later. Contractor shall provide a copy of the Builder's Risk policy for review by the Owner. If the Owner believes additional coverage is necessary, the Owner shall notify the Contractor in writing within seven (7) days of receiving the policy. Coverage shall be effected on an "All Risk" form including, but not limited to, the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable Laws and Regulations. The Contractor may arrange for such deductibles as it deems to be within its ability to assume, but Contractor will be held solely responsible for the amount of such deductible and for any coinsurance penalties. Any insured loss shall be adjusted with the Owner and the Contractor and paid to the Owner and Contractor as Trustee for the other insured(s).

- f) Umbrella or Excess Liability: The Owner or its representative may, for certain projects, require limits higher than those stated in Article 51.B which follows. The Contractor is granted the option of arranging coverage under a single policy for the full limit required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy equal to the total limit(s) requested. Umbrella or Excess policy wording shall be at least as broad as the primary or underlying policy(ies) and shall apply both to the Contractor's general liability and to its automobile liability insurance.
- g) Railroad Protective Liability: Where such an exposure exists, the Contractor will provide coverage in the name of each railroad company having jurisdiction over rights-of-way across which Work under the Contract is to be performed. The form of policy and the limits of liability shall be determined by the railroad company(ies) involved. See Contract Documents for limits and coverage requested.
- h) Professional Liability: Contractor shall cause any professional providing design or engineering services to Contractor as required by the Contract Documents to maintain professional liability insurance.
- i) The Contractor shall purchase Contractor's Pollution Liability (CPL) Insurance and include the additional insureds as required by the Contract Documents.

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- j) Impairment of Coverage: The Owner may in its discretion, at any time and without payment of further compensation or fees to the Contractor, require the Contractor to obtain and provide satisfactory evidence of appropriate supplemental, additional or replacement insurance coverage (of any type required hereunder) in the event of any cancellation, lapse, impairment, restriction or reservation that would have the effect of either removing, reducing or rendering insecure any of the coverage required of Contractor hereunder.

B. Limits of Liability for the Contractor: The required limits of liability for insurance coverage requested in Article 51.A shall be not less than the following:

1) Workers' Compensation

Coverage A - Compensation	Statutory
Coverage B - Employer's Liability - (Each Accident)	\$ 500,000
Employer's Liability (Disease Policy Limit)	\$ 500,000
Employer's Liability - (Disease - Each Employee)	\$ 500,000

2) Commercial General Liability

General Aggregate	\$ 2,000,000
Products-Comp/Ops Aggregate	\$ 2,000,000
Personal & Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000
Fire Damage (any one fire)	\$ 300,000
Medical Expense (any one person)	\$ 5,000

3) Comprehensive Automobile Liability

Combined single limit	\$ 1,000,000
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4) OCP

Each occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000

5) Builder's Risk Installation Floater

Cost to Replace at Time of Loss

6) Umbrella or Excess Liability

\$ 2,000,000

7) Professional Liability Insurance

\$ 1,000,000

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8) Contractor's Pollution Liability Insurance (CPL)

General Aggregate	\$ 2,000,000
Each Occurrence	\$ 2,000,000

9) The required limits of liability for insurance coverage in the Contract Documents will be primary and non-contributory to any other insurance available to the additional insureds.

C. Insurance-Other Requirements

1) Notice of Cancellation or Intent not to Renew: Policies will be endorsed to provide that at least 30 days written notice shall be given to the Owner and to the Engineer of cancellation or of intent not to renew.

2) Evidence of Coverage: Prior to commencement of the Work, the Contractor shall furnish to the Owner, Certificates of Insurance in force on the standard Accord Form. Other forms of Certificates are acceptable only if (1) they include all the items prescribed in the Accord Form, including agreement to cancellation provisions outlined in Article 51.C.1) above, and (2) they have been approved by the Owner and Engineer in writing. The Owner reserves the right to request complete copies of policies if deemed necessary to ascertain details of coverage not provided by the certificates. Such policy copies shall be "Originally Signed Copies," and so designated. The Certificate(s) for the required Commercial General Liability coverage shall clearly evidence "project aggregate" policy limits, as specified in Article 51.A.2) hereof.

3) Additional Named Insured and Additional Insured: Insurance requirements shall include the Additional Named insured and Additional Insured as set forth in the Supplementary Conditions hereto plus any additional municipality that may be created and exists at the time of award of this Contract.

4) Qualification of Insurers

a) In order to determine financial strength and reputation of insurance carriers, all companies providing the coverage required shall be licensed or approved by the Insurance Bureau of the State of Michigan and shall have a financial rating not lower than XI and a policyholder's service rating no lower than A- as listed in A.M. Best's Key Rating Guide, current edition. Companies with ratings lower than A-: XI will be acceptable only upon written consent of the Owner.

b) All sureties shall be from U.S. Treasury list. In the event of a surety delisting, delisting, bankruptcy, insolvency or loss of right to do business in the state where the Project is located, Contractor agrees to replace such surety with one that complies with the Contract Requirements as no increase in cost to the Owner. Such insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

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- 5) Acceptance of Bonds and Insurance; No Option to Replace: If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 51 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) as required by the Contract Documents. Owner and Contractor each shall provide to the other such additional information regarding the insurance provided as the other may reasonably request. If either party does not purchase or maintain all the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the Owner will make the final and ultimate decision as to acceptability of the insurance and bonds provided. The Contractor may elect to obtain equivalent bonds or insurance to protect its interests at Contractor's own expense. If the Contractor secures quotations or additional insurance for this Project, the Owner has the specific right to initiate and continue direct dialogue with the Contractor's insurance agency, agent, carrier, wholesaler or broker of such insurance. Owner shall decide whether a Change Order shall be issued to adjust the Contract Price accordingly.
- 6) Subcontractors, Sub-subcontractors and suppliers will be required to have the same insurance as the Contractor as specified in the General and Supplementary Conditions, except as specifically modified above or approved in writing by the Owner.
- 7) The entire amount of Contractor's liability insurance policy coverage limits, identified in the policy and on the Certificate of Insurance, must, under the policy, be available to pay damages for which the Contractor becomes liable, or for which the insured assumes liability under the indemnity agreement herein contained, and such coverage amount shall not be subject to reduction or set off by virtue of investigation or defense costs incurred by Contractor's insurer.
- 8) The entire amount of the Contractor's liability insurance policy coverage limits shall be payable by the Contractor's insurer, with no deductible to be paid by, or self-insured retention to be attributed to, the Contractor unless this requirement is waived by the Owner. Contractor's insurance policy shall be primary to any policies carried by the Owner. Contractor's Certificate of Insurance must set forth the nature and amount of any such deductible or self-insured retention.
- 9) If Contractor's liability insurance coverage is subject to any exclusions, reduction of policy limits or limitations not common to the type of coverage being provided, such exclusions or limitations shall be noted on the Certificate of Insurance.
- 10) In the event that any of the policies of insurance or insurance coverage identified on the Contractor's Certificate of Insurance are canceled or modified, or in the event that Contractor incurs liability losses, either due to activities under this Contract, or due to other activities not under this Contract but covered by the same insurance, and such losses exhaust the aggregate limits of Contractor's

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liability insurance, then in that event the Owner may in its discretion either suspend Contractor's operations or activities under this Contract or terminate this Contract, and withhold payment for work performed on the Contract.

- 11) The maintenance in full current force and effect of such form and amount of insurance as Owner shall have accepted, shall be a condition precedent to the Contractor's exercise or enforcement of any rights under the Contract.
- 12) If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Article 51, the Owner may, but shall not be obligated to, upon five (5) days written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand. Upon purchase of such insurance, the Owner shall issue, and the Contractor shall execute a Change Order reducing the Contract Sum by the cost of the insurance. The Contractor shall furnish all necessary information to incept and maintain such replacement insurance.
- 13) When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor also shall furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.
- 14) The Contractor's liability and indemnification obligations to the Owner under the Agreement shall not be relieved or diminished by securing insurance coverage in accordance with the Owner's requirements or by the Owner's acceptance of certificates of insurance or policies. Any acceptance of insurance coverage by the Owner shall not be construed as accepting in any way deficiencies in the insurance

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D. Indemnification Clause:

- 1) To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel acceptable to Owner) and hold harmless Owner, Engineer and any additional indemnities identified in the Supplementary Conditions and their respective directors, officers, members, partners, affiliates, employees, agents and successors, from and against any and all liabilities, claims, causes of action, lawsuits, liens, injuries, damages, losses and expenses (collectively "Demand(s)") to the extent caused by, arising out of, resulting from or occurring in connection with:
 - a) Contractor's breach of, or failure to comply with, the Agreement or any other contract that it enters regarding the Work, including any Default; or
 - b) Personal injury or death to any person (including, but not limited to, Contractor, Contractor's employees, Subcontractors, Subcontractors' employees and material suppliers) or injury to or destruction of property (including claims for loss of use) caused by, arising out of, resulting from, or in any way connected with (1) the Work, (2) any activity associated with the Work or (3) the operations or acts of commission or omission of Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, material suppliers, or anyone for whom Contractor is legally liable in the performance of Work (including under this Agreement), whether arising before or after completion of the Work.
- 2) To the extent caused by, arising out of, resulting from, or occurring in connection with the provisions of the above Article 51.D.1), Contractor's indemnity obligations under this Agreement shall include, but are not limited to:
 - a) Indemnity for all damages and judgment interest, all costs and fees, including, but not limited to, all defense costs, expenses and actual attorneys' fees, and all settlement payments relating to, arising out of, resulting from or in any way connected with any Demand requiring indemnity by this Agreement;
 - b) All expenses, including, but not limited to, costs, expenses and actual attorneys' fees, incurred in securing and enforcing indemnity from Contractor if Contractor fails or refuses promptly to fulfill any of the indemnity obligations under this Agreement;
 - c) All indemnification obligations imposed upon Owner or Engineer, or both, arising out of or in connection with the Work or the Agreement; and
 - d) Indemnification for any penalties and/or fines arising or resulting from Contractor's any Subcontractor's failure to comply with laws and/or regulations applicable to its/their Work.
- 3) The fault or negligence of Owner, Engineer or other indemnities shall not be a defense to or bar Contractor's duty to indemnify Owner, Engineer or other

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indemnified party except where the negligence of the Owner, Engineer or indemnity is the sole cause of the injury giving rise to the Demand.

- 4) The indemnification rights under this Agreement shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist.
- 5) Owner, at its option, may select counsel to defend any Demand brought against it without impairing any obligation of the Contractor to provide indemnification.
- 6) In the case of claims by any employee of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, the indemnification obligations under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor under workers' compensation acts. Such obligations shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Agreement.
- 7) The indemnification obligations of Contractor under this Agreement shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants and Subcontractors arising solely out of:
 - a) the preparation of or the failure to prepare maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; or
 - b) giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
- 8) Indemnification, additional insured and hold harmless obligations of Contractor and its Subcontractors under the Contract Documents shall survive the completion or termination of this Contract.
- 9) Contractor and Subcontractors will obtain endorsements from their insurance company(ies) waiving the insurer's subrogation rights against the Owner, all engineers and all of the contractors and subcontractors identified as additional insureds in the Contract Documents, including any municipal entity now existing or newly created during the term of the Contract Documents.

51. EASEMENTS

- A. This Contract may require Work to be performed within easements provided by the Owner. All such easements are on file with the Owner and are available for inspection by the Contractor. The Contract Documents show the location and limits of all such easements.
- B. Easements provided by the Owner in the foregoing general forms also may include specific written conditions or restrictions. Contractor shall refer to individual easements for specific conditions or restrictions.

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- C. The Contractor shall conduct its operations in easements to comply with all requirements contained in easement agreements, including without limitation those directed specifically to the "Contractor", to the "County", to the "Owner", to the "Drainage District" or the "Grantee". Contractor acknowledges that all costs necessary to comply with such easement agreements is included in the Contract Price. The cost, unless otherwise included in the measurement and payment section, shall be incidental to the contract.
- D. Additional agreements obtained by the Contractor from any property owner that alter or extend the rights granted under any easement agreement provided by the Owner, or any additional easement agreements obtained by the Contractor from any property owner, shall be obtained by the Contractor at its own expense. Such additional agreements or easement agreements shall not be binding upon the Owner. The Contractor shall defend and hold the Owner and any Indemnified Party harmless from any action that may arise from activities related to such additional agreements or easement agreements.

52. WAIVER OF CONSEQUENTIAL DAMAGES

- A. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes
 - 1) damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
 - 2) damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.
- B. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination or default. Nothing contained in this Article shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. Contractor also waives any claim for such consequential damages against Engineer where such claims arise out of or relate to the Project, or the Contract Documents.

53. ATTORNEY FEE PROVISION

- A. In the event of a default, termination, or any other dispute arising out of or related to this Agreement or the interpretation or enforcement of this Agreement, Contractor agrees to pay Owner's reasonable costs, attorney fees, arbitration fees, expenses and the costs charged by necessary expert consultants and/or expert witnesses if Owner prevails in such action.

54. OWNERSHIP OF INVENTIONS

- A. Contractor will promptly disclose to the Owner each invention, discovery and improvement which it, alone or together with others, may conceive or make at any time during this Agreement and the prosecution of the Work, and which is related to the Project, the Work or Owner's business or interests.

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- B. In consideration of the payment of the Contract Sum, Contractor hereby assigns, and agrees to assign, all its rights, title and interest in such inventions, discoveries and improvements to the Owner, its successors, assigns and nominees. Contractor acknowledges that it is not entitled to additional fees or compensation for any such inventions, discoveries or improvements.
- C. Whenever required to do so by the Owner, Contractor will execute any and all applications, assignments or other instruments which the Owner deems necessary to apply for and obtain copyrights or letters patent of the United States or of any foreign country, or otherwise to protect the Owner's interests in such inventions, discoveries or improvements. Any costs or fees involved in making such applications, assigning such patents, obtaining copyrights, or otherwise transferring any rights to such inventions, etc. shall be paid by the Owner.
- D. Contractor's obligations under this Article will survive the termination of the Agreement and completion of the Project and are binding upon its assigns, executors, administrators and other legal representatives.

55. OWNER'S RIGHT TO CARRY OUT THE WORK

- A. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness as determined by the Owner and Engineer in their sole discretion, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Engineer's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.
- B. The Owner's right to take such corrective actions is in addition to, and without prejudice to, any other remedy the Owner may have and shall not prejudice the Owner's right to terminate this Agreement pursuant to the terms and conditions of the Contract Documents. The failure of the Owner to enforce the provisions of this Section in any given instance, or multiple instances shall not constitute a waiver of the right to enforce the provisions of this Section for that particular instance or instances, nor of any other instance where these provisions may be enforced.

56. OWNER MAY SUSPEND WORK

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefore as provided in herein.

