

ENGINEERING DESIGN SERVICES CONTRACT

BETWEEN

GREAT LAKES WATER AUTHORITY, A MICHIGAN MUNICIPAL AUTHORITY

AND

ENTER CONSULTANT COMPANY NAME

REQUISITION NO. ENTER REQUISITION NUMBER

SCN-_____

ENTER BRIEF DESCRIPTION OF CONTRACT

TABLE OF CONTENTS

| | |
|---|----|
| ENGINEERING DESIGN SERVICES CONTRACT | 3 |
| Article I: Employment of Consultant..... | 3 |
| Article III: The Contract Documents | 3 |
| Article IV: Commencement and Completion | 4 |
| Article V: Contract Price; Terms of Payment..... | 4 |
| Article VI: Notices | 4 |
| Article VII: Insurance | 4 |
| Article VIII: Miscellaneous Provisions | 4 |
| EXHIBIT A: Project Details and Scope of Services | 9 |
| EXHIBIT B: Contract Documents..... | 10 |
| EXHIBIT C: General Conditions..... | 11 |
| Article 1: General Provisions..... | 11 |
| 1.1 Definitions..... | 11 |
| 1.2 Relationship of the Parties | 11 |
| Article 2: Owner General Provisions..... | 11 |
| 2.1 General Provisions | 11 |
| Article 3: Information and Assistance Required of Owner | 12 |
| Article 4: Consultant Obligations | 12 |
| 4.1 General..... | 12 |
| 4.2 Design Phases; Obligations..... | 13 |
| 4.3 Deliverable Review..... | 14 |
| 4.4 Ownership of Documents | 15 |
| 4.5 Coordination | 16 |
| 4.6 Indemnification..... | 16 |
| 4.7 Royalties and Patents | 16 |
| Article 5: Subcontractors | 17 |
| 5.1 No Contractual Relationship..... | 17 |
| 5.2 Award of Subcontracts and Other Contracts for Portions of the Services..... | 17 |
| 5.3 Subcontractor Relations..... | 17 |
| Article 6: Work by Owner or Third Parties | 18 |
| 6.1 Owner’s Right to Perform the Services and to Award Separate Contracts | 18 |
| Article 7: Non-Discrimination | 18 |
| Article 8: Time..... | 18 |
| 8.1 Suspension by Owner | 18 |
| 8.2 Delays and Extensions of Time | 19 |
| 8.3 Acceleration of Performance | 20 |
| Article 9: Invoices, Payments and Completion..... | 20 |
| 9.1 Invoices; Final Payment..... | 20 |
| 9.2 Payments Withheld | 21 |
| Article 10: Costing Basis | 22 |
| 10.1 Hourly Rates | 22 |
| 10.2 Lump Sum Services | 22 |
| Article 11: Changes in the Work | 22 |

| | |
|---|----|
| 11.1 General..... | 22 |
| 11.2 Processing Changes in the Services..... | 23 |
| 11.3 Changes for an Owner Act, Error, or Omission..... | 23 |
| 11.4 Allowances..... | 24 |
| Article 12: Termination..... | 24 |
| 12.1 Termination..... | 24 |
| 12.2 Termination for Cause..... | 24 |
| 12.3 Termination for Convenience..... | 26 |
| 12.4 Obligations Upon Termination..... | 26 |
| Article 13: Audit..... | 27 |
| 13.1 Owner’s Access to Consultant’s Records..... | 27 |
| Article 14: Conflict of Interest..... | 27 |
| Article 15: Confidential Information..... | 28 |
| Article 16: Claims..... | 28 |
| 16.1 Claims..... | 28 |
| 16.2 Injury or Damage to Person or Property..... | 29 |
| 16.3 Submittal of Claims; Resolution..... | 29 |
| EXHIBIT D: Costing Summary and Payment Terms..... | 30 |
| EXHIBIT E: Notice Addresses and Designation of Representatives..... | 32 |
| EXHIBIT F: Insurance..... | 33 |
| EXHIBIT G: Glossary..... | 38 |
| EXHIBIT H: Supplemental General Conditions..... | 43 |

**GREAT LAKES WATER AUTHORITY
ENGINEERING DESIGN SERVICES CONTRACT**

This Engineering Services Contract, requisition no. Enter Requisition Number, (“Contract”) is made by and between the Great Lakes Water Authority (“Owner”), and Enter Consultant Name, with its principal place of business located at Enter Consultant Address (“Consultant”). Collectively, Owner and Consultant are the “Parties” and individually a “Party”.

Recitals

A. Owner desires to engage Consultant for the purpose of securing from Consultant certain engineering design services (“Services”) as set forth in the Contract Documents; and

B. Consultant is willing and able to perform the Services in accordance with the Contract Documents; and

Accordingly, in consideration of the promises, the mutual undertakings, and benefits to accrue to the Parties and to the public, the Parties agree as follows:

Article I: Employment of Consultant

- 1.01 Owner engages Consultant to perform the Services relating to the Project, as the same are described in Exhibit A, Project Details and Scope of Services, and in accordance with the terms and conditions contained in the Contract Documents, which are set forth in Exhibit B, Contract Documents, as administered and directed by Owner, and as may be, if applicable, as set forth in Exhibit H, Supplemental General Conditions. The Contract Documents include, without limitation, Exhibit C, General Conditions.
- 1.02 Consultant shall comply with and shall require its employees, Subcontractors, and Sub-Subcontractors to comply with (i) all health, safety, and security policies and procedures in effect at any Owner-owned or operated facility, (ii) any Owner-requested background checks, and (iii) Owner’s security clearance requirements.
- 1.03 Consultant’s daily working hours while working in or about an Owner-owned or operated facility shall be the same as those worked by Owner employees working in that facility, unless otherwise directed by Owner.

Article II: Contracting Officer

- 2.01 The Contracting Officer shall be the CPO or, if designated by the CPO, the Owner Project Manager, as set forth in Exhibit E, Notice of Addresses and Designation of Representatives.

Article III: The Contract Documents

- 3.01 The Contract Documents shall be as set forth in Exhibit B.

Article IV: Commencement and Completion

- 4.01 The Services shall be started by the date specified in the Notice to Proceed and shall be completed within the Contract Time specified in Exhibit A.

Article V: Contract Price; Terms of Payment

- 5.01 Subject to Consultant's performance of its obligations under the Contract Documents, Owner agrees to pay Consultant the Contract Price stated in Exhibit D, Costing Summary and Terms of Payment.

Article VI: Notices

- 6.01 "Notice of Termination for Cause", "Notice of Termination for Convenience", and "Notice to Proceed" shall be given in writing, mailed by postage prepaid, signed by the CPO and addressed to Contractor as set forth in Exhibit E.
- 6.02 Either Party may change its postal address and/or e-mail address at any given time by giving notice of the address change to the other Party.
- 6.03 "Notice of Change of Address" shall be in writing, mailed by postage prepaid, signed by the authorized representative of the Party, and addressed as set forth in Exhibit E.
- 6.04 All other notices, consents, approvals, requests, and other communications required or permitted under the Contract Documents, including change of e-mail address, may be given by a Party by e-mail at the e-mail addresses set forth in Exhibit E.
- 6.05 Notices shall be deemed given on the day of mailing or e-mailing.
- 6.06 Any notice given in the manner specified in this Article shall be sufficient and Consultant waives all claims relative to the sufficiency of such notice.

Article VII: Insurance

- 7.01 Consultant shall provide and include in its pricing the insurance required in Exhibit F, Insurance. Consultant shall fully comply with the terms and conditions of Exhibit F at no additional cost to Owner.

Article VIII: Miscellaneous Provisions

- 8.01 No part of the Contract Documents may be waived except by written agreement of the Parties. Forbearance in any form from demanding performance is not a waiver of performance. Until complete performance under the Contract Documents, the Party owed performance may invoke any remedy thereunder or under law, despite its past forbearance.
- 8.02 If any provision of the Contract Documents, or their application to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of the Contract Documents shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

- 8.03 The Contract Documents contain the entire agreement between the Parties and all prior negotiations and agreements are thereby merged. Neither Owner nor its agents have made any representations except those expressly set forth in the Contract Documents, and no rights or remedies are, or shall be, acquired by Consultant by implication or otherwise unless expressly set forth therein.
- 8.04 Unless the context otherwise expressly requires, (i) the words "herein", "hereof" and "hereunder" and other words of similar import refer to the Contract Documents as a whole and not to any particular section or subdivision; and (ii) as used in the Contract Documents, the singular shall include the plural, and the plural shall include the singular.
- 8.05 The headings of the sections of the Contract Documents are for convenience only and shall not be used to construe or interpret the scope or intent of the Contract Documents or in any way affect the same.
- 8.06 The Contract Documents and all actions arising thereunder shall be governed by, subject to, and construed according to the laws of the State of Michigan. Consultant shall submit to the personal jurisdiction of any competent court in Wayne County, Michigan, for any action arising out of the Contract Documents. Service of process at the address and in the manner specified in Article VI, "Notices", shall be sufficient to put Consultant on notice and waives all claims relative to such notice. Consultant shall not commence any action against Owner because of any matter whatsoever arising out of or relating to the validity, construction, interpretation, and enforcement of the Contract Documents, in any courts other than those in Wayne County, Michigan, unless original jurisdiction can be had in the United States District Court, Eastern District, Southern Division, the Michigan Court of Appeals, or the Michigan Supreme Court. The terms of this Section shall survive the expiration or termination of this Contract.
- 8.07 If any Subcontractor shall take any action which, if done by a Party, would constitute a breach of the Contract Documents, the same shall be deemed a breach by Consultant with right legal effect. The terms of this Section shall survive the expiration or termination of this Contract.
- 8.08 This is not an exclusive service contract and, during the term hereof, Owner may contract with other consulting firms and contractors. Consultant is free to render the same or similar services to other clients, provided however, that Consultant's obligations to Owner contained in the Contract Documents shall not be affected in any manner.
- 8.09 Consultant warrants that all prices, terms, warranties, and benefits granted to Owner are comparable to or better than the equivalent terms presently being offered by Consultant to any other customer for the performance of the Services.
- 8.10 Consultant covenants that it is not and shall not become in arrears to Owner upon any contract, debt, or other obligations to Owner. Consultant shall include this provision in any Subcontracts.
- 8.11 The Contract Documents shall not be construed to create any rights in any third party.

- 8.12 This Contract may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Contract. Promptly after the execution of this Contract, Owner shall provide a copy to Consultant.
- 8.13 The rights and benefits under the Contract Documents shall inure to Owner and its agents, successors, and assigns.
- 8.14 Unless explicitly stated otherwise, the rights and remedies of Owner set forth in the Contract Documents are not exclusive and are in addition to any of the rights and remedies provided by law or equity.
- 8.15 Consultant waives any defense it may have to the validity of the execution of the Contract Documents.
- 8.16 Owner shall have the right to recover by setoff from any payment owed to Consultant any amounts owed to Owner by Consultant under the Contract Documents or other contracts, and any other debt owed to Owner by Consultant.
- 8.17 No term or condition of the Contract Documents shall be construed to abrogate the governmental immunity granted to Owner by law.
- 8.18 Consultant shall not make an assignment of all or any part of the Contract Documents, nor any Services thereunder, nor any payments due or to become due thereunder, without first obtaining written consent from Owner, which consent may be withheld in Owner's sole and absolute discretion.
- 8.19 Owner shall be permitted to make an assignment of the Contract Documents to any successor in interest without the prior consent of Consultant. As soon as practicable thereafter, Owner shall provide written notice to Consultant of the assignment.
- 8.20 Nothing contained in the Contract Documents shall be construed as to create a relationship of employment, principal and agent, or joint venture between Owner and Consultant. Consultant is an independent contractor with respect to the Services to be performed under the Contract Documents.
- 8.21 Consultant represents and warrants that this Contract has been duly authorized and executed by an individual authorized to bind Consultant to its terms and conditions in accordance with Consultant's requirements and procedures and constitutes a legal, valid, and binding obligation of Consultant.
- 8.22 No rights or remedies are, or shall be, acquired by Consultant by implication or otherwise unless expressly set forth in the Contract Documents.
- 8.23 For purpose of the hold harmless and indemnity provisions contained in the Contract Documents, the term "Owner" shall be deemed to include the Great Lakes Water Authority and all other associated, affiliated, allied or subsidiary entities or commissions, now existing or subsequently created, and their officers, agents, representatives and employees. The terms of this Section shall survive the expiration or termination of this Contract.

- 8.24 Capitalized terms in the Contract Documents shall have the meanings defined throughout the Contract and as ascribed in Exhibit G, Glossary.
- 8.25 Consultant’s design shall consider equipment and product selection with preference given to “Energy Star” rated equipment and product when possible. All proposed equipment/product choices must be reviewed by Owner’s energy manager for approval only as to the sufficiency of the “Energy Star” rating and/or other applicable energy efficiency ratings; Owner assumes no responsibility for the adequacy, capability or appropriateness of the equipment/product selected by Consultant as it relates to successful completion of the Services.
- 8.26 Consultant shall be subject to Owner’s “Vendor Performance Assessment”, and the results thereof may impact its future engagements with Owner.
- 8.27 When the Services require adherence to Owner’s Business Inclusion and Diversity (B.I.D.) Program as set forth in the Procurement Policy, Consultant shall use its best efforts to ensure compliance with Consultant’s “Diversity Plan”, as finalized and approved by Owner upon execution of this Contract. Owner may monitor and assess Consultant’s compliance with Consultant’s “Diversity Plan” during the term of this Contract.
- 8.28 Owner shall not be bound by “Unauthorized Acts” in any dealings with Consultant. For purposes of this Section, Unauthorized Acts means any acts by Owner’s employees, agents, or representatives that are not permitted by the Contract Documents.

(Signatures appear on the next page)

Accordingly, Owner and Consultant, by and through their duly authorized officers and representatives, have executed this Contract as of the dates of their respective signatures below.

Enter Consultant Name, Consultant:

By: _____
Signature

Print Name

Its: _____
Title

Dated: _____

Great Lakes Water Authority, Owner:

By: _____
Choose an item.

Its: Enter title

APPROVED AS TO FORM BY
GLWA GENERAL COUNSEL: _____
Signature/Date

APPROVED BY GLWA

BOARD OF DIRECTORS: Not Applicable Enter Date

EXHIBIT A

PROJECT DETAILS AND SCOPE OF SERVICES

The Project: Insert Project Title

The Services: The Services consist of the following items and as fully described in the Contract Documents.

Enter scope of Services

Contract Time: Enter Number Days from the start date specified in the Notice to Proceed.

Key Personnel and Approved Subcontractors:

[INSERT KEY PERSONNEL LIST]

[INSERT APPROVED SUBCONTRACTORS LIST]

(End of Exhibit A)

EXHIBIT B

CONTRACT DOCUMENTS

- I. The Contract Documents. The Contract Documents shall consist of the documents explicitly stated in this Exhibit B.
- a. This Contract, including:
 - 1. Exhibit A: Project Details and Scope of Services
 - 2. Exhibit B: Contract Documents
 - 3. Exhibit C: General Conditions
 - 4. Exhibit D: Costing Summary and Payment Terms
 - 5. Exhibit E: Notice of Addresses and Designation of Representatives
 - 6. Exhibit F: Insurance
 - 7. Exhibit G: Glossary
 - 8. Exhibit H: Supplemental General Conditions, if applicable
 - b. Notice to Proceed and Contracting Officer's Designated Representatives; and
 - c. Task Adjustments and Change Orders.
- II. Interpretation. The Contract Documents are intended to permit the Parties to complete the Services and all obligations required by the Contract Documents within the Contract Time for the Contract Price. The Contract Documents are intended to constitute a single agreement, to be complementary and interpreted in harmony to avoid conflict, with its words and phrases interpreted in a manner consistent with design industry standards using common sense interpretations. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall be construed according to the following priority:
- | | |
|-------------------|--|
| Highest Priority: | Task Adjustments and Change Orders |
| Second Priority: | Exhibit H, Supplemental General Conditions, if and as applicable |
| Third Priority | The Contract, excepting Exhibit C and H |
| Fourth Priority: | Exhibit C, General Conditions |

(End Exhibit B)

EXHIBIT C

GENERAL CONDITIONS

Article 1: General Provisions

1.1 Definitions

Unless the context expressly requires otherwise, defined terms used herein shall have the meanings set forth in Exhibit G, Glossary.

1.2 Relationship of the Parties

1.2.1 Consultant shall furnish the Services set forth in the Contract Documents and shall complete the Project consistent with the interests of Owner. Consultant shall be responsible for performing and coordinating the total design of the Project, including the coordination of all professional design and engineering work used or incorporated therein. Consultant shall ensure performance of all Services necessary to obtain completion of the Project within the Contract Time for the Contract Price.

1.2.2 Consultant warrants and assumes full responsibility and liability with respect to the design of the Project and completion of all Services in accordance with the standard of care set forth in Article 4.1.2 and the requirements of the Contract Documents. The terms of this Section shall survive the expiration or termination of this Contract.

1.2.3 Consultant represents that (i) it is financially solvent; (ii) it is qualified to conduct business in the State of Michigan; (iii) it has all required licenses and permits necessary in connection with performance by Consultant hereunder (all such licenses and permits shall be at Consultant's sole cost and expense); (iv) it has the expertise and authority to perform its obligations under the Contract Documents; (v) it has inspected the Project site and familiarized itself with the local conditions (including, both all physical conditions and all local codes, laws and applicable regulations) under which the Services are to be performed; (vi) it is familiar with all applicable federal, state, and local laws, ordinances and regulations which may, in any way, affect the Project and the Services, or those employed therein; and (vii) the Contract Price is the agreed amount for all the Services, including all risks, hazards, and difficulties in connection therewith assumed by Consultant under the Contract Documents. Consultant shall ensure that the foregoing representations are included in any Subcontract.

Article 2: Owner General Provisions

2.1 General Provisions

2.1.1 The Contracting Officer, CPO, and Owner Project Manager have the authority to act on behalf of Owner only to the extent provided in the Contract Documents.

2.1.2 Owner shall render decisions in a timely manner pertaining to documents submitted by Consultant to avoid unreasonable delay in the orderly and sequential progress of the Services.

Owner may obtain independent review of the documents by a separate architect, engineer, or cost estimator under contract to or employed by Owner. Such independent review shall be undertaken at Owner's expense.