57. OWNER MAY TERMINATE FOR CAUSE

- A. The occurrence of any one or more of the following events will justify Owner's termination of the Contract for cause:
- 1) Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under the Contract Documents);
 - 2) Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - 3) Contractor's disregard of the authority of Owner and/or the Engineer;
 - 4) Contractor becomes bankrupt, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for the benefit of creditors;
 - 5) Contractor fails to make prompt payment of any obligation to others (including but not limited to materialmen and laborers) arising from its performance of this Contract; and/or
 - 6) Contractor's violation in any substantial way of any provisions of the Contract Documents.
 - 7) a receiver, liquidator, trustee or assignee is appointed because of the Contractor's bankruptcy or insolvency;
 - 8) a receiver is appointed for all or any substantial portion of the Contractor's properties;
 - 9) Contractor abandons the Work;
 - 10) Contractor submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is untrue in any material respect;
 - 11) Contractor fails to make prompt payment of any obligation to others (including but not limited to materialmen and laborers) arising from its performance of this Contract; and/or
 - 12) a Lien is claimed against any part of the Work or the Project Site by a member of the Construction Team, other than by reason of Owner's failure to pay Contractor amounts to which it is entitled under the Agreement, and not promptly bonded or insured over by the Contractor;
 - 13) any representation made by the Contractor in the Agreement proves untrue, or the Contractor otherwise violates any provision of the Agreement;
 - 14) Contractor persistently fails to comply with the requirements of the Contract

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Documents; or

- 15) Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Subsection A occur, Owner may, after giving Contractor (and surety) seven (7) days written notice of its intent to terminate the services of Contractor:
- 1) exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);
 - 2) incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 - 3) complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided herein, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages including but not limited to all direct and indirect costs, such as administrative and supervision costs, delay costs, all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs and fees and an allowance of ten percent (10%) of the total costs of completion for Owner's overhead and profit ("Owner's Damages"), Contractor shall immediately pay to Owner the difference, and Owner shall have a lien upon all materials, tools and appliances of Contractor taken possession of as aforesaid to secure the payment thereof, together with interest thereon at the highest rate legally permissible from the date demand therefor is made and until such excess is paid by Contractor to Owner. Owner's Damages will be reviewed by Engineer as to their reasonableness and, when so affirmed as reasonable by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Section, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Contractor's services will not be terminated if Contractor begins, within seven (7) days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure and completes the cure of such failure within no more than thirty (30) days of receipt of said notice.
- E. When Owner terminates Contractor's services, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

58. OWNER MAY TERMINATE FOR CONVENIENCE

- A. Upon forty-eight (48) hours written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

GENERAL CONDITIONS

- B. Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Article:
- 1) cease operations as directed by the Owner in the notice and deliver to the Owner the originals or legible copies of all Drawings, Specifications, reports and other data, records and materials in the Contractor's custody and control pertaining that portion of the Work terminated by Contractor;
 - 2) enter into no additional Subcontracts, except as necessary to complete continuing portions of the Contract take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;
 - 3) terminate, on the most favorable terms possible, all Subcontracts to the extent they relate to the Work terminated except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders;
 - 4) complete the performance of Work not terminated; and
 - 5) take actions that may be necessary or that the Owner may direct, for the protection and preservation of the terminated Work and of materials, plant and equipment in transit or stored.
- C. Upon such termination, the Owner shall pay, and the Contractor, as its sole remedy, may recover (without duplication of any items) for the following:
- 1) completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - 2) expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 - 3) all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, suppliers, and others; and
 - 4) reasonable expenses directly attributable to termination.
- D. The Contractor hereby waives all other claims whatsoever against Owner based on the termination, including, without limitation, loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

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- E. In any recovery by the Contractor, the Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, (2) claims which the Owner has against the Contractor under the Agreement and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor.

APPENDICES

CONTRACTOR'S AFFIDAVIT

The undersigned, _____ ("Contractor") hereby represents that on _____ (date of contract) it was awarded a Contract by the Oakland County Water Resources Commissioner, County Agency for the County of Oakland County or _____ Drain Drainage District [strike one], ("Owner"), in accordance with the terms and conditions of Oakland County Contract Name _____; and the undersigned further represents that the subject Work has been accomplished and the Contract has been completed.

The undersigned hereby warrants and certifies that all of its indebtedness arising by reason of the Contract has been fully or satisfactorily secured, and that all claims from Subcontractors and others for labor and material and equipment used in accomplishing the Project, as well as all other claims arising from the performance of the Contract, have been fully paid or satisfactorily secured. The undersigned further warrants that if any such claim should hereafter arise, it shall assume responsibility for the same immediately upon Owner's request.

The undersigned, for valuable consideration, the receipt of which is hereby acknowledged, does further hereby waive, release and relinquish any and all legal and equitable claims or lien rights which the undersigned now has or may hereafter acquire upon the subject premises for labor and material used and services or work performed in completing the Owner's project.

This affidavit is freely and voluntarily given with full knowledge of the facts, on this _____ day of _____, 20____.

Contractor: _____

Signature: _____

Name: _____

Title: _____

Subscribed and sworn to before me, a Notary Public in and for _____, County, Michigan, on this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

CONTRACTOR'S DECLARATION

The undersigned, on behalf of _____ ("Contractor"), hereby declares that the Contractor has not, during the period commencing with the start of the Work which is the subject of the Contract defined below to following date: _____, 20____, performed any Work, furnished any material, sustained any loss, damage or delay for any reason, including soil conditions encountered or created, or otherwise done anything for which Contractor shall ask, demand, sue for, or claim compensation from the Oakland County Water Resources Commissioner, County Agency for the County of Oakland County or _____ Drain Drainage District [strike one] ("Owner"), or its agents, in addition to the original scope of Work specified in Oakland County Purchasing Contract Number _____ and , on this _____ day of _____, 20____ between Contractor and Owner, and in the Change Orders for additional or extra Work issued by the Owner, in writing, as provided thereunder and/or extension of time, except as set forth on the itemized statement attached hereto.

There ☐ is ☐ is not an itemized statement attached.

Date: _____

Contractor: _____

Signature: _____

Name: _____

Title: _____

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GENERAL SPECIFICATIONS

1. INTENT

It is the intention of these General Specifications to describe work, which may be performed or required, on the various storm drains, sewer, water main or structure projects.

2. PUMPING AND DRAINING

- A. The Contractor shall provide and maintain adequate pumping and drainage facilities for removal and disposal of water from drains, sewers, trenches or other excavations. He shall also provide pumping and drainage facilities for bulk headed drain and sewer section and shall operate same as may be necessary until bulkheads have been removed or construction completed if bulkheads are to be left in place.
- B. Where underground work contains an excessive amount of water, the Contractor shall provide, install, maintain, and operate suitable well points, deep wells, connecting manifolds or other methods, and reliable pumping equipment to operate same to insure proper construction of the work.
- C. When pumping equipment and/or generators are placed within populated areas, the equipment shall be adequately muffled by using hospital quiet motors and/ or generators. The Owner will require the construction of temporary barriers to isolate noisy equipment. Temporary barriers shall be 4 feet above highest part of generator.
- D. Drainage or discharge lines shall be connected to adjacent public storm water drains or extended to nearby watercourses whenever possible. Without exception, written permission must be obtained to traverse private property. All pumping and drainage shall be done without damage to any highway or other property, public or private, or to the environment, without interference with the rights of the public or private property owners. If it should become necessary to lay pipe in water, the Engineer must approve the method of installation. The contractor is responsible for acquiring and obtaining any permits for drainage or discharge if not already provided within the contract documents at time of bid.
- E. The Contractor shall receive no extra compensation for, designing, providing, maintaining, or operating dewatering or drainage facilities.

3. SHEETING, SHORING AND BRACING

- A. Excavations shall be sheeted and braced as necessary to ensure substantial completion of the work and/or to ensure the safety of the workmen or the public or to protect adjoining structures. All excavations shall be in accordance with MIOSHA standards.
- B. No extra compensation shall be paid the Contractor for sheeting or bracing left in place, unless ordered left in place by the Engineer and then only a fair salvage value for material left in place shall be paid. The Contractor shall receive no extra compensation for sheeting or bracing left in place.

4. DISPOSAL OF EXCAVATED MATERIAL

Except for the amount of excavated materials enough for backfilling and construction of fills as called for on the plans; the Contractor shall dispose of all broken concrete, stone and excess excavated materials. The Contractor will be required to obtain his own disposal ground and will receive no extra compensation for disposing of any of the excess materials.

5. SOIL CONDITIONS

- A. Borings may have been made by the Owner at the points indicated on the plans. This information is given to bidders as an aid in the determination of the character of the soil. The Owner does not guarantee, however, that the ground encountered during construction will conform to these borings and the bidders should secure such other information, as they consider necessary to check and supplement the above data.
- B. The Contractor shall assume all risk and responsibility and shall complete the work in whatever materials, and under whatever conditions he may encounter or create without extra cost to the Owner unless a Differing Site Condition has been determined following Article 32 "Differing Site Conditions" of the General Conditions.

6. TREES

- A. The Contractor shall preserve and protect all trees along the line of his work except where specified herein to be removed and not replaced, and shall assume all risk and responsibility for any damage to trees which he may cause or create as the result of his operations under this Contract, for a period of one year.
- B. The Contractor will receive no extra compensation for preservation or protection of trees; for removal, disposal, replacement, trimming, or repair of damaged trees; or for other treatment specified herein except where noted.
- C. All work affecting all trees shall be done using the best nursery practice of the industry. Any trees, roots, trimmings and stumps which are removed during performance of contract work shall be disposed of in a manner acceptable to the Engineer, or as specified in the contract documents. Burial of trees or tree related refuse in the backfill of any excavation for contract work shall be expressly prohibited. All diseased trees or diseased tree related refuse, and all Ash or Elm trees or Ash or Elm tree related refuse shall be disposed of by burning or by other methods approved by the Michigan Department of Agriculture.
- D. Trees along the line of the work affected by the Contractor's operations which die, or trees planted by the Contractor which die, shall be removed completely by the Contractor and replaced as specified by Paragraph h. (4) below entitled, "REMOVE - REPLACE". Trees planted by the Contractor shall be guaranteed for one (1) year.

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- E. Contract work affecting trees located within the public right-of-way (dedicated or assumed) under the jurisdiction of the Road Commission for Oakland County, the Michigan Department of Transportation or of the municipality shall be governed by the requirements of the construction or forestry permits issued by these respective agencies.
- F. In some instances, it may be policy of municipalities or other governmental agencies to issue permits which specify requirements of contract work affecting trees. Requirements of such permits shall govern within the geographic boundaries established by the permit.
- G. The Contractor shall conduct and control his operations in accordance with the following specific requirements where trees are encountered in the performance of all contract work. Where such requirements differ from those specified by permits issued by the Road Commission for Oakland County, by the Michigan Department of Transportation, by municipalities or other governmental agencies, permit requirements shall govern.
- 1) Permanent Easement - Trees may be removed unless otherwise indicated on the Contract Drawings, Easement Conditions or in the Supplemental Specifications.
 - 2) Temporary Construction Easement - Trees in wooded areas shall not be clear-cut. Trees four (4) inches in diameter and smaller may be removed unless otherwise indicated on the Contract Drawings, Easement Conditions or in the Supplemental Specifications. Trees larger than four (4) inches in diameter may be removed, if necessary, unless otherwise indicated on the Contract Drawings, Easement Conditions or in the Supplemental Specifications, and only with prior approval of the Engineer.
 - 3) Private or Public Road Right-of-Way - Trees located at a distance ten (10) feet or less from the centerline of construction may be removed unless otherwise indicated on the Contract Drawings, Easement Conditions in the Supplemental Specifications, or by governing permit.

Trees located more than ten (10) feet from the centerline of construction shall not be clear-cut. Trees four (4) inches in diameter and smaller may be removed unless otherwise indicated on the Contract Drawings, Easement Conditions, in the Supplemental Specifications, or by governing permit. Trees larger than four (4) inches in diameter may be removed, if necessary, unless otherwise indicated on the Contract Drawings, Easement Conditions, in the Supplemental Specifications, or by governing permit, and only with prior approval of the Engineer.
- H. Definition and Application of Terms
- 1) Tree size is to be expressed as its diameter measured 3 feet from the ground.
 - 2) Where the term "REMOVE" is indicated to apply to a specific tree, the Contractor shall remove the tree completely, including the stump.

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- 3) Where the term "PRESERVE AND PROTECT - CONDITIONAL REMOVE" is indicated to apply to a specific tree, the Contractor may work around such tree and preserve and protect it from damage; or may remove such tree completely. If such tree is removed, the Contractor shall pay to the Property Owner the dollar amount set forth on the Contract Drawings or in the Supplemental Specifications. Should this payment not be made within 30 days, such dollar amount will be deducted from any monies due the Contractor on a subsequent regular construction estimate.
- 4) Where the term "REMOVE - REPLACE" is indicated to apply to a specific tree, the Contractor shall remove the tree completely and plant a replacement tree. The selection of the replacement tree shall be governed by the following, appropriate condition:
 - a) The type and size tree noted on the plans or in the Supplemental Specifications.
 - b) A comparable quality tree at least two (2) inches in diameter from nursery stock acceptable to the Engineer.
 - c) The specific tree removed, if proper precautions are taken to prevent damage or permanent injury to the tree.
- 5) Where the term "SAVE" is indicated to apply to a specific tree, the Contractor shall work around such tree and shall preserve and protect it from damage.
- 6) Where the term "SAVE - TUNNEL" is indicated to apply to a specific tree, the Contractor shall tunnel or bore such tree.

I. Open Cut Excavation of Trees

- 1) Trees four (4) inches in diameter and smaller may be removed and re-planted if proper precautions are taken to prevent damage or permanent injury to the tree.
- 2) Trees eight (8) inches in diameter and smaller should not be open cut closer than four (4) feet as measured from the center of the tree to the nearest point of open cut or excavation. Undermining of the root structure or disturbance to the soil closer than four (4) feet for the total depth of open cut or excavation should be avoided.
- 3) Trees larger than eight (8) inches in diameter and smaller than twenty-four (24) inches in diameter should not be open cut closer than the radius of the main trunk in inches multiplied by one (1) foot. For example, a twelve (12) inch diameter tree should not be open cut closer than six (6) feet. The controlling distance shall be measured from the center of the main trunk to the nearest point of open cut or excavation. Undermining of the root structure or disturbance of the soil closer than the controlling distance for the total depth of open cut or excavation should be avoided.