2.1.3 Owner will assist Consultant as necessary in preparing Task Adjustments and Change Orders.

2.1.4 During the performance of the Services, based on Owner observations and on evaluations of the Invoice, Owner shall issue payment in such amounts as determined by Owner.

2.1.5 In the event of death, resignation, refusal, or inability to act of the Contracting Officer's designee, the CPO may designate and substitute another representative as the Contracting Officer. Such designation shall be in writing and shall be effective when delivered to Consultant.

2.1.6 Owner shall not be estopped, bound, or precluded by any determination, decision, approval, order, letter, payment or certificate made or given by the Contracting Officer or any other officer, employee, servant or agent of Owner, at any time, either before or after completion and acceptance of the Services and payment therefore, from (i) showing the true and correct amount, classification, quality, and character of the Services completed by Consultant or any other person or entity performing the Services, or from showing at any time that any determination, decision, approval, order, letter, payment, or certificate is untrue and incorrect, or improperly made in any particular, or that any part of the Services, do not in fact conform to the Contract Documents; or (ii) demanding the recovery of any overpayments made to Consultant, or such damages as Owner may sustain by reason of Consultant's failure to strictly perform each and every term, provision or condition of the Contract Documents. The terms of this Section shall survive the expiration or termination of this Contract.

Article 3: Information and Assistance Required of Owner

Upon Consultant's written request, information or assistance under Owner's control shall be furnished by Owner with reasonable promptness to avoid delay in the orderly progress of the Services. The furnishing of such information or assistance by Owner shall not relieve Consultant from its responsibilities under the Contract Documents. Consultant is not entitled to rely on any of the documents or information provided by Owner, except to the extent expressly provided otherwise in the Contract Documents. Owner does not represent or warrant that the information contained in the reference documents provided to Consultant is either complete or accurate.

Article 4: Consultant Obligations

4.1 General

4.1.1 Consultant's general obligation is to design the Project. Consultant shall deliver the Project in phases, based on the applicable completion milestones set forth in the Schedule, within the Contract Time and for the Contract Price.

4.1.2 The standard of care for all professional engineering and related work performed or furnished by Consultant under the Contract Documents shall be the care and skill ordinarily used by engineering professionals utilizing professional engineering principles generally accepted

as standards of the industry for projects of similar technology, size, scope, and complexity at the time and in the locale where the design Services are furnished, which locale shall be Detroit, Michigan. Consultant shall prosecute the Services in accordance with applicable laws, rules, regulations, codes and ordinances and the criteria of performance, reliability and availability set forth in the Contract Documents.

4.1.3 Notwithstanding the existence of any dispute, Consultant shall always (i) perform the Services in a diligent manner and without delay; (ii) abide by the decisions or orders of Owner; and (iii) comply with all applicable provisions of the Contract Documents. Consultant shall be responsible for the professional quality, technical accuracy and coordination of all Services furnished by Consultant and its Subcontractors under the Contract Documents. Consultant shall, without additional compensation, promptly correct or revise any errors or deficiencies in its completed Services.

4.1.4 Consultant shall provide a Consultant Project Manager approved by Owner who shall, on behalf of Consultant, (i) have full responsibility for the prosecution of the Services; (ii) act as an agent and be a single point of contact in all matters; and (iii) be available to execute instructions from Owner including, without limitation, preparing the necessary documentation in connection with Task Adjustments and Change Orders.

4.1.5 Consultant shall be responsible to, and indemnify and hold harmless Owner for the acts, errors, and omissions of Consultant's employees. Consultant shall be as fully responsible to Owner for the acts, errors, and omissions of its Subcontractors, its agents, and persons directly or indirectly employed by it, and any other persons performing any of the Services as it is for the acts, errors, and omissions of persons directly employed by Consultant. The terms of this Section 4.1.5 shall survive the expiration or termination of this Contract.

4.1.6 Consultant shall not be relieved from its obligations to perform the Services in accordance with the Contract Documents either by the activities or duties of Owner or by inspections, tests or approvals required or performed by persons other than Consultant. No inspection performed or failed to be performed by Owner shall be a waiver of any of Consultant's obligations or be construed as an approval or acceptance of the Services.

4.1.7 At the request of Owner, Consultant shall attend, make presentations, and participate in Project meetings and other Project-relevant community and public meetings and provide materials describing the Services rendered or that will be rendered by Consultant, and their current progress, when such material is required or appropriate.

4.2 Design Phases; Obligations

4.2.1 Consultant shall deliver the Services in phases customary to the Services and as stated in the Contract Documents. Where Consultant is delivering design Services, these phases may include, but are not limited to, preliminary design, final design, bidding, and construction phases. For all other Services, phases shall be as determined by Owner to successfully deliver the Services.

4.2.2 Consultant shall review the Services to ascertain the requirements thereof and shall review its understanding of such requirements with Owner.

4.2.3 Consultant shall review with Owner alternative approaches to prosecution of the Services, as applicable.

4.2.4 Consultant shall prepare, for approval by Owner, the Deliverables required by the Contract Documents.

4.2.5 Unless otherwise approved by Owner in writing, prior to proceeding with successive phases, Consultant shall provide to Owner all necessary Deliverables within each phase for its review and comment. Owner's comments on the Services produced from each phase shall be discussed, responded to, and incorporated into the Services, as agreed upon and as directed by Owner. After Owner's written approval of a phase, Consultant shall proceed to the next phase of the Services.

4.2.6 The Services shall include all engineering disciplines and work necessary to complete the Services, whether explicitly defined in the Contract Documents or implied by the Deliverables required for the successful prosecution of the Services.

4.2.7 Engineer shall provide all Deliverables in reproducible form and digital documents as specified by Owner. Digital format shall be presented on solid state hard drive or electronic file share location provided by Owner and include all of the following: (i) copies of all Drawings in the native format of the CAD program used to create them; (ii) plot files for all printed sheets in the Drawings provided; and (iii) a PDF file version of each printed sheet in the Drawings.

4.2.8 The Services may include certain asset management services which require Consultant to utilize Owner's asset turnover processes and asset information forms to provide asset data throughout design development. As required, Consultant shall complete the asset turnover processes in accordance with Owner's applicable written instructions.

4.2.9 The Services may require Consultant to maintain Records and provide final Records for automatic import to Owner's document management system. As required, Consultant shall complete the document turnover processes in accordance with Owner's applicable written instructions.

4.2.10 Consultant shall prepare final Deliverables in accordance with the Contract Documents. Consultant shall transmit a log along with the final Deliverables identifying what is being submitted. All other documents shall be submitted in native format as well as PDF format. Where the Services require Drawings, all Drawings shall be delivered to Owner in native AutoCAD .DWG or .RVT formats (in the most current software version of AutoCAD) as well as PDF format.

4.3 Deliverable Review

4.3.1 Consultant shall furnish the design of the Project by preparing and delivering to Owner all Deliverables. Consultant shall cause all Deliverables to be submitted to Owner according to the completion milestones set forth in the Schedule.

4.3.2 Owner shall have the right to review, comment on, and object to all Deliverables for the purpose of verifying compliance with the requirements of the Contract Documents. Owner

will coordinate all Owner's design review comments and will deliver such comments to Consultant.

4.3.3 If Owner has any comments or objections related to Consultant's failure to comply with the requirements of the Contract Documents, then Consultant shall respond to all such comments and ensure they are incorporated and/or resolved as necessary to fully reflect such comments. Consultant acknowledges that comments may be provided which reflect concerns regarding operability or preferences of the commenter. The foregoing shall in no way obligate Consultant to incorporate any comments that (i) Consultant believes would render the Deliverables erroneous, defective, or deficient in any respect; or (ii) do not directly relate to specific requirements of the Project and would result in a delay to the Schedule or an increase in its costs. If Consultant does not incorporate or otherwise resolve any comment, Consultant shall deliver to Owner within a reasonable time period, not to exceed thirty (30) Days after receipt of Owner's comments, a written explanation why modifications or modifications based on such comments are not required. The explanation shall include facts, analyses and reasons that support the conclusion. Any failure of Consultant to provide such explanation shall constitute Consultant's full acceptance of all responsibility related to its failure to incorporate or resolve Owner's comments or objections to the Deliverables.

4.3.4 Consultant shall be responsible for handling all design reviews required by, and obtaining all design approvals from, any third parties.

4.4 Ownership of Documents

All Design Documents, Construction Documents, reports and other data (including without limitation, written, printed, graphic, video and audio material contained in any computer data base or computer readable form) (hereinafter "Works of Authorship") developed during the term of this Contract are the property of Owner. Works of Authorship created during the term of this Contract are "Works for Hire," as that term is defined in copyright law. Owner shall own all rights to any inventions, discoveries, new uses, advances on the state of art, protocols, ideas, products, or other protectable rights arising from any activities within the scope of the Contract Documents (hereinafter "Inventions"). Consultant shall execute all documents, provide all information, and otherwise take all actions requested by Owner including, without limitation, assignments of any rights Consultant may have in such works, to secure for Owner the ownership rights and available legal protections for all Works of Authorship or Inventions. Consultant expressly disclaims any rights in Works of Authorship or Inventions related to the performance of the Work. In the event of termination of the Contract for any reason, Consultant shall promptly deliver to Owner one (1) complete set of all Design Documents and Construction Documents prepared to the date of termination in the digital formats required by the Contract Documents. In no event shall this Section 4.4 transfer any right, title or interest to any intellectual property Consultant possessed prior to entering the Contract or that is developed separately from this Project. Consultant shall not assume any responsibility for Owner's use of Consultant's Works of Authorship for any other project or for any other use outside of that defined under the terms of the Contract Documents.

4.5 Coordination

Consultant shall coordinate the Services with the work of Owner's forces and any of Owner's separate contractors and consultants, including the conduct of inspections during the construction of the Project. Consultant's failure to coordinate the Services shall not relieve Consultant of its responsibility to complete the Services within the Contract Time and in accordance with the Contract Documents, unless otherwise agreed to by Owner.

4.6 Indemnification

4.6.1 To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the Indemnitees from and against claims, damages, losses, liability, cost and expenses (including, but not limited to, reasonable attorneys' fees and court costs) arising out of or resulting from performance of the Services, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Services itself) including loss of use resulting therefrom, but only to the extent caused by a negligent act or omission of Consultant or a party under its responsibility and control. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section.

4.6.2 To the fullest extent permitted by law, Consultant shall indemnify and hold harmless the Indemnitees from and against all claims, damages, losses, liability, cost and expenses (including, but not limited to, reasonable attorneys' fees and court costs) resulting from claims against the Indemnitees attributable to bodily injury in connection with the Project by any employee of Consultant, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, but only to the extent caused by a negligent act or omission of Consultant or a party under its responsibility and control. The indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Consultant or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.6.3 The terms of this Section 4.6 shall survive the expiration or termination of this Contract.

4.7 Royalties and Patents

Consultant shall pay all royalties and license fees. Consultant shall indemnify and hold harmless the Indemnitees from all suits or claims for infringement of any patent rights or copyrights and from all loss, cost, or expense (including reasonable attorneys' fees and court costs) on account thereof. Notwithstanding the foregoing, Consultant shall not be responsible for infringement of patent rights where a particular design process or product of a particular manufacturer is specified by Owner and Consultant has no reason to believe that such design process or product specified is an infringement of a patent or copyright. The terms of this Section 4.7 shall survive the expiration or termination of this Contract.

Article 5: Subcontractors

5.1 No Contractual Relationship

Nothing contained in the Contract Documents shall create any contractual relation between Owner or any Subcontractor or Sub-Subcontractor.

5.2 Award of Subcontracts and Other Contracts for Portions of the Services

5.2.1 Prior to executing any Subcontracts for the Services, Consultant shall provide Owner with a list of proposed Subcontractors for Owner's prior review and approval (the "Subcontractor List"). Owner may object, for any reason, to any proposed Subcontractor within a reasonable time after its receipt of the Subcontractor List. Consultant shall not award any portion of the Services to a Subcontractor that was not nominated before execution of the Contract, without first obtaining Owner's written consent. If Owner objects to any Subcontractor without cause, and such objection causes an increase in the Contract Price, Owner shall, pursuant to Article 11, order any adjustments in the Contract Price required to make up the difference in cost between the proposed Subcontractor and the Subcontractor approved by Owner, or Consultant's cost to self-perform that part of the Services involved, whichever is applicable. Consultant shall make no substitution for any Subcontractor, person or entity previously approved by Owner without first obtaining Owner's written consent.

5.2.2 Consultant shall promptly deliver to Owner a complete executed copy of each Subcontract awarded.

5.2.3 Upon award of a Subcontract, the Subcontractor shall identify its job-site staff and agree that such job-site staff may not be changed or reassigned (except where an individual leaves the employ of the Subcontractor or any affiliate) without the prior written consent of Consultant. Consultant shall consult with Owner prior to giving consent to any proposed substitution.

5.2.4 Neither Consultant nor any entity that owns any of the equity interests of Consultant (nor any entity in which Consultant or any such equity interest owner has a greater than 5% ownership interest) shall serve as a Subcontractor with respect to any portion of the Services unless such equity ownership interest has been disclosed to and approved by Owner.

5.3 Subcontractor Relations

5.3.1 By an appropriate written agreement, Consultant shall require each Subcontractor, to the extent of the Services to be performed by the Subcontractor, to be bound to Consultant by the terms of the Contract Documents, and to assume toward Consultant all the obligations and responsibilities which Consultant, by the Contract Documents, assumes toward Owner. Where appropriate, Consultant shall require each Subcontractor to enter into similar agreements with its Sub-Subcontractors. Consultant shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound and shall identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of the Contract Documents available to its Sub-Subcontractors.

5.3.2 Consultant shall cause all its Subcontractors to agree to indemnify and hold harmless the Indemnitees from all claims that may arise from such Subcontractor's operations to the same extent as Consultant has indemnified the Indemnitees pursuant to Section 4.6. Such provisions shall be in a form reasonably satisfactory to Owner. The terms of this Section 5.3.2 shall survive the expiration or termination of this Contract.

5.3.3 Consultant shall bear the risk of any inconsistencies between the terms and conditions of the Contract Documents and the terms and conditions of its Subcontract, purchase orders, and similar documentation.

Article 6: Work by Owner or Third Parties

6.1 Owner's Right to Perform the Services and to Award Separate Contracts

This is not an exclusive service contract. Owner reserves the right to (i) perform work related to the Project with its own forces; and (ii) to award separate contracts in connection with other portions of the Project or other work on the Project.

Article 7: Non-Discrimination

Consultant shall comply with and shall require its Subcontractors to comply with all applicable federal, state, and local laws regarding non-discrimination, fair employment practices, and equal opportunity laws. Consultant shall furnish and file relevant compliance reports within the times and in the form prescribed by Owner. Compliance reports may elicit information as to the practices, policies, programs, and employment statistics of Consultant and Subcontractors. Consultant will permit access to Consultant's records and accounts by Owner and/or its agent for purposes of investigation to ascertain compliance with the Contract Documents. The United States, the State of Michigan, and Owner shall have the right to seek judicial enforcement of the foregoing covenants against discrimination, against Consultant or its Subcontractors connected directly or indirectly with the performance of the Services.

Article 8: Time

8.1 Suspension by Owner

8.1.1. The CPO may order Consultant in writing to suspend, delay or interrupt all or any part of the Services for such period of time as it may determine to be appropriate for the convenience of Owner.

8.1.2 If the performance of all or any part of the Services is suspended, delayed, or interrupted at the direction of the CPO, and such act causes a delay in the Schedule, then any affected activity in the Schedule shall be adjusted as determined by Owner, but the total adjustment of any such activity shall not exceed the length of the delay.

8.1.3 Any Change Request related to an extension of time pursuant to Section 8.1.2 shall be made in writing to the CPO no more than thirty (30) Days after the commencement of the suspension, delay, or interruption, otherwise it will be waived. In the case of a continuing cause of

delay, only one (1) Change Request is necessary. Any delay of less than twenty-four (24) hours duration shall not be justification for adjusting the Schedule or the Contract Time.

8.1.4 No adjustments to the Contract Time or Contract Price shall be made under this Section 8.1 for any suspension, delay, or interruption by Owner (i) to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of Consultant or any party under Consultant's responsibility and control; or (ii) for which an equitable adjustment is provided or excluded under any other provision of the Contract Documents. Owner's exercise of any of its rights under the Contract Documents, or Owner's requirement of correction or re-execution of any defective Services shall not, under any circumstances, be construed as interference with Consultant's performance of the Services.

8.1.5 Notwithstanding anything contained herein to the contrary, no extensions of the Contract Time or increase to the Contract Price shall be permitted except as approved in advance and in accordance with the Procurement Policy and this Contract.

8.1.6 Each Subcontractor shall be bound by the provisions of this Section 8.1.

8.2 Delays and Extensions of Time

8.2.1 If Consultant shall be delayed by (i) the combined action of workmen (either those employed on the Services or in any industry essential to the conduct of the Services) in no way caused by or resulting from default or collusion on the part of Consultant; (ii) any Act of God, war, act of terrorism, riot, epidemic or pandemic, explosion, sabotage, embargo, fire, unavoidable casualties, unusual delay in transportation, national emergency, unusually severe and adverse weather conditions, the binding order of any court or governmental authority; or (iii) by any other causes which Consultant could not reasonably control or circumvent, and if such delay affects the Schedule, then the Schedule shall be adjusted as necessary, and as determined by Owner, to compensate for such delay (but the total extension may not exceed the length of the delay).

8.2.2 An adjustment to the Schedule or an extension of the Contract Time shall be Consultant's sole remedy for any delay. Owner's exercise of any of its rights under the Contract Documents, including requirement of correction or re-execution of the Services, regardless of the extent, number or frequency of Owner's exercise of such rights or remedies, shall not under any circumstances be construed to as providing grounds for Consultant to seek damages for delay of the Project. In no event shall Consultant be entitled to any compensation or recovery of any damages in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. Consultant waives and shall not assert any Claims against Owner for any damages, costs, losses or expenses of any nature whatsoever which Consultant, any Subcontractor or Sub-Subcontractor may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any act or omission of Owner, its representatives or agents, and Consultant's sole remedy in such event shall be an adjustment to the Schedule or an extension of the Contract Time.

8.2.3 All Change Requests arising under this Section 8.2 shall be made in no more than thirty (30) Days after the commencement of the delay, otherwise they shall be waived. In the case

of a continuing cause of delay, only one (1) Change Request is necessary. Any delay of less than twenty-four (24) hours duration shall not be justification for adjusting the Schedule or the Contract Time.