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- 4) Trees twenty-four (24) inches in diameter through thirty-six (36) inches in diameter should not be open cut closer than twelve (12) feet. The controlling distance shall be measured from the center of the main trunk to the nearest point of open cut or excavation. Undermining of the root structure of disturbance to the soil closer than the controlling distance for the total depth of open cut or excavation should be avoided.
- 5) Trees larger than thirty-six (36) inches in diameter should not be cut closer than one-third ($1/3$) the diameter of the main trunk in inches multiplied by one (1) foot. For example, a forty-two (42) inch diameter tree should not be open cut closer than fourteen (14) feet. The controlling distance shall be measured from the center of the main trunk to the nearest point of open cut or excavation. Undermining of the root structure of disturbance for the total depth of open cut or excavation should be avoided.

J. Tunnels or Bores of Trees

- 1) Tunnels or bores under or adjacent to trees shall begin and end at points which fall outside a radius measured from the center of the tree equal to the radius of the main trunk in inches multiplied by one (1) foot plus one half the depth of open cut or excavation. In addition, the open cut or excavation at tunnel or bore and points should not be closer than the distance for open cut specified above under Paragraph I.
- 2) Tunnels or bores shall be constructed using structural liners to support the mined earth. Pre-mined, unsupported, earth tunnels or bores shall be expressly prohibited.

K. Removal of Trees

Where trees are removed, the Contractor shall remove the tree, completely, including the stump and main roots.

L. Filling Under and Around Trees

Permanent placement of earth fill above existing ground level, under or around any existing tree, without the prior consent of the Engineer, should be avoided. Damage to trees may result from permanent placement of fill materials on the existing ground surface, and over the root system.

7. FINAL CLEANUP AND RESTORATION

- A. Upon completion of construction and before final payment is made the Contractor shall properly restore all disturbed areas to original or better condition as existed before his operations were started. The Contractor shall go over the entire line and refill any places that may have settled. The Contractor shall then regrade all backfilled trenches, all fills he may have made from excess excavated materials, and all other areas that may have been disturbed through his operations.

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- B. The Contractor shall restore the job site to substantially the same condition as existed prior to beginning of work. All topsoil in the area of the excavation or in any area, which will be disturbed by construction, shall be excavated and stockpiled. After backfilling is completed and settlement has taken place, the topsoil shall be replaced. Topsoil removal, stockpiling, replacement and seeding as necessary, shall be as directed by the Engineer.
- C. Minimum seeding requirement shall be MDOT "Roadside" Mixture.
- D. Where the Contractor has disturbed lawn area, he shall then bring all areas to be seeded to an acceptable subgrade and shall then apply three inches (3") of "quality" topsoil acceptable to the engineer to attain finished grade.
- 1) "Quality" topsoil shall be defined as a loose black colored soil suitable for the growth of grass seed, obtained from the upper layer of an existing soil, free of limbs, twigs, rocks, stones, roots and debris, etc., containing organic matter rich in nutrients, with negligible clay content.
 - 2) Prior to applying seed, all topsoil shall be brought to a friable condition conducive to receive the seed. All lumps and clods, etc. shall be thoroughly broken, crushed or removed. If the friable condition of the topsoil is lost through compaction or crusting due to rain, equipment movement, etc. prior to seeding, the seedbed shall again be made friable by raking, disking, etc. before applying the seed.
 - 3) The Contractor shall then apply seed and fertilizer in accordance with the following table:

Location	Seeding Requirement	Fertilizer Requirement
Maintained Lawn Areas	MDOT "Class A" Mix (30% Perennial Rye, 30%; Kentucky Blue, 40% Red Fescue) applied at 100 lbs./acre	600 lbs./acre of 10-6-6
Fields, Slopes & Ditch Banks, Etc.	MDOT "Roadside" Mix (50% Perennial Rye, 15% Kentucky Blue, 35% Red Fescue) applied at 100 lbs./acre	600 lbs./acre of 10-6-6

The Contractor shall then mulch all seeded areas with unweathered small grain straw, applied at the rate of 2-3 bales/1000 sq. ft. The mulch shall be anchored in place with biodegradable netting with openings not to exceed 1 1/2 inches x 3 inches, and a minimum roll width of 35 inches. It shall be anchored with wood pegs at least 6 inches long.

The Contractor shall be responsible to ensure the growth of all seeded areas and shall reseed as necessary, at his expense, to accomplish this end. The basis for payment for seed restoration shall be 50% upon the completion of the initial seeding, with the remaining 50% being paid upon establishment of a dense lawn of permanent grasses to the satisfaction of the engineer.

- E. The Contractor may restore areas disturbed by his operations with sod conforming to MDOT 2003 Specifications Section 917.13 instead of seed, with the approval of the Engineer. In addition, sod shall be placed where called for on the Contract Drawings or

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Supplemental Specifications. Sod shall be placed on a prepared bed of 2" of "quality" topsoil. On slopes steeper than 1 vertical to 3 horizontal, the sod shall be pegged with wooden pegs or wire stakes driven flush with the surface of the sod. Sod placed by the Contractor shall match existing lawn.

The basis for payment for sod restoration shall be 50% upon completion of initial sodding, with the remaining 50% being paid upon establishment of a dense lawn of permanent grasses to the satisfaction of the engineers.

- F. If any special landscaped area is disturbed, because of the operations of the Contractor, it shall be reasonably restored to its original condition by the Contractor, or as specified in easement conditions or the contract documents.
- G. Seeding or sodding, as may be required by Road Permits, shall be done in accordance with requirements of governing body issuing said Road Permits.
- H. Final cleanup and restoration work shall be commenced and completed as soon as possible. The work must be done to assure that no disturbed areas exist within 1,000 feet behind pipe laying and/or within 30 days after pipe laying, whichever is less. The above shall apply exclusive of the time period from December 1 to April 1. The Contractor shall maintain lawns by watering, fertilizing, weeding, mowing, trimming, and other operations such as rolling, regrading and replanting as required to establish a smooth, acceptable lawn, free of eroded or bare areas.
- I. If, in the opinion of the Engineer, work has not progressed in a reasonable manner, he shall have the right to direct the Contractor to proceed with the work or any portion thereof immediately. In the event that the Contractor does not proceed with the work immediately, as directed by the Engineer, the Engineer may order any or all other operations of the Contractor, under this Contract, to cease until the final cleanup and restoration work is proceeding in an acceptable manner. Should the Contractor fail to comply with these provisions, the owner may with or without notice cause the required restoration and cleanup to be done by the owner or others and will deduct the cost of said work from any money due or to become due the Contractor under this Contract. The performance of such work by the owner or others shall serve in no way to release the Contractor from his general or liability for the safety of the public or the work.

8. PUBLIC AND PRIVATE UTILITIES - ROAD PERMITS

- A. Utilities - Where any utilities, water, sewer, gas, telephone or any other either public or private, are encountered, the Contractor must provide adequate protection for them and he will be held responsible for any damages to such utilities arising from his operations.
 - 1) When it is apparent that construction operations may endanger the foundation of any utility conduit, or the support of any structure, the Contractor shall notify the utility owner of this possibility and he shall take such steps as may be required to provide temporary bracing or support of conduits or structures.

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- 2) In all cases where permits or inspection fees are required by utilities in connection with changes to or temporary support of their conduits, the Contractor shall secure such permits and pay all inspection fees.
 - 3) When it is necessary in order to carry out the work, that a pole, electric or telephone, be moved to a new location, or moved and replaced after construction, the Contractor shall arrange for the moving of such pole or poles, and the lines thereof, and shall pay any charges therefor.
 - 4) Where it is the policy of any utility owner to make his own repairs to damaged conduit or other structures, the Contractor shall fully cooperate with the utility owner and he shall see that his operations interfere as little as possible with those operations.
- B. Existing Sewer Facilities - In certain instances, existing sewers or drains will be encountered along the line of work. In all such cases, the Contractor shall perform his operations in such a manner that sewer service will not be interrupted, and shall, at his own expense, make all temporary provisions to maintain sewer service.
- 1) Unless otherwise indicated on the plans, the Contractor shall replace any disturbed sewer or drain, or relay same to a new grade to be established by the Engineer such that enough clearance for the sewer will be provided.
 - 2) The Contractor will receive no extra compensation for replacement of sewers or drains encountered, or for relaying at a new grade.
- C. Existing Water Facilities - Where existing water facilities are encountered in the Work; they shall be maintained in operation. If necessary, they shall be relayed, using ductile iron pipe, offsets, bends and sleeves. The Contractor will receive no extra compensation for the relaying and/or lowering or raising of water mains.
- D. Existing Gas Facilities - Where existing gas facilities are encountered, the Contractor shall arrange with the gas company for any necessary relaying and shall pay for the cost of such work.
- E. In all cases the Contractor shall contact "MISS DIG" not less than 72 hours before starting construction for assistance in locating utilities or for any work to be done on utilities. The toll-free telephone number is 811.
- F. Roads and Road Permits - The Contractor shall obtain any necessary construction permits for work within public streets, highways, roads or alleys. He shall pay for same at his own expense as well as for any inspection fees that may be required in connection with such permits, and in addition to all other requirements of these Contract Documents, shall conduct his entire operation in accordance with the provisions of such permits including tunneling of pavements where required. He shall also furnish any required bonds and/or cash deposits and pay the cost of same. In the event that the Contractor fails to furnish the Owner with proof of payment within ten (10) days after receipt of billing for the above-mentioned charges, the Owner will assume that the charges are equitable and unpaid and the Owner will pay such bills and deduct the sum

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plus 10% for handling costs from any money due or to become due the Contractor under the terms of this Contract. Improved roadways or walkways damaged by the Contractor shall be repaired to substantially the same condition as existed prior to beginning of work unless otherwise stated on plans or in Supplemental Specifications.

9. REQUIREMENTS PERTAINING TO WORK WITHIN RAILROAD RIGHT-OF-WAY

- A. Where the Contract plans call for work within railroad right-of-way or where the work crosses under railroad tracks, the Contractor shall secure the approval of the railroad company of his method and schedule of operations and shall carry out his work in strict accordance therewith, all to the satisfaction of the railroad company and at no extra cost to the Owner.
- B. No work of installing, maintaining or repairing of the facility shall be done until the railroad company shall have had sufficient prior notice of at least seventy two (72) hours (exclusive of Saturdays, Sundays and Holidays) to allow assignment of an inspector to the job to protect railroad interests.
- C. All work of installation, maintenance and repair of the facility and appurtenances shall be performed to the satisfaction of the Chief Engineer of the railroad company, or his duly authorized representative, and when any work hereunder is completed, the area shall be left in a neat, smooth and level condition.
- D. The Contractor shall reimburse the railroad for any necessary expense it is put to incidental to the installation of the facility, including the wages and expenses of railroad inspectors and flagmen.
- E. The Contractor shall reimburse the railroad for any costs due to the Contractor's operations, including the wages and/or expense of watchmen, flagmen, barricades, lights, or inspectors, etc., as required by the railroad to protect its operations and property during the Contractor's construction operations on railroad property.
- F. In the event that the Contractor fails to furnish the Owner with proof of payment within ten (10) days after receipt of billing for the above-mentioned charges, the Owner will assume that the charges are equitable and unpaid and the Owner will pay such bills and deduct that sum plus 10% for handling costs from any money due or to become due the Contractor under the terms of this Contract.
- G. All tunnel headings shall be breasted at the end of each mining operation.
- H. Prior to beginning of construction on railroad property, the Contractor shall submit, through the Owner, for approval, the details of any proposed construction shaft located within the limits of the railroad right-of-way, including details of sheeting and bracing. Any such shaft shall be tightly braced to prevent any movement of the adjacent soil or structure.
- I. The additional named insured under GENERAL CONDITIONS for "Owner's Protective Public Liability and Property Damage Insurance" and "Owner's and Contractors Protective Public Liability and Property Damage Insurance", shall include the name of the railroad company.

10. GAS

If gas is present in existing sewers or open excavations in which the Contractor must work, the sewer or open excavation shall be cleared of gas before entering. If the gas cannot be removed by natural ventilation, or by the removal of manhole covers on existing sewer appurtenances, the Contractor shall maintain forced draft or such other gas control or removal process as may be necessary to render the sewers or open excavation safe as determined by gas detection instruments and shall pay all costs therefor.

11. MAINTENANCE AND RESTORATION OF ROAD SURFACES, STRUCTURES AND TRENCH BACKFILL

- A. All structures, including curbing, driveways, walks, paving, gravel, or street road surfaces, etc. that may be damaged or destroyed by the Contractor's operations, shall be maintained, repaired and replaced by him at his own expense.
- B. In order to ensure proper maintenance of service, the Contractor shall follow immediately behind the pipe laying operation with the restoration of all drainage facilities including driveways and road culverts, catch basins, manholes, ditches, sewers, and any other structure as deemed necessary by the Engineer. Mailboxes were removed or disturbed shall be replaced as soon as is practicable. Trenches shall be promptly backfilled after the pipe is laid with no more than 50 lineal feet of trench being open at one time. The trench backfill may be neatly mounded over the centerline of the excavation to provide enough material to establish the original grade after settlement has taken place. All construction debris, equipment, and excess dirt shall be removed from the site. Stockpiling of excess excavated materials in large piles will not be allowed without permission of the Engineer.
- C. All haul roads, detour roads, gravel roads, and driveways must be maintained in a dust-free condition during the life of this Contract. The control of dust shall be accomplished by the application of dust control materials and methods of application, which are in accordance with the requirements of the agency having jurisdiction over the roadway. Such dust control materials shall be applied as often as is necessary to control the dust. The use of road oils and waste oils to control dust is prohibited.
- D. Where concrete or asphalt areas are disturbed, temporary cold patching will be as required elsewhere in these Contract Documents.
- E. Maintenance and restoration of road surfaces, structures and trench backfill shall be commenced and completed within a reasonable length of time after construction. If in the opinion of the Engineer work has not progressed in a reasonable manner, he shall have the right to direct the Contractor to proceed with the work or any portion thereof immediately. In the event that the Contractor does not proceed with the work immediately, as directed by the Engineer, the Engineer may order any or all other operations of the Contract, under this Contract, to cease until the maintenance and restoration of road surfaces, structures and trench backfill is proceeding in an acceptable manner.
- F. If, due to weather conditions, the existing gravel roads, disturbed by the Contractor's operations, cannot be maintained with 21AA natural aggregate, the Contractor shall, at

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the Engineer's request, provide sufficient crushed stone of a size approved by the Engineer until final restoration can be accomplished with 21AA natural aggregate.

- G. The Contractor shall immediately restore all roadways and shoulders with 8" of 21AA natural aggregate, parking areas and driveways with a minimum of 6" 21AA natural aggregate and shall maintain as settling occurs. If necessary, the Contractor shall build a sub-base using larger size aggregate in order to open the facility to traffic.
- H. All driveways disturbed by the Contractor's operations shall be promptly restored by the Contractor using materials matching or exceeding the performance characteristics and visual aspects of the original driveway construction.
- I. New gravel shall be used for all road and driveway restoration; no salvaged material shall be used.