8.2.4 No adjustments shall be made under this Section 8.2 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 due to fault or negligence of Consultant, or (ii) for which an equitable adjustment is provided or excluded under any other provision of the Contract Documents. Owner's exercise of any of its rights under the Contract Documents, or Owner's requirement of correction or re-execution of any defective Services shall not, under any circumstances, be construed as interference with Consultant's performance of the Services.

8.2.5 Consultant shall mitigate any delay, whether caused by Owner, Consultant, Subcontractor, or Sub-Subcontractor.

8.2.6 Each Subcontractor shall be bound by the provisions of this Section 8.2.

8.3 Acceleration of Performance

8.3.1 If Owner desires the Services to be performed with greater speed than is contracted for, Consultant shall, without affecting the rights of Owner under the Contract Documents, upon receipt of a written order from Owner specifically setting forth a request pursuant to this Section 8.3, employ overtime labor. Owner shall, in accordance with the Contract Documents, compensate Consultant for the premium cost of such overtime labor, as shown on the time slips checked and approved each Day by Owner, plus any additional incremental costs Consultant incurs to comply with and which result directly from such acceleration, and as such costs are otherwise permitted by the Contract Documents. This provision shall not apply to acceleration of performance caused by Consultant's default, the cost of which shall be borne solely by Consultant.

8.3.2 Each Subcontractor shall be bound by the provisions of this Section 8.3.

Article 9: Invoices, Payments and Completion

9.1 Invoices; Final Payment

9.1.1 An Invoice constitutes a representation by Consultant to Owner that (i) the Services have progressed to the point indicated; (ii) the quality of the Services are in accordance with the Contract Documents; and (iii) Consultant is entitled to payment in the amount invoiced.

9.1.2 The Contracting Officer will, with reasonable promptness, either approve payment in the amount the Contracting Officer determines is properly due or notify Consultant in writing of its reasons for withholding payment.

9.1.3 Upon completion of the Services, Consultant shall issue an Invoice for Final Payment which shall represent to Owner that (i) the quality of the Services is in accordance with the Contract Documents; (ii) all as-built Drawings are accurate and complete; and (iii) Consultant is entitled to Final Payment. Upon the Contracting Officer's agreement that the Services have been completed, Final Payment shall be made. Acceptance of the Final Payment by Consultant shall

constitute accord and satisfaction of all claims against Owner of whatsoever kind or nature under the Contract.

9.2 Payments Withheld

Owner may withhold payment because of subsequently discovered evidence or subsequent observations, or it may nullify the whole or any part of any payment previously issued, to such extent as may be necessary in its opinion to protect Owner from loss because:

9.2.1 An Invoice is incorrectly completed or is not accompanied by properly completed supporting documentation, or

9.2.2 Consultant fails to properly respond to any notices issued by Owner pursuant to Section 12.1.1, or

9.2.3 Consultant is in material default under the Contract Documents, or

9.2.4 Any part of such payment is attributable to Services which are defective or not performed in accordance with the Contract Documents, as determined by the Contracting Officer; provided, however, such payment shall be made as to the part attributable to Services which are performed in accordance with the Contract Documents and are not defective, reserving, however, such amount as Owner shall determine reasonably necessary to protect Owner with respect to defective Services, or

9.2.5 Consultant has failed to make payments when due to Subcontractors in accordance with the Subcontract, or

9.2.6 Any part of such payment is attributable to Services with respect to which Owner has been notified of a claim or dispute or has received reasonable evidence indicating the existence of such a claim or dispute, provided Owner has paid Consultant in accordance with the Contract Documents, or

9.2.7 Owner has reasonable indication that the Services will not be completed within the Contract Time, or

9.2.8 Third-party claims have been filed or there is reasonable evidence indicating the probable filing of such claims, or

9.2.9 If Owner determines that the portion of the Contract Price then remaining unpaid will not be sufficient to complete the Services, no additional payments will be due to Consultant unless and until Consultant, at no cost to Owner, performs and pays in full for a sufficient portion of the Services so that such portion of the Contract Price then remaining unpaid is determined by Owner to be sufficient to complete the Services.

Article 10: Costing Basis

10.1 Hourly Rates

10.1.1 The Services may be priced on an hourly rate basis by labor classification. Each hourly rate will be deemed to include an amount considered by Consultant to be adequate to cover Consultant's labor, overhead, profit, and any applicable markup for any Subcontractor, for each separately identified classification. The hourly rates shall not include any reimbursable expenses; reimbursable expenses, if any, shall be set forth and paid in accordance with Exhibit D.

10.1.2 Any quantities of Services to be performed on an hourly rate basis specified in this Contract are estimated and are not guaranteed. Determinations of the actual quantities and classifications of hourly rate Services performed by Consultant will be made by Owner.

10.1.3 There shall be no adjustment, equitable or otherwise, to hourly rates established in the Contract Documents, unless otherwise permitted by the CPO in their sole discretion, and if applicable, in accordance with Section 11.1.2.

10.2 Lump Sum Services

Where the Contract Documents provide that all or part of the Services are to be paid on a lump sum basis, the Contract Price shall be as set forth in Exhibit D and may include overhead and profit. Owner may elect to use hourly rates within a lump sum proposal.

Article 11: Changes in the Work

11.1 General

11.1.1 General. Owner may, without invalidating the Contract Documents, order changes in the Services (including extra Services, less Services, or alterations), and such changes, regardless of their scope or number, are within the contemplation of the Parties. Changes in the Services shall be ordered only by Task Adjustment or Change Order. Changes in the Services shall be performed under the applicable provisions of the Contract Documents and as provided in the Task Adjustment or Change Order. Changes shall not relieve or release Consultant from any of its obligations under the Contract Documents. No verbal instructions, course of conduct or dealings between the Parties, nor express or implied acceptance of changes in the Services, and no claim that Owner has been unjustly enriched by any change in the Services, whether or not there is, in fact, any unjust enrichment to Owner, shall be the basis for any Change Request or claim, and are waived by Consultant and forever barred.

11.1.2 Task Adjustment. A Task Adjustment shall be used to (i) order changes in the Services; (ii) authorize the use of or the reallocation of funds of any Allowance; (iii) adjust quantities of, establish, or change hourly rates and/or unit prices; and/or (iv) authorize the reallocation of funds between lump sum line items, which each of the foregoing shall not change the Contract Time and/or Contract Price. When the cost of a Task Adjustment is paid from an Allowance, the terms of Section 11.4 shall apply. A signed Task Adjustment shall be immediately

effective and binding on the Parties, and shall constitute a final settlement and waiver of, and permanent bar to, all claims and matters relating to the subject of the Task Adjustment.

11.1.3 Change Order. A Change Order shall be used to order any changes in the Services, including changes that affect the Contract Time and/or Contract Price. Agreement on any Change Order shall constitute a final settlement and waiver of, and permanent bar to, all claims relating to the change in the Service which is the subject of the Change Order, including all direct and indirect costs associated with such change and all adjustments to the Contract Time and/or Contract Price, and shall entitle Consultant to payment for the Services covered thereby. Consultant shall include the Services covered by any Change Order in its Invoice as if such Services were originally part of the Contract Documents.

11.1.4 Emergencies. In cases of emergency, Owner shall have the right to direct such emergency changes in the Services to proceed promptly. Until a Task Adjustment or Change Order is authorized, the authorization of which shall proceed promptly, Consultant shall document, maintain, and submit daily Records and an itemization of labor used in the changed Services, which Records shall be acknowledged daily by Owner. Such documentation shall be submitted in the form directed by Owner and include an itemized accounting, supporting dates, receipts, and vouchers of all actual costs associated with extra or changed Services.

11.2 Processing Changes in the Services

11.2.1 Task Adjustments. Changes in the Services may be initiated by Task Adjustment describing any changes in the Services agreed between Owner and Consultant and otherwise in accordance with Section 11.1.2. Consultant shall, if in agreement, sign the Task Adjustment and Owner's signature subsequent to Consultant's signature shall give the Task Adjustment immediate effect.

11.2.2 Change Orders. Owner may initiate changes in the Services by issuing a Change Directive sufficiently describing the scope and justification of the change being considered. Consultant shall respond within five (5) Days with its proposed submission date of its Change Request, which time shall be agreed upon. Consultant may request changes by submission of a Change Request. In either case, Consultant shall submit its Change Request including (i) the amount of any encumbrance against an Allowance or change to the Contract Price, including an itemization of all labor costs, quantities, and total costs; and (ii) any changes to the Contract Time, including a substantiation for any adjustment thereof, together with a revised Schedule depicting the change. Consultant shall produce all documentation which Owner may request for the purpose of determining the correctness of the charges for the changed Services. If the Parties agree to proceed with the changes in the Services, then the Parties shall execute a Change Order.

11.2.3 Costing Basis for Changed Services. The changed Services shall be performed on a costing basis of Owner's choosing as provided in Article 10, or any combination thereunder.

11.3 Changes for an Owner Act, Error, or Omission

Subject to the terms of the Contract Documents, if Consultant believes that any act, error, or omission of Owner constitutes a change in the Services entitling Consultant to additional

compensation and/or time, Consultant shall, within thirty (30) Days after the date on which Consultant discovers, or should have discovered with the exercise of appropriate diligence, the relevant act, error, or omission of Owner (provided that the necessity of extra cost and/or time is already determinable, even if such extra cost and/or time has not yet been incurred), submit to Owner a Change Request stating the amount of the additional compensation and/or additional time to which it is entitled and the justification for the request. Owner shall evaluate the Change Request within a reasonable time and advise Consultant whether Owner will grant in whole, grant in part, or deny the Change Request. Any additional compensation and/or additional time granted shall be recorded in the form of a Change Order. Failure of Consultant to timely submit a Change Request in strict, not substantial, accordance with the requirements of this Section 11.3 shall constitute a waiver of and shall forever bar any claim and any recovery whatsoever arising out of the pertinent act, error, or omission of Owner, even if Owner was not prejudiced thereby.

11.4 Allowances

Consultant shall complete Services covered by an Allowance only as directed in writing by Owner through, as applicable, a Task Adjustment or a Change Order. The costing basis of Services authorized under an Allowance shall be determined in accordance with Article 10.

Article 12: Termination

12.1 Termination

This Contract shall remain in full force and effect for the duration of the Contract Time unless otherwise terminated for cause or convenience according to the provisions of this Article 12.

12.2 Termination for Cause

12.2.1 Owner shall have the right, without prejudice to any other right or remedy it may have, to terminate this Contract for cause. Cause is an event of default.

12.2.1.1 An event of default shall occur if there is a material breach of the Contract Documents, and shall include the following:

12.2.1.1.1 Consultant fails to begin the Services in accordance with the terms of the Contract Documents; or

12.2.1.1.2 Consultant, in the judgment of Owner, is unnecessarily, unreasonably, or willfully delaying the performance and completion of the Services; or

12.2.1.1.3 Consultant ceases to perform the Services; or

12.2.1.1.4 Owner reasonably believes the Services cannot be completed within the Contract Time and that the delay is attributable to conditions within Consultant's control; or

12.2.1.1.5 Consultant, without just cause, reduces its work force to a number that would be insufficient, in the reasonable judgment of Owner, to complete the Services within the Contract Time, and Consultant fails to sufficiently increase such work force when directed to do so by Owner; or

12.2.1.1.6 Consultant voluntarily makes any unauthorized changes in its personnel, Subcontractors, and Sub-Subcontractors previously approved by Owner; or

12.2.1.1.7 Consultant assigns, transfers, conveys, or otherwise disposes of its interests in the Contract Documents in whole or in part without prior approval of Owner; or

12.2.1.1.8 Any officer or employee of Owner acquires an interest in this Contract to create a conflict of interest; or

12.2.1.1.9 Consultant violates any of the provisions of the Contract Documents, or disregards applicable laws, ordinances, permits, licenses, instructions, or orders of Owner; or

12.2.1.1.10 The performance of the Services, in the sole and reasonable judgment of Owner, is substandard, unprofessional, or faulty and not adequate to the demands of the Services to be performed; or

12.2.1.1.11 Consultant fails in any of the agreements set forth in the Contract Documents; or

12.2.1.1.12 Consultant ceases to conduct business in the normal course; or

12.2.1.1.13 Consultant makes an assignment for the benefit of creditors or makes an admission in writing of its inability to pay its debts generally as they become due; or

12.1.1.1.14 Claims are filed with Owner by third parties alleging Consultant's failure to pay any amount due (except disputed claims).

12.2.2 If Owner finds an event of default has occurred, Owner may issue a Notice of Termination for Cause setting forth the grounds for terminating the Contract. Consultant shall have either ten (10) Days from the date of the Notice of Termination for Cause within which to cure such default, or such other period as may be provided therein (the "Cure Period"). If the default is cured within the Cure Period, the right of termination for such default shall cease. If the default is not cured to the satisfaction of Owner within the Cure Period, this Contract shall terminate at the end of the Cure Period, unless Owner, in writing, gives Consultant additional time to cure the default (the "Extended Cure Period"). If the default is not cured to the satisfaction of Owner within the Extended Cure Period, this Contract shall terminate for cause at the end of the Extended Cure Period.

12.2.3 If Owner terminates this Contract for cause, Owner shall have the right to immediate possession of all Deliverables produced up to the date of termination and finish the Project by whatever method Owner may deem expedient.

12.2.4 In the event of a termination for cause, Consultant shall be entitled to receive, as total compensation for all Services performed, payment for all Services properly performed and accepted by Owner prior to the effective date of termination, plus properly incurred and authorized reimbursable expenses then due. Payment of such compensation is the sole and exclusive remedy of Consultant for a termination of the Contract by Owner for cause, and Consultant shall not be entitled to, and waives, claims for lost profits and all other damages and expenses. Consultant shall execute a waiver and general release of claim as a condition of payment. At Owner's option, Consultant shall assign to Owner all approved Subcontracts and Owner shall hold harmless Consultant against all claims for payment with respect to Services performed after the date of termination. Consultant shall be liable to Owner for any damages sustained by Owner as a result of Consultant's breach or any reasonable costs Owner might incur in enforcing or attempting to enforce this Contract. Such costs shall include reasonable fees and expenses for attorneys, expert witnesses, and other consultants. Owner may withhold any payments to Consultant, in an amount not to exceed the amount claimed in good faith by Owner to represent its damages, for the purpose of setoff until such time as the exact amount of damages due to Owner from Consultant is determined. Consultant shall remain liable for any damages Owner sustains in excess of any setoff.

12.3 Termination for Convenience

Owner may terminate the Contract, in whole or in part, without cause and for its convenience at any time upon fifteen (15) Days' written Notice of Termination for Convenience to Consultant. In such case and to the extent of the termination specified, Consultant shall be entitled to receive, as total compensation for all Services performed, payment for all Services properly performed and accepted by Owner prior to the effective date of termination, plus properly incurred and authorized reimbursable expenses then due. Payment of such compensation is the sole and exclusive remedy of Consultant for a termination of the Contract by Owner without cause and for its convenience, and Consultant shall not be entitled to, and waives, claims for lost profits and all other damages and expenses. Consultant shall execute a waiver and general release of claim as a condition of payment. At Owner's option, Consultant shall assign to Owner all approved Subcontracts and ensure the assignment of all approved Sub-Subcontracts, and Owner shall hold harmless Consultant against all claims for payment with respect to Services performed after the date of termination.

12.4 Obligations Upon Termination

12.4.1 After receiving a Notice of Termination for Cause or Convenience, and except as otherwise directed by Owner, Consultant shall:

12.4.1.1 Stop Services under the Contract on the date and to the extent specified in the Notice of Termination for Cause or Convenience; and

12.4.1.2 Obligate no additional Contract funds for payroll costs and other costs beyond such date as Owner shall specify, and place no further orders on Subcontracts

for labor, material, equipment, services, or facilities and the like, except as may be necessary for completion of such portion of the Services under this Contract as is not terminated; and

12.4.1.3 Terminate all orders and Subcontracts to the extent that they relate to the portion of the Services terminated pursuant to the Notice of Termination for Cause or Convenience; and

12.4.1.4 Preserve all Records and submit to Owner such Records and reports as Owner shall specify, and furnish to Owner an inventory of all furnishings, equipment, materials, and other property purchased for the Contract, if any, and carry out such directives as Owner may issue concerning the safeguarding or disposition of all such items; and

12.4.1.5 Submit within thirty (30) Days a final report of receipts and expenditures of funds relating to this Contract, and a list of all creditors, Subcontractors, lessors, and third parties, if any, to whom Consultant has become financially obligated pursuant to this Contract.

12.4.2 After any Notice of Termination is given, each Party shall have the duty to assist the other Party in the orderly termination of this Contract and the transfer of all rights and duties arising under the Contract, as may be necessary for the orderly, un-disrupted continuation of the business of each Party.

Article 13: Audit

13.1 Owner's Access to Consultant's Records

13.1.1 Owner or any of its duly authorized representatives shall, until the expiration of three (3) years after Final Payment, have access to and the right to examine and audit any directly pertinent Records involving transactions related to the Contract Documents.

13.1.2 Consultant shall include in each Subcontract the terms of Section 13.1.1. The term "Subcontract," as used in this clause only, excludes: (i) purchase orders of less than Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00); and (ii) Subcontracts or purchase orders, for public utility services at rates established for uniform applicability to the general public.

13.1.3 The periods of access and examination described in this Article 13 for Records which relate to or arise under (i) Article 16, "Claims"; (ii) litigation or the settlement of Claims arising out of the performance of the Contract Documents; or (iii) costs and expenses of the Contract Documents as to which exception has been taken by Owner, shall continue until such appeal, litigation, claim or exception has been disposed of.

Article 14: Conflict of Interest

14.1 Consultant warrants that (i) it presently has no interest in and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of

the Services; (ii) in the performance of the Contract Documents, no person having any such interest shall be employed; and (iii) to the best of its knowledge and belief, no officer, member or employee of Owner and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Contract Documents has any personal or financial interest, direct or indirect, in the Contract Documents or in the proceeds thereof.

14.2 Consultant warrants it has not and will not employ any person to solicit or secure the Contract upon any agreement or arrangement for payment of a commission, percentage, brokerage, or contingent fee, either directly or indirectly. If this warranty is breached, Owner may, at its option, terminate the Contract without penalty, liability, or obligation, or may at its election, setoff from any amounts owed to Consultant hereunder any amounts of such commission, percentage, brokerage, or contingent fee.