12. REPLACEMENT OF CONCRETE OR ASPHALT PAVEMENT CROSSINGS

Unless otherwise specified or required by the local units of government, the Road Commission for Oakland County or the Michigan Department of Transportation, all existing concrete or asphalt paved areas shall be restored with materials of similar type, thickness and width to match existing material using the following minimum criteria:

A. Concrete Pavement Replacement

- 1) The replacement concrete shall be at least the thickness of the existing slab and of Grade A (3,500 p.s.i.) compressive strength.
- 2) In all cases, the concrete replacement shall be a minimum of four (4") inches thick and have a minimum 18 inches bearing on undisturbed ground on each side of the trench excavation.
- 3) The existing slab shall be saw-cut to provide the concrete replacement width required in (2), above, however if a saw-cut is closer than three (3) feet from a parallel joint, the existing slab shall be removed and replaced to that joint.
- 4) The concrete replacement shall be reinforced in a manner equal to the existing slab, however, if the existing slab is unreinforced the replacement concrete shall have a 6" x 6" w6/w6 welded wire fabric, steel mesh placed therein.
- 5) A temporary cold patch (equal to the Michigan Department of Transportation CP-3 Patching Mixture) shall be used to surface the area where the concrete has been removed until the concrete pavement can be replacement. The Contractor shall maintain this temporary cold patch until it is removed for completion of the work.

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B. Asphalt Pavement Replacement

- 1) Asphalt surfaces shall be replaced to sawed joints as directed by the Engineer. Repair areas shall be such that the sawed joints are parallel to the undisturbed edge of the surface at the furthest extremity of the disturbed area. No "checkerboard" repairs shall be permitted.
- 2) The asphalt replacement shall have a minimum of eight (8) inches of MDOT 21AA natural gravel or slag aggregate, or approved equal, to match original aggregate subgrade material, with a minimum of four (4) inches of bituminous surface course in accordance with MDOT (2003) Division 5 Specifications, as necessary to match existing surface.
- 3) (3) A temporary cold patch (equal to Michigan Department of Transportation CP-3 Patching Mixture) shall be used to surface the area where the asphalt has been removed until the asphalt pavement can be replaced. The Contractor shall maintain this temporary cold patch until it is removed for completion of the work.

- C. Replacement of Driveway Approach Pavement: When either asphalt or concrete drive approach pavement is removed, the area to be repaired shall include the entire approach from the existing pavement to the sidewalk. If there is no sidewalk the repair shall extend to the "throat" of the driveway or to the point at which the approach meets the driveway at its normal width.

13. ENGINEER'S AND INSPECTOR'S FIELD OFFICE

- A. The Contractor shall provide and maintain, at his own expense, a field office for the exclusive use of the Owner's Engineers and Inspectors. It shall be centrally located within the limits of the Contract. The field office shall have all utilities in service PRIOR to the commencement of construction and shall not be removed until the completion of all work including cleanup and restoration. The Contractor shall not remove the field office without receiving written permission to do so from the Owner.
- B. The field office shall contain a minimum area of 192 square feet and be equipped with the following: heat, air conditioning, electric lights, sanitary facilities, closet, two desks, matching rolling desk chair, one drafting table and padded drafting stool, a print rack, fax-copier, six sturdy chairs, a four drawer legal size file cabinet, a 3 foot by 4 foot bulletin board, mop, broom, pail, first aid kit, fire extinguisher, bottled water and dispenser, locks and 4 keys for the doors.
- C. Field offices, having chemical/holding tank sanitary facilities may be utilized provided, in the opinion of the Owner, the Contractor adequately maintains the sanitary facilities.
- D. The Contractor will receive no special payment for the cost of the field office, and the cost shall be included in other items of the proposal. Costs of heat, electricity and telephone service, including reasonable toll calls, shall be borne by the Contractor. Two or more Contractors on a multi-sectioned project may join to furnish a field office, if, in the opinion of the Owner, it would meet certain location and size requirements.

- E. A mobile telephone system may be provided for telephone service, subject to approval of the Owner and Engineer.

14. CONTRACTOR FURNISHED SURVEY EQUIPMENT

The Contractor shall provide one (1) tripod, automatic level and level rod for the use of the Inspector for the duration of the project. The level rod shall be in English units. The equipment shall be of commercial construction grade quality. The equipment shall be calibrated at the start of the project with a copy of the calibration certificate provided to the Inspector for his records. The survey equipment will be returned to the Contractor at the end of the project.

15. MONUMENTS

Monuments or other recognized property boundary markers at street intersections, section corners, acreage or lot corners, and right-of-way lines shall be preserved and protected. Where such monuments or markers must be removed during construction, the Engineer shall be notified and the Contractor shall make all necessary arrangements, at their own expense, with a Land Surveyor registered in the State of Michigan to have these monuments or markers properly witnessed prior to disturbance or removal and later reset by the Registered Land Surveyor.

16. MAINTENANCE OF TRAFFIC

- A. During the progress of the work, the Contractor shall accommodate both vehicular and pedestrian traffic in road rights-of-way as provided in these specifications. Access to fire hydrants, water and gas valves shall always be maintained. All local traffic ordinances and regulations of the Fire and Police Department and the Department of Public Services shall govern the Contractor's truck and equipment operations on public streets.
- B. Working sites at manholes, alignment holes, and other minor openings in streets need not be fenced but they shall not be larger than necessary and shall be well protected by barricades and lights and shall not be occupied longer than necessary. Small openings in streets shall be covered with strong steel plates anchored in place, when they are not required to be open for construction purposes.
- C. Shaft locations shall be selected at point where they will interfere with traffic as little as possible and their working site arrangements shall meet the approval of the Engineer. Detouring of traffic shall be done in accordance with the requirements of the municipal unit having jurisdiction therefor.
- D. Where streets are partially obstructed, the Contractor shall place and maintain temporary driveways, ramps, bridges and crossings that, in the opinion of the Engineer, are necessary to accommodate the public. In the event of the Contractor's failure to comply with the foregoing provisions, the Owner may, with or without notice, cause the same to be done and deduct the cost of such work from any monies due or to become due the Contractor under this Contract, but the performance of such work by the Owner, or at his insistence, shall serve in no way to release the Contractor from his liability for the safety of the traveling public.

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- E. The Contractor shall provide flagmen, warning lights, signs and barricades necessary to direct and protect vehicular and pedestrian traffic.
- F. The Contractor shall inform the local Police, Fire and Public Services Department in advance of his program of street obstructions and detours, so that those Departments have ample time to develop plans for servicing the area in case of an emergency. He shall also notify the Owner at least one week prior to obstructing any street.

17. SCHEDULE FOR SMALL PROJECTS (Strike for Large Project)

The requirements for scheduling are specified in the following articles. Modifications, if any, can be found in the Supplementary Conditions.

A. PRELIMINARY SCHEDULE

- 1) The Bidder's Preliminary Schedule will provide an orderly progression of the work to completion within the Contract Times. The Preliminary Schedule will outline major project milestones including completion dates. The schedule will include all major construction activities such as shop drawing preparation, shop fabrication, intervals from purchase to delivery of purchased items, crew and other resource loading, field activity durations, etc., and will be sufficiently detailed to enable Owner and Engineer to evaluate the Contractor's plan and ability to complete all aspects of the work within the Contract Time periods. The preliminary schedule shall include all activity by others that Contractor requires to successfully complete the project, and its scheduled activities within the times set forth in the schedule. The schedule shall show all critical path activities regardless of duration. The schedule shall include at least 75 activities and no single activity shall have a duration greater than four weeks.
- 2) The Bidder's Preliminary Schedule shall be prepared using the current version of Microsoft Project, Primavera Project Planner software or Microsoft Excel. Failure to provide the requested schedule including all the provisions in this specification may result in the Contractor being declared non-responsive.
- 3) The Bidder's Preliminary Schedule shall be based on the anticipated Notice to Proceed date provided in the Proposal.
- 4) The Contractor shall submit the schedule with the Bid.

B. PROJECT PROGRESS SCHEDULE

- 1) Within ten (10) days after bids are received by the Owner, the Contractor who has submitted the low bid shall submit in electronic format with a printed color hard copy of a Project Progress Schedule. Second and third low bidders may be required to submit a Project Progress Schedule upon ten (10) days notice. Said schedule shall comply with the requirements set forth in the scheduling requirements below.

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- 2) The Project Progress Schedule shall show in a clear, graphical manner the proposed dates for the commencement and completion of each of the various bid items of the work. The schedule shall be predicated on the Notice to Proceed date as specified in the Proposal and the completion date outlined in the AGREEMENT, Article 2, entitled THE TIME. The schedule shall indicate the number of crews, including subcontractors if any is to be employed, on the project and the manner and times in which they will be utilized.
- 3) The Contractor may use Microsoft Project, Primavera, Excel, or other suitable programs in a format acceptable to the Owner.
- 4) The Contractor shall provide periodic updates of the schedule, at least monthly to the Owner.
- 5) Should the Contractor elect to change the Project Progress Schedule by the addition of one or more crews, he shall notify the Engineer in writing along with revised Project Progress Schedule two (2) weeks prior to the addition of any crew(s).
- 6) Should the Contractor elect to change his location of work or move to a different area, the Contractor shall notify the Engineer seventy-two (72) hours in advance (excluding weekends and holidays) of his intended move.
- 7) If during the course of the work, the time of completion of the Contract is extended, or if in the opinion of the Owner the progress is behind schedule so as to affect its completion, the Project Progress Schedule shall be corrected to show the revised commencement and completion dates of those parts of the work which are affected.
- 8) The schedule shall include activities that represent the major milestones and completion dates listed within the Contract Documents.
- 9) The schedule shall include Submittals and Submittal-Owner Approval activities, as well as time required for fabrication, delivery, storage, installation, testing close-out, and commissioning.
- 10) The activities shall be connected by only "finish-to-start" (FS) logic ties. If a relationship between activities cannot be accurately depicted using FS, then the Contractor can request the use of other logic types.
- 11) The Contractor shall provide the Project Progress Schedule to the Owner in hard copy print outs in bar chart format, printed landscape on 11"x17" paper with the timescale formatted to fit on 1 page wide, unless otherwise requested in writing by the Owner. The print out shall include columns indicating the Activity ID, Activity Name, Remaining Duration, Start Date, Finish Date, Total Float, and any other dates requested by the Owner.

C. MEASUREMENT OF CHANGE

- 1) The only means of changing the completion dates or milestones of the project is

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by a fully executed Change Order as set out in the Contract Documents.

- 2) The Contractor must identify, at the time that a change in the work is identified, what, if any, activities are impacted by the change and/or what new activities that are required to sufficiently depict the changed work in the schedule.
- 3) No requests for additional time will be granted unless entitlement is demonstrated by a contemporaneous time impact analysis.
- 4) All direct and indirect impacts from approved changed conditions must be indicated in the schedule.

D. SCHEDULE FLOAT

Any float existing, found, or created in the schedule shall belong equally to the Contractor and the Owner from the time of the Project Progress Schedule approval. Each party may use the float it owns. However, no damages will be recoverable by the Contractor based on an asserted right to an early finish date prior to the Contract or milestone completion deadlines.

18. SCHEDULE FOR LARGE PROJECTS (Strike for small project)

The requirements for scheduling are specified in the following articles. Modifications, if any, can be found in the Supplementary Conditions.

A. PRELIMINARY SCHEDULE

- 1) Each Bidder shall submit with the Bid Documents a preliminary resource-loaded schedule demonstrating the Bidder's plan to complete the construction work within the time allowed in the Contract and to achieve the completion of any milestones identified in the Contract Documents.
- 2) The Bidder's Preliminary Schedule will provide an orderly progression of the work to completion within the Contract Times. The Preliminary Schedule will outline major project milestones including completion dates. This will be a detailed incremental, logic driven CPM (Critical Path Method) schedule for the work of the Contract, and will reflect the Contract dates and include all construction activities such as detailing, shop fabrication, intervals from purchase to delivery of purchased items, crew and other resource loading, field activity durations, etc., and will be sufficiently detailed to enable the Owner and Engineer to evaluate the Contractor's plan and ability to complete all aspects of the work within the Contract Time periods. The preliminary schedule shall include all activity by others that Contractor requires to successfully complete the project, and its scheduled activities within the times set forth in the schedule. The schedule shall show all critical path activities regardless of duration. The Schedule shall include at least 75 activities and no single activity shall have a duration greater than four weeks. The Preliminary Schedule shall form the basis for the Baseline Project Schedule required by the Contract Documents.
- 3) The Bidder's Preliminary Schedule shall be prepared using the current version of

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Primavera Project Planner software or Microsoft Project and shall be submitted with the Bid in electronic format with a printed color hard copy. Failure to provide the requested schedule including all the above provisions may result in the Contractor being declared nonresponsive.

- 4) The Bidder's Preliminary Schedule shall be based on a Notice to Proceed date identified in the Proposal.

B. PROJECT BASELINE SCHEDULE

- 1) Within 10 calendar days of Notice of Award, the Contractor shall provide a Project Baseline Schedule which depicts all major elements of the work and calculates a completion date consistent with the completion dates listed in the Contract Documents. The Project Baseline Schedule shall be based on the Preliminary Schedule expanding the activities and detail as well as making any necessary corrections. It is expected that the number of activities in the Baseline Schedule will exceed the number of activities in the Preliminary Schedule. The exact minimum number of activities is to be determined by the Engineer or Owner. Any change in activity titles in the Preliminary Schedule shall be specifically identified to the Owner prior to use in the Project Baseline Schedule. The Contractor shall immediately address any exceptions taken by the Owner or Engineer. The schedule is not properly submitted until the Owner returns the schedule to the Contractor with "No Exceptions". The return of the schedule with "No Exceptions" will not constitute adoption of the schedule by the Engineer or Owner. This designation merely means that the Owner has not discovered any obvious errors in the schedule or obvious deviations from the schedule requirements in the Contract Documents. The return of the schedule with "No Exceptions" shall not preclude the Owner or Engineer from raising exceptions to subsequent updates regardless of whether those concerns appeared on the Project Baseline Schedule.
- 2) The Project Baseline Schedule shall include only the work shown in the Contract Documents at the time of Notice of Award as well as the obligations of others affecting the Work. The Project Baseline Schedule shall not show any progress of the work since the start of the project and shall not reflect any changes, claims, disputes or extra work performed or anticipated on the project.
- 3) The Project Baseline Schedule shall include a narrative that includes the following information (which may be appended by the Owner or Engineer at any time):
 - a) Overall description of the general work sequence
 - b) Summary of the critical path
 - c) Description of allowances made for adverse weather
 - d) Description of the basis for the durations
 - e) Listing of known project risks

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- f) Description of the general procurement plan for long lead equipment and materials
- g) A general overview of labor availability
- h) An overall site logistics and staging plan, including crane plans

C. TWO WEEK LOOK AHEAD

Contractor's Scheduler shall prepare two-week look-ahead schedules and present such schedules at the Progress Meetings. Copies of the two-week look-ahead schedules shall be provided by Contractor to Engineer and Owner every Monday and at or before each Progress Meeting.