14.3 Consultant and its employees shall not influence Owner's employees to seek employment with Consultant within the duration of the Contract and shall not for a period of one (1) year thereafter employ any of Owner's employees without prior written approval from Owner. Proof of such activity as determined by Owner shall be cause for immediate termination of this Contract.

14.4 Consultant shall include the provisions of this Article 14 in any Subcontract.

Article 15: Confidential Information

15.1 In order that Consultant may effectively fulfill its covenants and obligations under the Contract Documents, it may be necessary or desirable for Owner to disclose confidential and proprietary information to Consultant, its employees, and Subcontractors pertaining to Owner's past, present and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, Consultant shall instruct its employees and Subcontractors to regard all information gained by each such person because of the Services as information which is confidential and proprietary to Owner and not to be disclosed to any organization or individual without the prior written consent of Owner.

15.2 Consultant agrees to take appropriate action with respect to its employees, Subcontractors, and agents to ensure that the obligations of non-use and non-disclosure of confidential information of this Contract can be fully satisfied.

15.3 The terms of this Article 15 shall survive the termination or expiration of this Contract.

Article 16: Claims

16.1 Claims

16.1.1 Claims may result from a rejected Change Request or as provided in Section 16.2. All claims shall be made by written notice to the CPO containing as much detail as reasonably possible and be supported by any documentation required by the CPO and otherwise in accordance with the Contract Documents. The burden for substantiating any claim shall rest with Consultant.

16.1.2 Except as otherwise provided in Section 16.2, claims by Consultant must be made promptly and within not more than thirty (30) Days after the date of a rejected Change Request, unless a longer period is granted by the CPO in writing, whether any impact to Contract Price and/or Contract Time has yet to be determined. In no event shall this provision be deemed to extend the period for Consultant to make claims for an extension of the Contract Time and/or adjustment to the Contract Price as provided in other provisions of the Contract, which provisions and time periods are to be strictly adhered to by Consultant.

16.1.3 Pending final resolution of any claim, the Services shall continue unabated and be diligently pursued by Consultant, and Owner shall continue to make payment in accordance with the Contract Documents, except as to amounts in good faith dispute.

16.2 Injury or Damage to Person or Property

16.2.1 If Consultant suffers injury or damage to person or property because of an act or omission of Owner, its employees or agents, or others for whose acts Owner is legally liable, notice of such injury or damage shall be given to the CPO within a reasonable time after first observance and not exceeding twenty-four (24) hours in the case of personal injury or damage or seventy-two (72) hours in all other cases.

16.2.2 If Consultant suffers injury or damage to person or property by any third party, for recordkeeping purposes only, Consultant shall give notice to the CPO of the details of such injury or damage within a reasonable time and not exceeding seven (7) Days. In such event, Consultant shall not be entitled to any claim against Owner.

16.3 Submittal of Claims; Resolution

16.3.1 Agreement on the resolution of any claim shall be final and binding upon the Parties.

16.3.2 All claims which are not asserted and pursued strictly (not substantially) in accordance with the provisions of this Article 16 shall be deemed to have been waived and forever barred, regardless of whether Consultant is prejudiced thereby.

16.3.3 The resolution of all claims under this Article 16 resulting in a change in the Contract Price and/or Contract Time shall be memorialized by a Change Order. The provisions of this Article 16 shall survive the completion of the Services and termination of this Contract.

(End Exhibit C – General Conditions)

EXHIBIT D

COSTING SUMMARY AND PAYMENT TERMS

I. Contract Price

Subject to the performance by Consultant of its obligations under the Contract Documents, Owner agrees to pay Consultant for the performance of the Work the sum of Enter Contract Amount in Words and 00/100 Dollars (\$Enter Contract Amount in Numbers) (“Contract Price”), payable as set forth below. Unless the Contract is amended pursuant to Article 10, this amount shall be the entire compensation to which Consultant is entitled to for the performance of the Work.

II. Invoices; Submission and Payment

- a. Consultant shall, subject to other provisions of the Contract Documents, submit to the Contracting Officer an Invoice in a form acceptable to the Contracting Officer on or before the 10th Day of the month for Work completed through the last Day of the previous month. Invoices shall be proportioned to show each phase of the Work in accordance with the Schedule.
 - (i) For any Work completed on a time and materials or hourly basis, the Invoice shall also detail, at a minimum, the following:
 - 1) The name and classification/title of the person who performed the Work;
 - 2) The billable hourly rate of the person who performed the Work; and
 - 3) The specific task notes for hours worked on the Project for each segment.
- b. Consultant shall be reimbursed for the reimbursable expenses set forth herein, if any. Consultant shall present each month a statement of reimbursable expense for the preceding month. Consultant expressly waives any right to payment for any reimbursable expenses other than those described herein if Consultant does not secure the Contracting Officer’s prior written approval of such reimbursable expenses. Consultant further waives any right to payment for any reimbursable expense if Consultant fails to bill Owner for same on the immediately following Invoice. Notwithstanding anything contained herein to the contrary, in no event shall the reimbursable expenses described herein exceed, in the aggregate, through the term of the Contract, the Contract Price unless otherwise agreed to by Owner in writing.
- c. Invoices shall be submitted electronically each month and must be received by Owner not more than thirty (30) Days after the close of the immediately preceding calendar month. Invoices shall be submitted by e-mail to: AccountsPayable@glwater.org.

- d. Payment for the proper performance of the Work shall be contingent upon receipt by Owner of accurate, complete, and timely Invoices from Consultant and shall be made within forty-five (45) Days after receipt of a proper Invoice which conforms to the requirements of this Exhibit D.

III. Costing Summary

[Insert Costing Summary]

EXHIBIT E

NOTICE ADDRESSES AND DESIGNATION OF REPRESENTATIVES

Notices to Owner and designation of representatives:

“Notice of Change of Address” shall be sent to the CPO and Owner Project Manager as set forth below.

Chief Procurement Officer
Great Lakes Water Authority
735 Randolph Street, 15th Floor
Detroit, Michigan 48226
E-mail: ChiefProcurementOfficer@glwater.org

Enter Name, Owner Project Manager
Great Lakes Water Authority
Enter Address
Detroit, Michigan Enter Zip Code
E-mail: Enter E-mail Address

Notices to Consultant:

Notices to Consultant shall be sent to:

Name: Enter First and Last Name
Title: Enter Title of Notice Designee
Company: Enter Company Name
Address: Enter Address
Enter City, Enter Zip Code
E-mail: Enter E-mail Address

(End Exhibit E)

EXHIBIT F

INSURANCE

I. Insurance Coverage Types, Amounts and Endorsements

- a. Until the Services are complete and accepted by Owner, Consultant shall procure and maintain at its expense the insurance marked below and as otherwise required by this Exhibit F.

| <u>TYPE</u> | <u>AMOUNT NOT LESS THAN</u> |
|--|--|
| <input type="checkbox"/> Workers' Compensation | Statutory Limits Mandated by Law |
| <input type="checkbox"/> Employers' Liability | \$1,000,000 Each Accident \$1,000,000 Disease Each Employee \$1,000,000 Disease Policy Limit |
| <input type="checkbox"/> Commercial General Liability | \$1,000,000 Each Occurrence \$1,000,000 Personal/Advertising Injury \$2,000,000 General Aggregate \$2,000,000 Products/Completed Operations |
| <input type="checkbox"/> Automobile Liability (Covering Any Auto including Owned, Hired and Non-Owned vehicles) | \$1,000,000 Combined Single Limit |
| <input type="checkbox"/> Umbrella/Excess Liability (Providing excess limits over the Commercial General Liability, Auto Liability and Employers' Liability policies) | \$4,000,000 Each Occurrence \$4,000,000 Aggregate |
| <input type="checkbox"/> Professional Liability (Errors and Omissions) | \$3,000,000 Any One Claim |

- b. The commercial general liability policy shall include an endorsement naming "Great Lakes Water Authority" as an additional insured and any other entities as may be designated by Owner.

- c. The commercial general liability policy and the umbrella/excess liability policy shall be endorsed to provide that Consultant's insurance is primary and non-contributory to any insurance already carried by Owner.
- d. The workers' compensation, commercial general liability and automobile liability policies shall be endorsed with a waiver of subrogation on either a blanket basis or in favor of Owner. Further, Owner and Consultant waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance required under the Contract or any other insurance carried by Owner or Consultant, respectively. Consultant shall require similar waivers by Subcontractors and Sub-Subcontractors in accordance with Article 5. All insurance policies required by the Contract shall permit and recognize such waivers of subrogation.
- e. All insurance required by this Contract shall:
 - i. Name Consultant as the insured;
 - ii. Excepting professional liability insurance, be written on an occurrence-based policy form if the same is commercially available; and
 - iii. Be affected under valid and enforceable policies, issued by insurers either authorized to conduct business in Michigan or which have an A.M. Best's rating of A-/VIII or better, and which are otherwise acceptable to Owner.
- f. Consultant shall require all Subcontractors, if any, performing design and other architectural or engineering services to maintain professional errors and omissions coverage in connection with subcontracted Work, the amount of which shall be appropriate to the subcontracted Work, in Consultant's sole judgment, and for such extended period as Consultant determines necessary to cover the applicable warranty period and completed operations.