D. SCHEDULE MEETINGS

- 1) Contractor's Scheduler shall meet with the Scheduler appointed by the Owner as deemed necessary by the Owner's Scheduler, to review the progress of the Work; discuss without limitation any schedule concerns; the impact of any pending changes or claims, and the methods by which any delays may be made up through adjustments of the schedule logic, sequencing, overlapping Work, or other means. The Schedulers will determine any adjustments or updates that need to be made to the current schedule.
- 2) At least ten (10) days before any Application for Payment is submitted, Contractor will submit a schedule update based on the discussion between the Schedulers and in conformance with the requirements for schedule updates set out in the Contract Documents. If the Contractor disagrees with any change requested by the Scheduler appointed by the Owner, the Contractor shall note the disagreement on the schedule update and shall prepare the update in conformance with the analysis of the Scheduler appointed by the Owner. Contractor, at Engineer's request, shall require its Subcontractors and suppliers to attend progress or other meetings as requested by Engineer and as Engineer shall deem appropriate.

E. SCHEDULE UPDATES

- 1) Contractor shall revise the schedule update to address any exceptions noted by the Owner due to the failure to fully comply with the requirements set out herein or in the Scheduling Requirements as set forth in the Contract Documents. If necessary, Contractor's Scheduler shall meet with the Owner, Engineer, or Scheduler appointed by the Owner to discuss the schedule update and resolve any disputes or concerns. Any such meeting shall be conducted separately from the regularly scheduled Progress Meeting described herein. Contractor shall not be paid any sums for Work on an Application for Payment until the schedule update from the previous month is submitted to the Engineer and returned to the Contractor with "No Exceptions".

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- 2) Should the Contractor elect to change the schedule by the addition of one or more crews, he shall notify the Engineer in writing along with revised schedule two (2) weeks prior to the addition of any crew(s).
- 3) Should the Contractor elect to change his location of work or move to a different area, he shall notify the Engineer seventy-two (72) hours in advance (excluding weekends and holidays) of his intended move.
- 4) If during the course of the work, the time of completion of the Contract is extended, or if in the opinion of the Owner the progress is behind schedule so as to affect its completion, the schedule shall be corrected to show the revised commencement and completion dates of those parts of the work which are affected.
- 5) At least 10 days before submission of each Application for Payment, a conference attended by Contractor, Contractor's Scheduler, Engineer, Owner's Scheduler, and others as appropriate will be held to review the proposed schedule update to be submitted in accordance with the Contract Documents. Contractor will have 10 days to make corrections and adjustments and to complete and resubmit the schedule updates with the monthly progress payment application. No progress payment will be due to or made to Contractor until the current schedule updates are submitted to Engineer, and until the prior month schedule update has been returned to the Contractor by the Engineer with "No Exceptions."
- 6) The schedule shall be updated to indicate the actual progress of the work since the previous update and the intended sequence of the remaining work. All Work required to complete the Contract shall be included on the schedule updates, including Work relating to changes, disputes, claims, and delays or asserted delays. Schedule updates shall not include assertions as to the responsibility for any delays, claims or purported added work. The schedule updates shall not reflect theoretical time for completion beyond the time necessary for completion of the work. Schedule updates shall not move any completion dates or milestones unless a Change Order has been issued. A schedule review returned with exceptions, or other comments or response to a schedule update shall not constitute approval of a schedule modification, or a change order or work directive. The schedule updates are a report to the Owner of the Contractor's specific plan for completing the work and the time the Contractor believes is necessary to perform all the required Work.
- 7) In the event that actual progress of the work or any modifications to the sequence or duration of the activities causes the completion milestones of the project to be delayed beyond the dates indicated in the previous update, the Contractor shall make every effort to re-sequence the Work (or otherwise adjust the schedule) to eliminate the delay. Unless determined otherwise through the issuance of a written, fully executed Change Order, the cost of the re-sequencing shall be borne by the Contractor.
- 8) The Contractor shall certify each scheduling submission indicating that it has accurately depicted the critical path of the project.

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- 9) The Contractor shall provide an electronic copy of each schedule update to the Owner in the native scheduling software format approved by the Owner.
- 10) Each schedule update shall be submitted to the Owner with a narrative report indicating the major changes that occurred (and the reason for the changes) including:
 - a) Activities added to the schedule
 - b) Activities deleted from the schedule
 - c) Logic revisions
 - d) Changes to the Critical Path
 - e) Calendar changes
 - f) Added or deleted constraint dates
 - g) Duration Changes
- 11) The Contractor must provide with each update a listing of all activities, complete with the current float values that require specific input or direction from the Owner.
- 12) The Contractor may not rename activities included in the Project Baseline Schedule nor divide existing activities into new activities or sub-activities without the written consent of Owner. Additionally, the Contractor is not to re-use Activity IDs (i.e., if an activity is deleted, that ID shall not be used for a new activity).
- 13) Significant changes to the schedule sequence or the addition/deletion of change order work may necessitate a schedule Revision. This is effectively a re-baselining of the project, and the schedule shall be designated and reviewed as a Revision.

F. CONTRACTOR'S SCHEDULER

- 1) The Contractor's Scheduler may be an employee of Contractor or an outside consultant. Contractor will identify and provide qualifications of the Scheduler within five (5) days after Notice to Award. The Owner may reject the Scheduler if they don't meet the minimum qualifications or is otherwise unacceptable. In the event the Scheduler is rejected by the Owner, or becomes unavailable to the Contractor, the Contractor will immediately appoint a qualified replacement Scheduler and submit the qualifications of the replacement Scheduler for review by the Owner.
- 2) Contractor's Scheduler shall prepare the Project Baseline Schedule, all schedule updates, and any time impact analysis, make up schedules or acceleration schedules required by the Contract Documents. The Contractor's scheduler shall

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attend all project meetings where scheduling input is necessary, as well as attend the meetings and perform the duties set out in the Contract Documents.

- 3) Contractor shall appoint a project scheduler with the following minimum qualifications (unless otherwise modified by the Owner or Engineer):
 - a) At least five years of experience using the most recent version of Microsoft Project or Primavera Project Planner.
 - b) Scheduling for at least three heavy construction projects each with a total construction value in excess of ten million dollars (\$10,000,000) each.

G. SCHEDULE STANDARDS

- 1) The Contractor shall employ the Critical Path Method (or similar, pre-approved method) scheduling technique to create and maintain a current and accurate schedule depicting the actual and expected progress of the work and meeting the following requirements:
- 2) The Contractor shall create its schedule using the latest version of Microsoft Project or Primavera Project Planner.
- 3) Each element of work on the project shall be shown as an activity or group of activities on the schedule in the detail necessary to accurately depict every step required to complete the project. At least 300 discrete activities shall be included on the Preliminary Schedule, however, Owner and Engineer retains the right to modify the minimum activity count.
- 4) In addition to construction activities, the schedule shall include applicable activities for design and procurement (of both subcontractors and material). The material delivery date shall be the same as provided in the Consolidated Submittal Schedule.
- 5) The schedule shall include activities that represent the major milestones and completion dates listed within the Contract Documents.
- 6) The schedule shall include Submittals and Submittal-Owner Approval activities, as well as time required for fabrication, delivery, storage, installation, testing, start-up, training, close-out, and commissioning.
- 7) The activities shall form a complete network wherein all activities shall have at least one predecessor and one successor. Each activity shall have as many predecessor or successor activities as is necessary to accurately calculate the Critical Path of the Project.
- 8) Each activity shall have as many predecessor or successor activities as is necessary to accurately reflect the requirements to complete the work.

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- 9) The activities shall be connected by only “finish-to-start” (FS) logic ties with 0-day lags. If a relationship between activities cannot be accurately depicted using FS, then the Contractor can request the use of other logic types.
- 10) The Contractor shall refrain from constraining activity dates in the schedule. If the Contractor feels constraints are necessary, the Contractor will detail the reasons for the constraints to the Engineer for approval.
- 11) The Critical Path shall be the longest continuous chain of activities in the network from the data date of the schedule through Substantial and Final Completion of the project.
- 12) The schedule must contain activities that clearly identify information, materials, actions or directions required from the Owner to progress the work.
- 13) The Contractor shall provide all schedules to the Owner in hard copy print outs in bar chart format, printed landscape on 11”x17” paper with the timescale formatted to fit on 1 page wide, unless otherwise requested in writing by the Owner. The printout shall include columns indicating the Activity ID, Activity Name, Remaining Duration, Start Date, Finish Date, Total Float, and any other dates requested by the Owner.
- 14) The Contractor shall also submit all schedule files in the native scheduling program electronic format.
- 15) The schedule shall clearly show the calculated critical path of the project.
- 16) Schedule calendars must be developed to accurately reflect the working times for each activity based on the specific requirements of the project.
- 17) The Contractor must provide a manpower curve for each trade based on the activity duration and sequence as calculated by the scheduling software.
- 18) The schedule shall include a specific plan for dealing with ‘normal adverse weather’. This is weather that can be reasonably expected to slow or stop work, based on historical weather in the same general geographic area. Examples of such weather include, but are not limited to wind, cold, heat, humidity, rain, and snow. Time extensions for ‘abnormal adverse weather’ will only be considered if the Contractor provides specifics as to why the actual weather is abnormally adverse. Analysis of historical weather data will nearly always demonstrate that normal adverse weather should be anticipated by the Contractor every month. This must be planned for in the schedule.
- 19) The schedule shall include appropriate activity codes and work breakdown structure (WBS) such that it can be easily grouped, filtered, and sorted. The Engineer may suggest additional codes.
- 20) At any time, the Owner may request that an existing schedule be resource loaded to ensure that the Contractor is making adequate progress towards the final completion deadlines.

H. MEASUREMENT OF CHANGE

- 1) The only means of changing the completion dates or milestones of the project is by a fully executed Change Order as set out in the Contract Documents.
- 2) The Contractor must identify, at the time that a change in the work is identified, what, if any, activities are impacted by the change and/or what new activities that are required to sufficiently depict the changed work in the CPM schedule.
- 3) No requests for additional time will be granted unless entitlement is demonstrated by a contemporaneous time impact analysis.
- 4) All direct and indirect impacts from approved changed conditions must be indicated in the schedule.

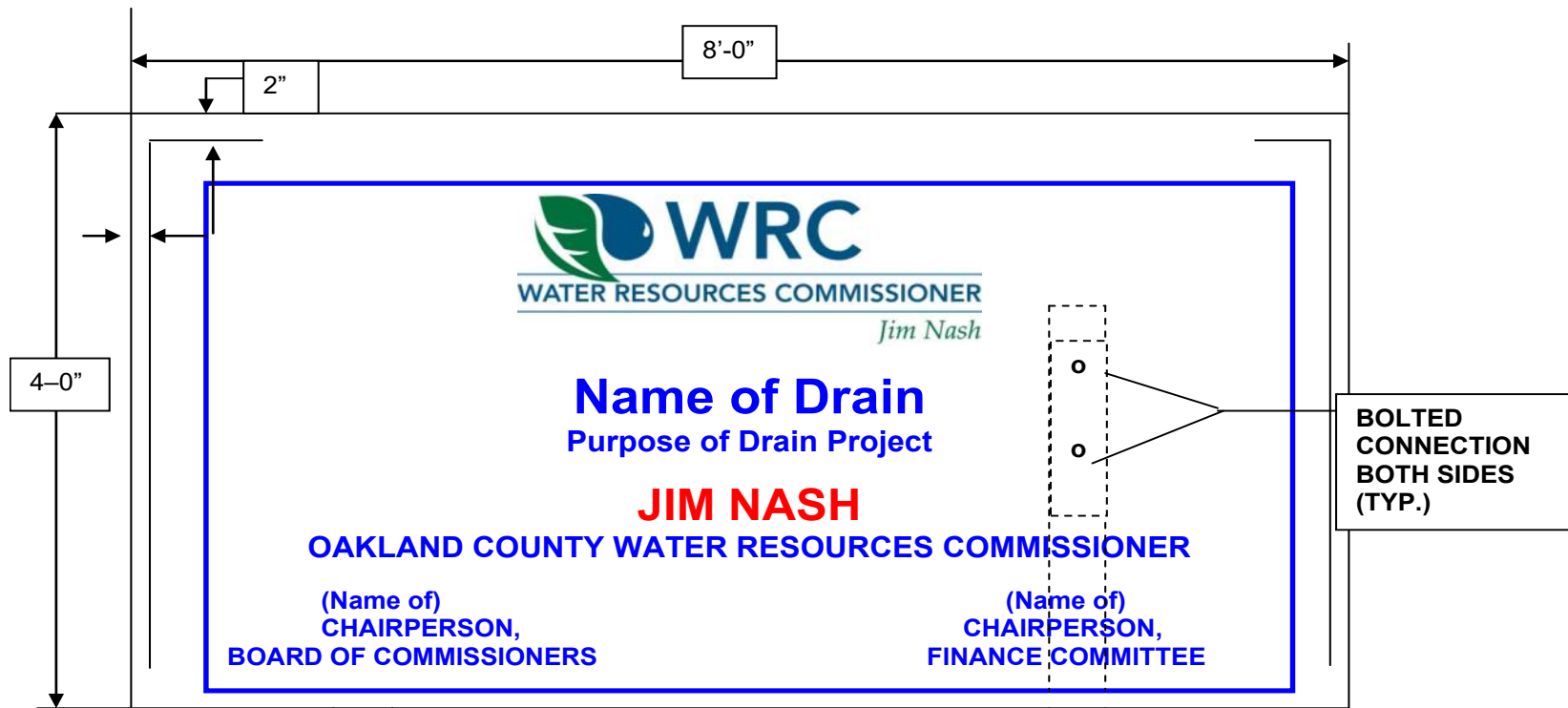
I. SCHEDULE FLOAT

Any float existing, found, or created in the schedule shall belong equally to the Contractor and the Owner from the time of Project Baseline Schedule approval. Each party may use the float it owns. However, no damages will be recoverable by the Contractor based on an asserted right to an early finish date prior to the Contract or milestone completion deadlines.

19. SIGNS

- A. The Contractor will furnish and erect one sign for each section of the Project, at those locations as directed by the Engineer.
- B. The Project sign shall be in accordance with the drawing shown on the following page, made of 3/4-inch exterior plywood with blue and red letters on a white background and maintained in good condition until completion of the project.
- C. The Engineer will supply to the Contractor an electronic copy of the WRC logo for use on the sign(s).
- D. A draft copy of the sign(s) must be approved by the Engineer prior to final production.
- E. Signs must be in accordance with local ordinances.

GENERAL SPECIFICATIONS



Color Scheme: 3/4" Exterior Plywood

Background - White
Border Lines - Blue
Letters - Blue 4" x 4" Support Posts
Commissioner letters - Red

Logo Color Scheme:

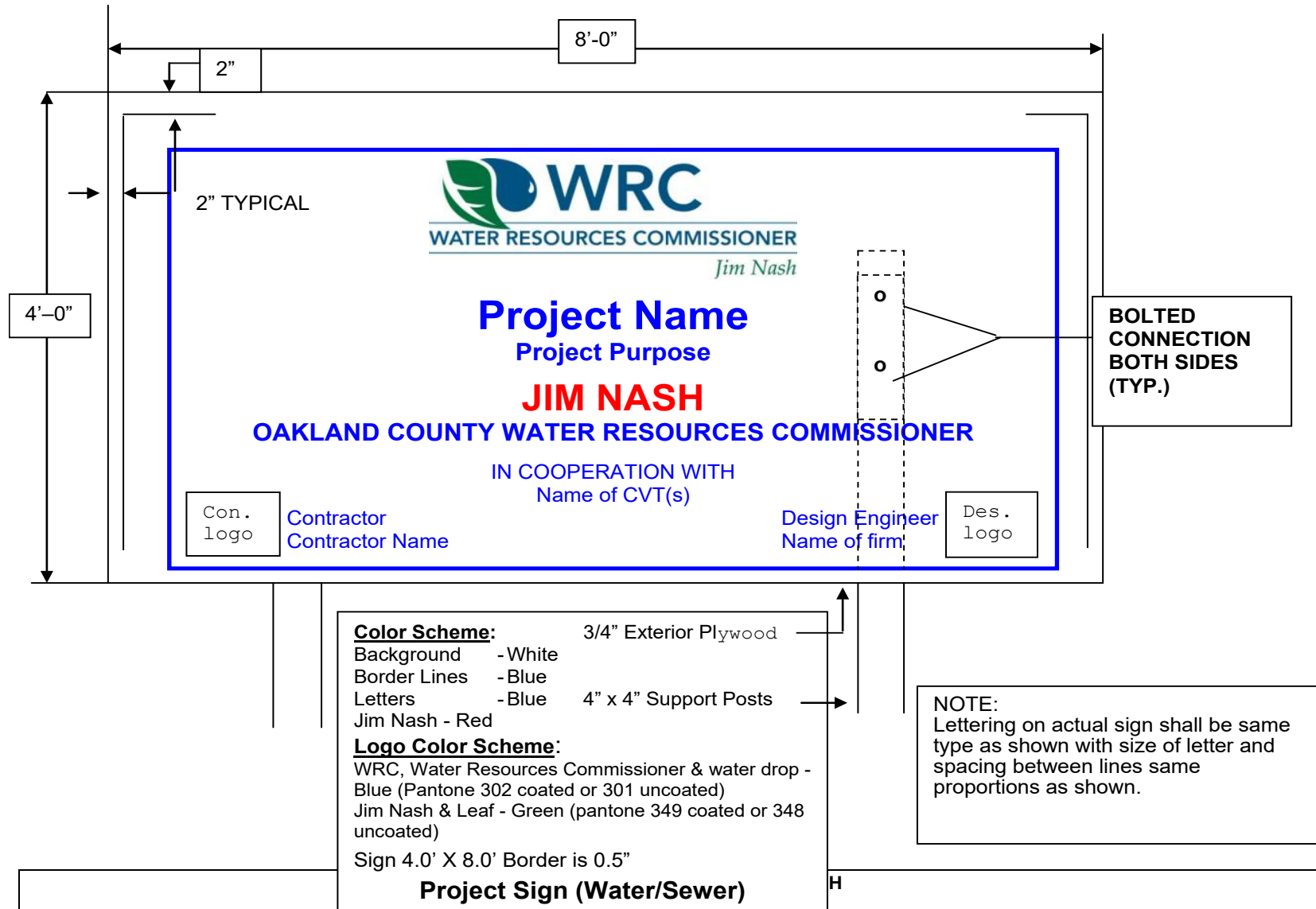
WRC, Water Resources Commissioner & water drop - Blue (Pantone 302 coated or 301 uncoated)
Jim Nash & Leaf - Green (Pantone 349 coated or 348 uncoated)

Sign 4.0' X 8.0' Border is 0.5"

Project Sign (Drain)

NOTE:
Lettering on actual sign shall be same type as shown with size of letter and spacing between lines same proportions as shown.

GENERAL SPECIFICATIONS



JIM NASH
OAKLAND COUNTY WATER RESOURCES COMMISSIONER

**LIEN WAIVER AND RELEASE
(Full Unconditional)**

_____ (“Releasor”) is party to a contract with _____ pursuant to which it has provided following work or materials:

for improvements to one or more properties which are the subject of the contract for the following project described as Village of Lake Orion PHASE 1 Pump Station Improvements (“Project”), constructed for the OAKLAND COUNTY WATER RESOURCES COMMISSIONER, pursuant to Chapter 20 of the Public Act 40 of the Public Acts of 1956, as amended (hereinafter, called the “Owner”).

Having been paid in full, Releasor does hereby waive and release any and all liens and claims of lien against the Project, any claims against the bonds furnished in connection with the Project, and all other claims, demands, actions, suits, causes of action, liability, or debt against the Owner, its employees, officers, agents, sureties, affiliates, successors and assigns by reason of any labor, materials, equipment, rentals and/or services furnished by the Releasor under or by virtue of the contract, including, without limitation, all claims for additional compensation and/or extensions of time, extra or changed work, delays, inefficiencies, acceleration, extended home office and/or field office overhead, attorneys' fees or expenses of litigation and any other actual, direct and/or consequential damages.

Releasor further represents and certifies that (i) to its knowledge, no liens have been filed against the Project or claims asserted against the bonds by Releasor or any of Releasor's subcontractors, laborers or suppliers who have directly or indirectly furnished labor, materials, equipment, rentals and/or services to or for the Project under or by virtue of the contract, or if any such liens or bond claims have been filed by Releasor or Releasor's subcontractors, laborers or suppliers, such liens or claims will be satisfied and discharged by Releasor and/or any liens bonded over or removed of record and (ii) Releasor has paid or will pay all subcontractors, laborers, and suppliers of Releasor out of funds received from Owner for all of said labor, materials, equipment, rentals and/or services furnished to or for the Project.

IN WITNESS WHEREOF, Releasor has by its duly authorized representative set their hand and seal hereto this ____ day of _____, 20____.

(Name of Lien Claimant)

(Signature of Lien Claimant)

Signed on: _____
(date)

(Address)

Telephone: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY

**JIM NASH
OAKLAND COUNTY WATER RESOURCES COMMISSIONER**

**LIEN WAIVER AND RELEASE
(Partial Unconditional)**

_____ ("Releasor") is party to a contract with _____ pursuant to which it has provided the following work or materials:

for improvements to one or more properties which are the subject of the contract for the following project described as VILLAGE OF LAKE ORION PHASE 1 PUMP STATION IMPROVEMENTS ("Project"), constructed for the OAKLAND COUNTY WATER RESOURCES COMMISSIONER, pursuant to Chapter 20 of the Public Act 40 of the Public Acts of 1956, as amended (hereinafter, called the "Owner").

Releasor does hereby waive and release any and all liens and claims of lien against the Project and any claims against the bonds furnished in connection with the Project to the amount of \$_____ for labor, materials, equipment, rentals and/or services furnished by the Releasor either pursuant to the contract with Owner and/or pursuant to a contract for the benefit of the Project provided through [insert date].

This waiver, together with all previous waivers, if any, constitutes a release of Owner, its employees, officers, agents, sureties, affiliates, successors and assigns from any and all claims, demands, actions, suits, causes of action, liability, or debt by reason of any labor, materials, equipment, rentals and/or services furnished by the Releasor under or by virtue of the contract, including, without limitation, all claims for additional compensation and/or extensions of time, extra or changed work, delays, inefficiencies, acceleration, extended home office and/or field office overhead, attorneys' fees or expenses of litigation and any other actual, direct and/or consequential damages through the date shown above.

Releasor further represents and certifies that (1) to its knowledge, no liens have been filed against the Project or claims asserted against the bonds by Releasor or any of Releasor's subcontractors, laborers, or suppliers who have directly or indirectly furnished labor, materials, equipment, rentals and/or services to or for the Project under or by virtue of the contract, or if any such liens or bond claims have been filed by Releasor or Releasor's subcontractors, laborers, or suppliers, such liens or claims will be satisfied and discharged by Releasor and/or any liens bonded over or removed of record and (2) Releasor has paid or will pay all subcontractors, laborers and suppliers of Releasor out of funds received from Owner for all of said labor, materials, equipment, rentals and/or services furnished to or for the Project through the date shown above.

IN WITNESS WHEREOF, Releasor has by its duly authorized representative set their hand and seal hereto this ____ day of _____, 20____.

(Name of Lien Claimant)

(Signature of Lien Claimant)

Address: _____

Telephone: _____

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY

**JIM NASH
OAKLAND COUNTY WATER RESOURCES COMMISSIONER**

PART 1 – GENERAL

1.01 GENERAL

These specifications are a part of the Specification and Contract Documents for the **Village of Lake Orion Phase 1 Pump Station Improvements**. The requirements herein specified supplement and/or supersede those contained elsewhere in the Contract Documents.

1.02 Information for Bidders, Section 3, Escrow Bid Documents

Delete Section 3 in its entirety. Escrowing of bid documents will **not** be required.

1.03 Information for Bidders, Section 15, Owner Controlled Insurance Program

Delete Section 15 in its entirety.

1.04 General Conditions, Section 7, Permits and Regulations

Add the following:

The Contractor is responsible for making all arrangements for inspection and the payment of fees to permitting agencies. Permits required for this project include the following:

Village of Lake Orion Plan Review Approval

Village of Lake Orion Building Permit

Village of Lake Orion Electrical Permit

Water Resources Commissioner SESC Permit – (Will be issued following Award)

1.05 General Conditions, Section 11, Testing and Sampling

Add the following:

The Owner will arrange to have all soil compaction tests and concrete quality control tests, including concrete compression tests, performed by an Independent Testing Laboratory, in accordance with the specifications. Copies of test reports shall be furnished to the Owner and distributed to parties designated by the Owner, including the Contractor.

1.06 General Conditions, Section 39, Sunday, Holiday and Night Work

Add the following:

The Contractor shall limit the hours of operation from 7:00 A.M. to 8:00 P.M., Monday through Saturday. Prior authorization shall be obtained from the Village of Lake Orion to extend these working hours and/or to continue work on Sundays.

Work shall be suspended during the following days listed unless pre-approved:

Memorial Day

Independence Day

Labor Day

Thanksgiving Day plus the following day

Christmas Eve

Christmas Day

New Year's Eve

New Year's Day

Good Friday

SUPPLEMENTAL CONDITIONS

1.07 General Conditions, Section 50, Insurance and Indemnification, Subsection A.1).g) Railroad Protective Liability

Delete this paragraph in its entirety.

1.08 General Conditions, Section 50, Insurance and Indemnification:

Subsection A.1, Subsubsections d, e, and i are deleted in its entirety;

Subsection B.4, B.5, and B.8 are deleted in its entirety; and

Subsection C.3), add the following:

The General Liability, Automobile Liability, and Excess Liability Insurance shall name the following entities as additional insured(s):

Evergreen Farmington Sanitary Drain Drainage District (EFSD), One Public Works Drive, Building 95 West, Waterford, MI 48328, and its consultants, agents, and employees.

Evergreen Farmington Sanitary Drainage Board

Oakland County Water Resources Commissioner's Office, One Public Works Drive, Building 95 West, Waterford, MI 48328, and its consultants, agents, and employees.

County of Oakland and its employees, agents, and/or authorized representatives.

The Village of Lake Orion, its employees, agents, and/or authorized representatives.

Hubbell, Roth & Clark, Inc. (engineer)

1.09 General Specifications, Section 13, Engineer's and Inspector's Field Office

Delete this section in its entirety. A field office will **not** be required for this project.

1.10 General Specifications, Section 17, Schedule for Small Projects

Delete references to Microsoft Excel in paragraph A, Part 2 and Paragraph B, Part 3.

1.11 General Specifications, Section 18, Schedule for Large Projects

Delete this section in its entirety. Section 17, Schedule for Small Projects will be used for scheduling requirements.

1.12 General Specifications, Section 19, Signs

Delete Section 19 in its entirety.

1.13 Color Audio-Video Recording of Construction Areas

The Contractor can submit on a flash drive or other electronic device approved by the Owner.

SUPPLEMENTAL CONDITIONS

1.14 Pay Items

The method of measurement and the basis of payment for each item in the Proposal will be as specified herein. The items are generally grouped by the section of the Specifications under which the particular unit of work is detailed. There will be no payment allowed for any unit of work not specifically mentioned in the Proposal as a bid item, and any such unit of work not mentioned in the Proposal, but necessary for the completion of the Project, shall be considered as incidental and the cost shall be included in other prices bid in the Proposal.

1.15 Measurement

Quantities of work completed under the Contract will be measured by the Engineer according to the United States standard measures. When measurements are stated in miles, stations, acres, feet, they will be ground level measurements unless specified otherwise. Where measurements are specified to be "in place," they will be taken along the actual surface of the completed item to obtain lineal, area, or volume measurements.

PART 2 – PRODUCTS

Not used.

PART 3 – EXECUTION

Not used.

END OF SECTION

The Oakland County Board of Commissioners adopted Miscellaneous Resolution (MR) #09116, on July 30, 2009, established a policy requiring future service contractors to register with, participate in, and utilize the E-Verify Program implemented by the Federal Department of Homeland Security and Social Security Administration when hiring employees.

“E-Verify” is an Internet based system operated by the Department of Homeland Security (DHS) in partnership with the Social Security Administration (SSA) that allows participating employers to electronically verify the employment eligibility of their new hired employees.

For more information and to register visit <https://e-verify.uscis.gov/enroll/>.

All newly hired Contractor Employees, unless otherwise excluded under Misc. Resolution No. 09116 must undergo employment eligibility verification through the E-Verify system. Failure of to verify newly hired employees is a material breach of this agreement.

E-VERIFY - STATEMENT OF POLICY

Pursuant to MR #09116 the Board of Commissioners has established a policy that every future services contract (including both new and renewing contracts) between Oakland County and service contractors/vendors shall require the contractors/vendors contracting with Oakland County to register with, participate in, and utilize the E-Verify Program (or any successor program implemented by the federal Department of Homeland Security and Social Security Administration) when hiring their employees.