II. Insurance General Requirements

- a. If, during the term of this Contract, changed conditions or other pertinent factors should, in the reasonable judgment of Owner, render inadequate the foregoing insurance limits, Consultant shall furnish such additional types of coverage or coverage amounts as may reasonably be required under the circumstances and the actual cost differential therefor shall be paid by Owner in accordance with the Contract Documents. Within thirty (30) Days of such request, Consultant shall obtain the additional coverage and furnish evidence of such coverage to Owner.
- b. Certificates of insurance evidencing the coverage required by this Contract shall, in a form acceptable to Owner (ACORD 25 form preferred), be submitted to Owner upon Consultant's execution of this Contract and at least five (5) Days prior to the expiration dates of expiring policies. All certificates of insurance shall be emailed to COI@glwater.org.

- c. Certificates of insurance shall reference this Contract requisition number.
- d. Consultant or its insurer shall provide to Owner thirty (30) Days' written notice of cancellation of any policy required by this Contract and ten (10) Days' written notice of cancellation due to non-payment of premium.
- e. If any Work is subcontracted in connection with the Contract Documents, Consultant shall require each Subcontractor to effect and maintain the types and amounts of insurance which, in Consultant's sole judgment, shall be appropriate to the Work conducted by each such Subcontractor. Owner shall have the right to request copies of any Subcontractor certificates of insurance.
- f. Consultant shall be responsible for the payment of all deductibles and/or self-insured retentions contained in any insurance required under this Contract. The provisions requiring Consultant to carry the specified insurance shall not be construed in any manner as waiving or restricting the liability of Consultant.
- g. If Consultant maintains broader coverage and/or higher limits than the minimums designated in this Contract, Owner requires and shall be entitled to the broader coverage and/or higher limits maintained by Consultant.
- h. Failure to comply with any term or condition of this Exhibit F shall constitute a material breach of this Contract.

III. General Terms Regarding Insurance

- a. If Owner is damaged by the failure of Consultant to purchase or maintain any insurance required by this Contract, then Consultant shall pay all costs incurred by Owner, including but not limited to reasonable attorneys' fees and court costs.
- b. Any insured loss under the required policies of property insurance will be adjusted with Owner and will be made payable to Owner as trustee for the insured. Owner shall deposit in a separate account, and shall distribute monies received, based on any agreement that the parties in interest may reach. If no other distribution agreement is reached, the damaged Work shall be replaced or repaired, the monies received shall be used for that purpose and the Work involved and resulting costs shall be covered by a Change Order. Owner as trustee shall have the power to adjust and settle any loss with the insurers unless a party in interest objects in writing within fifteen (15) Days following the occurrence of loss to Owner's exercise of this power. If an objection is made, Owner as trustee shall settle with the insurers pursuant to any agreement that the parties in interest may reach.
- c. If by the terms of the insurance a mandatory deductible is required, Consultant shall be responsible for the deductible amount in the event of a paid claim. Consultant shall be responsible for any co-insurance penalties.

(End Exhibit F – Insurance)

[INSERT INSURANCE CERTIFICATE]

EXHIBIT G

GLOSSARY

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| Allowance | A sum included in the Contract Price to reimburse Consultant for the cost to furnish and perform any Services that, at the time of contracting, are uncertain or of an indeterminate scope. Charges under any Allowance shall (i) not be paid by Owner unless written authorization permitting the use of the Allowance is given by Owner in advance of the Services and (ii) be substantiated in accordance with the terms of the Contract Documents. Services to be paid within the limits of an Allowance shall be specified, in advance of the Services, as time and materials and/or lump sum. The remaining balance of any Allowance upon completion of the Services or termination of the Contract shall be retained by Owner and not paid to Consultant. |
| Board | The Board of Directors of GLWA. |
| Change Directive | A written instrument initiated by Owner for a change in the Services that affects the Contract Time and/or the Contract Price. |
| Change Order | A written instrument signed by Owner and Consultant and approved in accordance with the Procurement Policy, which authorizes a change in the Services and results in an adjustment in the Contract Time and/or Contract Price. |
| Change Proposal | Consultant's written instrument that justifies a Change Directive or Change Request and includes detailed information related to the cost breakdown of the changed Services including the required labor and materials. |
| Change Request | A written instrument initiated by Consultant for a change in the Services, or issued in response to a Change Directive, that affects the Contract Time and/or Contract Price, which is justified with a Change Proposal. |

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| Construction Documents | A work product created by Consultant which sets forth the indicative requirements for the construction phase of the Project, including revisions thereto. These work products may include procurement requirements, contracting requirements, Specifications, Drawings, submittals, resource drawings, as-built drawings, system operation & maintenance manuals, etc. |
| Consultant | The party identified in the Contract. |
| Consultant Project Manager | The individual designated by Consultant to manage, direct, and oversee the Services and its related activities on a day-to-day basis as designated in the Contract Documents. |
| Contract | This written engineering services contract executed between Consultant and Owner in accordance with the Procurement Policy, including any exhibits attached hereto, each such exhibit which is fully incorporated by reference. |
| Contract Documents | Those documents specified in Exhibit B and any other documents so designated in this Contract. |
| Contract Price | The sum stated in the Contract Documents, including any Allowances and authorized adjustments, that is the total amount payable by Owner to Consultant for the performance of the Services, including all risks, hazards, and difficulties assumed by Consultant thereunder. |
| Contract Time | The duration of time stated in the Contract Documents, including any authorized adjustments, allotted to Consultant for the performance of the Services. |
| Contracting Officer | The CPO, or if designated by the CPO, the Owner Project Manager as identified in Exhibit E, which shall act as Owner's representative for certain matters arising under the Contract Documents. Whenever Exhibit E identifies an Owner Project Manager as the CPO's designee, the Owner Project Manager shall be the Contracting Officer for purposes of this Contract. |

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| Contractor | The entity that contracts with Owner for construction of the Project designed by Consultant. |
| CPO | The Chief Procurement Officer of GLWA. |
| Day | A calendar day unless otherwise designated. |
| Deliverables | All work product of the Consultant, including but not limited to Design Documents, Construction Documents, Drawings, Specifications, technical submittals, the Schedule, and any other documents required for submission by the Contract Documents and provided by Consultant to Owner for approval, comment, information, or record. |
| Design Documents | Any work product, report, condition assessment, need assessment, technical memorandum, or other Deliverable produced under this Contract that is not a Construction Document. All documents that manifest the indicative design for the Project or any portion, component or element thereof, including revisions thereto. |
| Drawings | Consultant's work product required to be produced as a part of the Services and consisting of indicative graphic and pictorial documents depicting the design, location, and dimensions of the elements of the Project. |
| Final Payment | The payment made to Consultant upon completion and acceptance of the Services by Owner. |
| General Conditions | Exhibit C of the Contract. |
| Indemnatee(s) | Owner and its directors, officers, employees, agents, and representatives, each an Indemnatee. |
| Invoice | Consultant's request for payment for completed portions of the Services in the form specified by Owner. |
| Notice to Proceed | Written notice from the CPO, or their designated representative, authorizing Consultant to proceed with the Services. The date of commencement of the Services is the date established in the Notice to Proceed. |

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| Owner (or “GLWA”) | The Great Lakes Water Authority, a Michigan municipal authority and public body corporate organized pursuant to Act 233 of 1955, with its principal place of business located at 735 Randolph, Detroit, Michigan 48226, including its officers, agents, representatives, employees, the CPO, and the Contracting Officer. |
| Owner Project Manager | The individual designated as the Contracting Officer’s designee to manage the Services and the related activities in connection with the Project, as authorized in the Contract Documents. |
| Procurement Policy | Owner’s document, entitled “Great Lakes Water Authority Procurement Policy, that establishes the way Owner conducts the process of procuring the goods and services for the business of the organization, as the same may be amended from time to time. |
| Project | The total undertaking described in Exhibit A and the Contract Documents, inclusive of the design and completion of the construction phase, to be accomplished by Consultant which completion of the Services will achieve. |
| Record(s) | All books, ledgers, journals, accounts, documents, and other collected data of Consultant in which information is kept regarding the performance of this Contract. |
| Schedule | A Deliverable consisting of those activities expected to occur to complete the Services. |
| Services | All activities required by and to be performed in accordance with the Contract Documents and necessary or appropriate to fully design, construct, fixture, operate, and maintain the Project. The Services may constitute the whole or a part of the Project. |
| Specifications | Consultant’s work product required to be produced as a part of the Services and consisting of written indicative requirements for materials, equipment, construction systems, standards, and workmanship. |
| Subcontract | The agreement between Consultant and Subcontractor to perform any of the Services. |

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| Subcontractor | A person or entity who has a direct contract with Consultant to perform any of the Services. |
| Sub-Subcontractor | A person or entity who has a direct or indirect contract with a Subcontractor to perform any of the Services. |
| Supplemental General Conditions | Exhibit H of the Contract which, if applicable, supplements and/or modifies, changes, adds to, or deletes provisions of Exhibit C, General Conditions. |
| Task Adjustment | A written instrument signed by Owner and Consultant and approved in accordance with the Procurement Policy, which authorizes a change in the Services and does not result in an adjustment in the Contract Time and/or Contract Price. |

(End Exhibit G – Glossary)

EXHIBIT H
SUPPLEMENTAL GENERAL CONDITIONS

[RESERVED.]