Oakland County shall not enter into any future services contracts (including both new and renewing contracts) for services with any contractors or vendors unless the contractors/vendors first certify they have registered with, participate in, and utilize the E-Verify Program (or any successor program implemented by the federal Department of Homeland Security and Social Security Administration) to verify the work authorization status of all newly hired employees employed by the contractors and vendors.

IMPLEMENTATION PROCEDURES

1. No Oakland County elected official, officer or employee having authority to enter into services contacts shall authorize a new or renewed contract for services with any contractor or vendor that has not registered with, does

not participate in, and/or does not utilize the E-Verify Program (or any successor program implemented by the federal Department of Homeland Security and Social Security Administration) when hiring their employees.

2. Each services contract, unless otherwise exempted under the terms of MR #09116, shall contain the following provision:

E-Verify. In accordance with Miscellaneous Resolution No.09116 (BOC Minutes, July 30, 2009, pp 37-38), unless otherwise exempted, all service contractors and/or vendors who wish to contract with the County to provide services must first certify they have registered with, will participate in, and continue utilize, once registered, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the contractors and/or vendors. Breach of this term or conditions is considered a material breach of this agreement.

Contractor's/Vendor's execution of this agreement constitutes a certification that they are authorized to certify on behalf of contractor/vendor and do hereby certify on behalf of contractor/vendor that the contractor/vendor has registered with, has and will participate in, and does and will continue utilize once registered and throughout the term of this contract and any permissible extension hereof, the E-Verify Program (or any successor program implemented by the federal government or its departments or agencies) to verify the work authorization status of all newly hired employees employed by the contractors and/or vendors.

For more information and to register visit <https://e-verify.uscis.gov/enroll/>.

**VENDOR CERTIFICATION
THAT IT IS NOT AN
“IRAN LINKED BUSINESS”**

Pursuant to Michigan law, (*the Iran Economic Sanctions Act, 2012 PA 517, MCL 129.311 et seq.*), before accepting any bid or proposal, or entering into any contract for goods or services with any prospective Vendor, the Vendor must first certify that it is not an “IRAN LINKED BUSINESS, as defined by law.

Vendor	
Legal Name	
Street Address	
City	
State, Zip	
Corporate I.D. Number / State	
Taxpayer I.D. #	

The undersigned, with: 1) full knowledge of all of Vendors business activities, 2) full knowledge of the requirements and possible penalties under the law MCL 129.311 et seq. and 3) the full and complete authority to make this certification on behalf of the Vendor, by his/her signature below, certifies that: the Vendor is NOT an “IRAN LINKED BUSINESS” as required by MCL 129.311 et seq., and as such that Vendor is legally eligible to submit a bid and be considered for a possible contract to supply goods and/or services to the County of Oakland.

Signature of Vendor's
Authorized Agent:

Printed Name of Vendor's
Authorized Agent:

Witness Signature:

Printed Name of Witness:

Act No. 524

Public Acts of 1980

Approved by Governor

January 29, 1981

STATE OF MICHIGAN
80th LEGISLATURE
REGULAR SEASON OF 1980

Introduced by Rep. Ryan

ENROLLED HOUSE BILL NO. 5541

AN ACT to provide for the terms of certain construction contracts with certain public agencies; to regulate the payment and retainage of payments on construction contracts with certain public agencies; and to provide for the resolution of certain disputes.

The People of the State of Michigan enact:

Sec. 1. As used in this act:

(a) "Agent" means the person or persons agreed to or selected by the contractor and the public agency pursuant to section 4(2).

(b) "Architect or professional engineer" means an architect or professional engineer licensed under Act No. 299 of the Public Acts of 1980, being sections 339.101 to 339.2601 of the Michigan Compiled Laws, and designated by a public agency in a construction contract to recommend progress payments.

(c) "Construction contract" or "contract" means a written agreement between a contractor and a public agency for the construction, alteration, demolition, or repair of a facility, other than a contract having a dollar value less than \$30,000.00 or a contract that provides for 3 or fewer payments.

(d) "Contract documents" means the construction contract; instructions to bidders; proposal; conditions of the contract; performance bond; labor and material bond; drawings; specifications; all addenda issued before execution of the construction contract and all modifications issued subsequently.

(e) "Contractor" means an individual, sole proprietorship, partnership, corporation, or joint venture, that is a party to a construction contract with a public agency.

(f) "Facility" means a building, utility, road, street, boulevard, parkway, bridge, ditch, drain, levee, dike, sewer, park, playground, or other structure or work that is paid for with public funds or a special assessment.

(g) "Progress payment" means a payment by a public agency to a contractor for work in place under the terms of a construction contract.

(h) "Public agency" means this state, or a county, city township, village, assessment district, or other political subdivision, corporation, commission, agency, or authority created by law. However, public agency does not include the state transportation department, a school district, junior or community college, the Michigan state housing development authority created in Act No. 346 of the Public Acts of 1966, as amended, being sections 125.1401 to 125.1496 of the Michigan Compiled Laws, and a municipal electric utility or agency.

“Assessment district” means the real property within a district area upon which special assessments are levied or imposed or the construction, reconstruction, betterment, replacement, or repair of a facility to be paid for by funds derived from those special assessments imposed or levied on the benefited real property.

(i) “Retainage” or “retained funds” means the amount withheld from a progress payment to a contractor pursuant to Section 3.

Sec. 2. (1) The construction contract shall designate a person representing the contractor who will submit written requests for progress payments, and a person representing the public agency to whom requests for progress payments are to be submitted. The written requests for progress payments shall be submitted to the designated person in a manner and at such time as provided in the construction contract.

(2) The processing of progress payments by the public agency may be deferred by the public agency until work having a prior sequence, as provided in the contract documents, is in place and is approved.

(3) Each progress payment requested, including reasonable interest if requested under subsection (4), shall be paid within 1 of the following time periods, whichever is later:

(a) Thirty days after the architect or professional engineer has certified to the public agency that work is in place in the portion of the facility covered by the applicable request for payment in accordance with the contract documents.

(b) Fifteen days after the public agency has received the funds with which to make the progress payment from a department or agency of the federal or state government, if any funds are to come from either of those sources.

(4) Upon failure of a public agency to make a timely progress payment pursuant to this section, the person designated to submit requests for progress payments may include reasonable interest on amounts past due in the next request for payment.

Sec. 3. (1) To assure proper performance of a construction contract by the contractor, a public agency may retain a portion of each progress payment otherwise due as provided in this section.

(2) The retainage shall be limited to the following:

(a) Not more than 10% of the dollar value of all work in place until work is 50% in place.

(b) After the work is 50% in place, additional retainage shall not be withheld unless the public agency determines that the contractor is not making satisfactory progress, or for other specific cause relating to the contractor’s performance under the contract. If the public agency so determines, the public agency may retain not more than 10% of the dollar value of work more than 50% in place.

(3) The retained funds shall not exceed the pro rata share of the public agency’s matching requirement under the construction contract and shall not be commingled with other funds of the public agency and shall be deposited in an interest bearing account in a regulated financial institution in this state wherein all such retained funds are kept by the public agency which shall account for both retainage and interest on each construction contract separately. A public agency is not required to deposit retained funds in an interest bearing account if the retained funds are to be provided under a state or federal grant and the retained funds have not been paid to the public agency.

(4) Except as provided in Section 4(7) and (8), retainage and interest earned on retainage shall be released to a contractor together with the final progress payment.

(5) At any time after 94% of work under the contract is in place and at the request of the original contractor, the public agency shall release the retainage plus interest to the original contractor only if the original contractor provides to the public agency an irrevocable letter of credit in the amount of the retainage plus interest, issued by a bank authorized to do business in this state, containing terms mutually acceptable to the contractor and the public agency.

Sec 4. (1) The construction contract shall contain an agreement to submit those matters described in subsection (3) to the decision of an agent at the option of the public agency.

(2) If a dispute regarding a matter described in subsection (3) arises, the contractor and the public agency shall designate an agent who has background, training, and experience in the construction of facilities similar to that which is the subject of the contract, as follows:

(a) In an agreement reached within 10 days after a dispute arises.

(b) If an agreement cannot be reached within 10 days after a dispute arises, the public agency shall designate an agent who has background, training, and experience in the construction of facilities similar to that which is the subject of the contract and who is not an employee of the agency.

(3) The public agency may request dispute resolution by the agent regarding the following:

(a) At any time during the term of the contract, to determine whether there has been a delay for reasons that were within the control of the contractor, and the period of time that delay has been caused, continued, or aggravated by actions of the contractor.

(b) At any time after 94% of work under the contract is in place, whether there has been an unacceptable delay by the contractor in performance of the remaining 6% of work under the contract. The agent shall consider the terms of the contract and the procedures normally followed in the industry and shall determine whether the delay was for failure to follow reasonable and prudent practices in the industry for completion of the project.

(4) This dispute resolution process shall be used only for the purpose of determining the rights of the parties to retained funds and interest earned on retained funds and is not intended to alter, abrogate, or limit any rights with respect to remedies that are available to enforce or compel performance of the terms of the contract by either party.

(5) The agent may request and shall receive all pertinent information from the parties and shall provide an opportunity for an informal meeting to receive comments, documents, and other relevant information in order to resolve the dispute. The agent shall determine the time, place, and procedure for the informal meeting. A written decision and reasons for the decision shall be given to the parties within 14 days after the meeting.

(6) The decision of the agent shall be final and binding upon all parties. Upon application of either party, the decision of the agent may be vacated by order of the circuit court only upon a finding by the court that the decision was procured by fraud, or other illegal means.

(7) If the dispute resolution results in a decision:

(a) That there has been a delay as described in subsection (3)(a), all interest earned on retained funds during the period of delay shall become the property of the public agency.

(b) That there has been unacceptable delay as described in subsection (3)(b), the public agency may contract with a subsequent contractor to complete the remaining 6% of work under the contract, and interest earned on retained funds shall become the property of the public agency. A subsequent contractor under this subdivision shall be paid by the public agency from the following sources until each source is depleted, in the order listed below:

(i) The dollar value of the original contract, less the dollar value of funds already paid to the original contractor and the dollar value of work in place for which the original contractor has not received payment.

(ii) Retainage from the original contractor, or funds made available under a letter of credit provided under section 3(5).

(iii) Interest earned on retainage from the original contractor, or funds made available under a letter of credit provided under section 3(5).

(8) If the public agency contracts with a subsequent contractor as provided in subsection (7)(b), the final progress payment shall be payable to the original contractor the time period specified in section 2(3). The amount of the final progress payment to the original contractor shall not include interest earned on retained funds. The public agency may deduct from the final progress payment all expenses of contracting with the subsequent contractor. This act shall not impair the right of the public agency to bring an action or to otherwise enforce a performance bond to complete work under a construction contract.

Sec. 5. (1) Except as provided in subsection (2), this act shall apply only to a construction contract entered into after the effective date of this act.

(2) For a construction contract entered into before the effective date of this date, the provisions of this act may be implemented by a public agency, through a contract amendment, upon the written request of the contractor, with such consideration as the public agency considers adequate.

Sec. 6. This act shall take effect January 1, 1983.

Act No. 517
Public Acts of 2012
Approved by the Governor
December 28, 2012
Filed with the Secretary of State
December 28, 2012
EFFECTIVE DATE: April 1, 2013

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Senators Kahn, Marleau, Brandenburg, Anderson, Green and Booher

ENROLLED SENATE BILL No. 1024

AN ACT to prohibit persons who have certain economic relationships with Iran from submitting bids on requests for proposals with this state, political subdivisions of this state, and other public entities; to require bidders for certain public contracts to submit certification of eligibility with the bid; to require reports; and to provide for sanctions for false certification.

The People of the State of Michigan enact:

Sec. 1. This act shall be known and may be cited as the "Iran economic sanctions act".

Sec. 2. As used in this act:

- (a) "Energy sector of Iran" means activities to develop petroleum or natural gas resources or nuclear power in Iran.
- (b) "Investment" means 1 or more of the following:
 - (i) A commitment or contribution of funds or property.
 - (ii) A loan or other extension of credit.
 - (iii) The entry into or renewal of a contract for goods or services.
- (c) "Investment activity" means 1 or more of the following:
 - (i) A person who has an investment of \$20,000,000.00 or more in the energy sector of Iran.
 - (ii) A financial institution that extends \$20,000,000.00 or more in credit to another person, for 45 days or more, if that person will use the credit for investment in the energy sector of Iran.
- (d) "Iran" means any agency or instrumentality of Iran.
- (e) "Iran linked business" means either of the following:
 - (i) A person engaging in investment activities in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran.
 - (ii) A financial institution that extends credit to another person, if that person will use the credit to engage in investment activities in the energy sector of Iran.
- (f) "Person" means any of the following:
 - (i) An individual, corporation, company, limited liability company, business association, partnership, society, trust, or any other nongovernmental entity, organization, or group.
 - (ii) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in section 1701(c)(3) of the international financial institutional act, 22 USC 262r(c)(3).

(275)

(iii) Any successor, subunit, parent company, or subsidiary of, or company under common ownership or control with, any entity described in subparagraph (i) or (ii).

(g) "Public entity" means this state or an agency or authority of this state, school district, community college district, intermediate school district, city, village, township, county, public authority, or public airport authority.

Sec. 3. (1) Beginning April 1, 2013, an Iran linked business is not eligible to submit a bid on a request for proposal with a public entity.

(2) Beginning April 1, 2013, a public entity shall require a person that submits a bid on a request for proposal with the public entity to certify that it is not an Iran linked business.

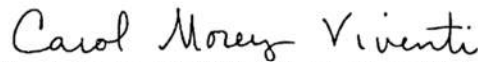
Sec. 4. If a public entity determines, using credible information available to the public, that a person has submitted a false certification under section 3(2), the public entity shall provide the person with written notice of its determination and of the intent not to enter into or renew a contract with the person. The notice shall include information on how to contest the determination and specify that the person may become eligible for a future contract with the public entity if the person ceases the activities that cause it to be an Iran linked business. The person shall have 90 days following receipt of the notice to respond in writing and to demonstrate that the determination of false certification was made in error. If a person does not make that demonstration within 90 days after receipt of the notice, the public entity may terminate any existing contract and shall report the name of the person to the attorney general together with information supporting the determination.

Sec. 5. The attorney general may bring a civil action against any person reported under section 4. If a civil action results in a finding that the person submitted a false certification, the person is responsible for a civil penalty of not more than \$250,000.00 or 2 times the amount of the contract or proposed contract for which the false certification was made, whichever is greater, the cost of the public entity's investigation, and reasonable attorney fees, in addition to the fine. A person who submitted a false certification shall be ineligible to bid on a request for proposal for 3 years from the date the public entity determines that the person has submitted the false certification.

Sec. 6. The provisions of this act are effective only if Iran is a state sponsor of terror as defined under section 2 of the divestment from terror act, 2008 PA 234, MCL 129.292.

Enacting section 1. This act takes effect April 1, 2013.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

.....
Governor

SECTION 00850

**CLEAN WATER STATE REVOLVING FUND
WAGE DECISION SCHEDULE**

PART I – GENERAL

- 1.01 The project will be financed with assistance from the Community Grants Program using federal assistance. The following requirements are applicable to this contract.
- A. Prevailing Federal Wage Rates
- 1.02 P.L. 111-88 requires compliance with the Davis Bacon Act and adherence to the current U.S. Department of Labor Wage Decision. Attention is called to the fact that not less than the minimum salaries and wages as set forth in the Contract Documents (see Wage Decision included herein) must be paid on this project. The Wage Decision, including modifications, must be posted by the Contractor on the job site. A copy of the Federal Labor Standards Provisions is included and is hereby a part of this contract.

Superseded General Decision Number: MI20230157

State: Michigan

Construction Type: Heavy
PIPELINE

Counties: Michigan Statewide.

Note: Contracts subject to the Davis-Bacon Act are generally required to pay at least the applicable minimum wage rate required under Executive Order 14026 or Executive Order 13658. Please note that these Executive Orders apply to covered contracts entered into by the federal government that are subject to the Davis-Bacon Act itself, but do not apply to contracts subject only to the Davis-Bacon Related Acts, including those set forth at 29 CFR 5.1(a)(1).

If the contract is entered into on or after January 30, 2022, or the contract is renewed or extended (e.g., an option is exercised) on or after January 30, 2022:	<ul style="list-style-type: none">. Executive Order 14026 generally applies to the contract.. The contractor must pay all covered workers at least \$17.20 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in 2024.
If the contract was awarded on or between January 1, 2015 and January 29, 2022, and the contract is not renewed or extended on or after January 30, 2022:	<ul style="list-style-type: none">. Executive Order 13658 generally applies to the contract.. The contractor must pay all covered workers at least \$12.90 per hour (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on that contract in 2024.

The applicable Executive Order minimum wage rate will be adjusted annually. If this contract is covered by one of the Executive Orders and a classification considered necessary for performance of work on the contract does not appear on this wage determination, the contractor must still submit a conformance request.

Additional information on contractor requirements and worker protections under the Executive Orders is available at <http://www.dol.gov/whd/govcontracts>.

Modification Number	Publication Date
0	01/05/2024
1	05/03/2024
2	05/17/2024

	Rates	Fringes
Power equipment operators - gas distribution and duct installation work:		
GROUP 1.....	\$ 37.98	25.25
GROUP 2.....	\$ 34.75	25.25

SCOPE OF WORK: The construction, installation, treating and reconditioning of pipelines transporting gas vapors within cities, towns, subdivisions, suburban areas, or within private property boundaries, up to and including private meter settings of private industrial, governmental or other premises, more commonly referred to as ""distribution work,"" starting from the first metering station, connection, similar or related facility, of the main or cross country pipeline and including duct installation.

Group 1: Backhoe, crane, grader, mechanic, dozer (D-6 equivalent or larger), side boom (D-4 equivalent or larger), trencher(except service), endloader (2 yd. capacity or greater).

GROUP 2: Dozer (less than D-6 equivalent), endloader (under 2 yd. capacity), side boom (under D-4 capacity), backfiller, pumps (1 or 2 of 6-inch discharge or greater), boom truck (with powered boom), tractor (wheel type other than backhoe or front endloader). Tamper (self-propelled), boom truck (with non-powered boom), concrete saw (20 hp or larger), pumps (2 to 4 under 6-inch discharge), compressor (2 or more or when one is used continuously into the second day) and trencher(service). Oiler, hydraulic pipe pushing machine, grease person and hydrostatic testing operator.

LAB01076-005 04/01/2024

MICHIGAN STATEWIDE

	Rates	Fringes
LABORER (DISTRIBUTION WORK)		
Zone 1.....	\$ 27.16	13.45
Zone 2.....	\$ 25.42	13.45
Zone 3.....	\$ 23.55	13.45
Zone 4.....	\$ 22.92	13.45
Zone 5.....	\$ 22.95	13.45

DISTRIBUTION WORK - The construction, installation, treating and reconditioning of distribution pipelines transporting coal, oil, gas or other similar materials, vapors or liquids, including pipelines within private property boundaries, up to and including the meter settings on residential, commercial, industrial, institutional, private and public structures. All work covering pumping stations and tank farms not covered by the Building Trades Agreement. Other distribution lines with the exception of sewer, water and cable television are included.

Underground Duct Layer Pay: \$.40 per hour above the base pay rate.

Zone 1 - Macomb, Oakland and Wayne

Zone 2 - Monroe and Washtenaw

Zone 3 - Bay, Genesee, Lapeer, Midland, Saginaw, Sanilac, Shiawassee and St. Clair

Zone 4 - Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon and Schoolcraft

Zone 5 - Remaining Counties in Michigan

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Note: Executive Order (EO) 13706, Establishing Paid Sick Leave for Federal Contractors applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2017. If this contract is covered by the EO, the contractor must provide employees with 1 hour of paid sick leave for every 30 hours they work, up to 56 hours of paid sick leave each year. Employees must be permitted to use paid sick leave for their own illness, injury or other health-related needs, including preventive care; to assist a family member (or person who is like family to the employee) who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member (or person who is like family to the employee) who is a victim of, domestic violence, sexual assault, or stalking. Additional information on contractor requirements and worker protections under the EO is available at <https://www.dol.gov/agencies/whd/government-contracts>.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (iii)).

The body of each wage determination lists the classification and wage rates that have been found to be prevailing for the cited type(s) of construction in the area covered by the wage determination. The classifications are listed in alphabetical order of ""identifiers"" that indicate whether the particular rate is a union rate (current union negotiated rate for local), a survey rate (weighted average rate) or a union average rate (weighted union average rate).

Union Rate Identifiers

A four letter classification abbreviation identifier enclosed in dotted lines beginning with characters other than ""SU"" or ""UAVG"" denotes that the union classification and rate were prevailing for that classification in the survey. Example: PLUM0198-005 07/01/2014. PLUM is an abbreviation identifier of the union which prevailed in the survey for this classification, which in this example would be Plumbers. 0198 indicates the local union number or district council number where applicable, i.e., Plumbers Local 0198. The next number, 005 in the example, is an internal number used in processing the wage determination. 07/01/2014 is the effective date of the

most current negotiated rate, which in this example is July 1, 2014.

Union prevailing wage rates are updated to reflect all rate changes in the collective bargaining agreement (CBA) governing this classification and rate.

Survey Rate Identifiers

Classifications listed under the ""SU"" identifier indicate that no one rate prevailed for this classification in the survey and the published rate is derived by computing a weighted average rate based on all the rates reported in the survey for that classification. As this weighted average rate includes all rates reported in the survey, it may include both union and non-union rates. Example: SULA2012-007 5/13/2014. SU indicates the rates are survey rates based on a weighted average calculation of rates and are not majority rates. LA indicates the State of Louisiana. 2012 is the year of survey on which these classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 5/13/2014 indicates the survey completion date for the classifications and rates under that identifier.

Survey wage rates are not updated and remain in effect until a new survey is conducted.

Union Average Rate Identifiers

Classification(s) listed under the UAVG identifier indicate that no single majority rate prevailed for those classifications; however, 100% of the data reported for the classifications was union data. EXAMPLE: UAVG-OH-0010 08/29/2014. UAVG indicates that the rate is a weighted union average rate. OH indicates the state. The next number, 0010 in the example, is an internal number used in producing the wage determination. 08/29/2014 indicates the survey completion date for the classifications and rates under that identifier.

A UAVG rate will be updated once a year, usually in January of each year, to reflect a weighted average of the current negotiated/CBA rate of the union locals from which the rate is based.

State Adopted Rate Identifiers

Classifications listed under the ""SA"" identifier indicate that the prevailing wage rate set by a state (or local) government was adopted under 29 C.F.R. 1.3(g)-(h). Example: SAME2023-007 01/03/2024. SA reflects that the rates are state adopted. ME refers to the State of Maine. 2023 is the year during which the state completed the survey on which the listed classifications and rates are based. The next number, 007 in the example, is an internal number used in producing the wage determination. 01/03/2024 reflects the date on which the classifications and rates under the ?SA? identifier took effect under state law in the state from which the rates were adopted.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour National Office because National Office has responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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END OF GENERAL DECISION"

29 CFR Part 5 – Labor Standards Provisions for Federally Assisted Projects

§ 5.5 Contract provisions and related matters.

(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in Sec. 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, *Provided*, That such modifications are first approved by the Department of Labor):

(1) *Minimum wages.* (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in Sec. 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(2) *Withholding.* The **Village of Lake Orion** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of

1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) *Payrolls and basic records.* (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under Sec. 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under Sec. 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) *Apprentices and trainees--(i) Apprentices.* Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the

journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) *Trainees.* Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) *Equal employment opportunity.* The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) *Compliance with Copeland Act requirements.* The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) *Contract termination: debarment.* A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) *Compliance with Davis-Bacon and Related Act requirements.* All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) *Disputes concerning labor standards.* Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) *Certification of eligibility.* (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(b) *Contract Work Hours and Safety Standards Act.* The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Sec. 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) *Overtime requirements.* No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible there for shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the

standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) *Withholding for unpaid wages and liquidated damages.* The **Village of Lake Orion** shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(c) In addition to the clauses contained in paragraph (b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in Sec. 5.1, the Agency Head shall cause or require the contracting officer to insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

SECTION 00851

CLEAN WATER STATE REVOLVING FUND
DISADVANTAGED BUSINESS ENTERPRISES (DBE)
AND
DEBARMENT CERTIFICATION

PART 1 GENERAL

1.01 DISADVANTAGED BUSINESS ENTERPRISES (DBE)

- A. Prime contractors bidding on this project must follow, document, and maintain documentation of their Good Faith Efforts (GFE), as listed below, to ensure that Disadvantaged Business Enterprises (DBEs) have the opportunity to participate in the project by increasing DBE awareness of procurement efforts and outreach. Bidders must make the following Good Faith Efforts for any work that will be subcontracted.
1. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. Place DBEs on solicitation lists and solicit DBEs whenever they are potential sources.
 2. Make information on forthcoming opportunities available to DBEs. Arrange timeframes for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. Whenever possible, post solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date. The DBEs should be given a minimum of 5 days to respond to the posting.
 3. Consider in the contracting process whether firms competing for large contracts can be subcontracted with DBEs. Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
 4. Encourage contracting with a consortium of DBEs when a contract is too large for one DBE firm to handle individually.
 5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.
- B. Subsequent to compliance with the Good Faith Efforts, the following conditions also apply under the DBE requirements. Completed Good Faith Efforts Worksheets, along with the required supporting documentation outlined in the instructions, must be submitted with your bid proposal. EPA form 6100-2 must also be provided at the pre-bid meeting. A copy of this form is available on the Forms and Guidance page of the EGLE Water Infrastructure Financing Section website.
1. The prime contractor must pay its subcontractor for work that has been satisfactorily completed no more than 30 days from the prime contractor's receipt of payment from the owner.

2. The prime contractor must notify the owner in writing prior to the termination of any DBE subcontractor for convenience by the prime contractor and employ the Good Faith Efforts if soliciting a replacement contractor.
3. If a DBE contractor fails to complete work under the subcontract for any reason, the prime contractor must employ the Good Faith Efforts if soliciting a replacement contractor.
4. The prime contractor must employ the Good Faith Efforts.

1.02 DEBARMENT CERTIFICATION

The prime contractor must provide a completed **Certification Regarding Debarment, Suspension, and Other Responsibility Matters Form** with its bid or proposal package to the owner (Attachment 2 of this Section).

SECTION 00852

**CLEAN WATER STATE REVOLVING FUND
AMERICAN IRON AND STEEL INFORMATION**

PART 1 – GENERAL

The Contractor acknowledges to and for the benefit of the *Village of Lake Orion* (“Purchaser”) and the Michigan Department of Environment, Great Lakes, and Energy (the “State”) that it understands the goods and services under this Agreement are being funded with monies made available by the Clean Water State Revolving Fund and/or the Drinking Water State Revolving Fund and such laws contain provisions commonly known as “American Iron and Steel (AIS);” that requires all iron and steel products used in the project be produced in the United States (“AIS Requirements”) including iron and steel provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Purchaser and the State that (a) the Contractor has reviewed and understands the AIS Requirements, (b) all iron and steel used in the project will be and/or have been produced in the United States in a manner that complies with the AIS Requirements, unless a waiver of the requirements is approved or the State made the determination in writing that the AIS Requirements do not apply to the project, and (c) the Contractor will provide any further verified information, certification, or assurance of compliance with this paragraph, or information necessary to support a waiver of the AIS requirements, as may be requested by the Purchaser. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Purchaser or State to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Purchaser or State resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the State or any damages owed to the State by the Purchaser). While the Contractor has no direct contractual privity with the State, as a lender to the Purchaser for the funding of its project, the Purchaser and the Contractor agree that the State is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the State.

SECTION 00853

BUILD AMERICA, BUY AMERICA
CONTRACT LANGUAGE

PART 1 GENERAL

The Contractor acknowledges to and for the benefit of the *Village of Lake Orion* (“Owner”) and the Michigan Department of Environment, Great Lakes, and Energy (the “Funding Authority”) that it understands the goods and services under this Agreement are being funded with federal monies and have statutory requirements commonly known as “Build America, Buy America;” that requires all of the iron and steel, manufactured products, and construction materials used in the project to be produced in the United States (“Build America, Buy America Requirements”) including iron and steel, manufactured products, and construction materials provided by the Contractor pursuant to this Agreement. The Contractor hereby represents and warrants to and for the benefit of the Owner and Funding Authority (a) the Contractor has reviewed and understands the Build America, Buy America Requirements, (b) all of the iron and steel, manufactured products, and construction materials used in the project will be and/or have been produced in the United States in a manner that complies with the Build America, Buy America Requirements, unless a waiver of the requirements is approved, and (c) the Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the Build America, Buy America Requirements, as may be requested by the Owner or the Funding Authority. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by the Contractor shall permit the Owner or Funding Authority to recover as damages against the Contractor any loss, expense, or cost (including without limitation attorney’s fees) incurred by the Owner or Funding Authority resulting from any such failure (including without limitation any impairment or loss of funding, whether in whole or in part, from the Funding Authority or any damages owed to the Funding Authority by the Owner). If the Contractor has no direct contractual privity with the Funding Authority, as a lender or awardee to the Owner for the funding of its project, the Owner and the Contractor agree that the Funding Authority is a third-party beneficiary and neither this paragraph (nor any other provision of this Agreement necessary to give this paragraph force or effect) shall be amended or waived without the prior written consent of the Funding Authority.