

**ENGINEERING SERVICES AGREEMENT  
\_\_\_\_\_ DRAIN**

**OAKLAND COUNTY, MICHIGAN**

**BETWEEN**

\_\_\_\_\_

**AND**

**THE \_\_\_\_\_ DRAINAGE DISTRICT**

**BUILDING 95 WEST – ONE PUBLIC WORKS DRIVE  
WATERFORD, MICHIGAN 48328-1907**

This Agreement, made and entered into the \_\_\_\_ day of \_\_\_\_\_, between \_\_\_\_\_ ("ENGINEER") and the \_\_\_\_\_ DRAINAGE DISTRICT ("OWNER").

WHEREAS, pursuant to a petition filed with the Oakland County Drain Commissioner in accordance with the provisions of Chapter 20 of Act No. 40 of the Public Acts of 1956, the \_\_\_\_\_ DRAINAGE DISTRICT has been established and is responsible for the construction of the \_\_\_\_\_ DRAIN in the \_\_\_\_\_ of \_\_\_\_\_; and

WHEREAS, the said \_\_\_\_\_ DRAIN (the "Project") shall, in general, consist of the following improvements:



(Insert description of improvements in accordance with Chapter 20 petition/Act 342 project)

### **PROPOSED IMPROVEMENTS:**

1. The installation of an enclosed storm drainage system along the routes described and shown on the enclosed route description and sketch.
- 2.
- 3.

WHEREAS, OWNER has appointed ENGINEER as the Engineering Design Consultant for the \_\_\_\_\_ DRAIN.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, the parties agree as follows:

### **DEFINITIONS**

Wherever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and plural thereof:

1. **Addenda.** Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the Bidding Documents.
2. **Agreement.** This Contract for Engineering Services between OWNER and ENGINEER including all exhibits hereto.
3. **Applications for Payment.** The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
4. **Bid.** The offer or proposal of the bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

5. **Bidding Documents.** The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
6. **Change Order.** A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the effective date of the Construction Agreement.
7. **Construction Agreement.** The written instrument, which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.
8. **Construction Contract.** The entire and integrated written agreement between the OWNER and Contractor concerning the Work.
9. **Construction Cost.** The total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include compensation and costs of ENGINEER or other design professionals and consultants, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER. Construction Cost is one of the items comprising Total Project Costs.
10. **Contractor.** The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.
11. **Contract Documents.** Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) which attached as an exhibit to the Construction Agreement, the notice to proceed, bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all written amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the effective date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.
12. **Contract Price.** The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

13. **Contract Times.** The number of days or the dates stated in the Construction Agreement to: (1) achieve Substantial Completion; and (2) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.
14. **Documents.** Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.
15. **Drawings.** That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
16. **Engineering Work Order.** A document which is signed by ENGINEER and OWNER to authorize an addition, deletion or revision in the services to be performed by ENGINEER under this Agreement, or an adjustment in the compensation to be paid to ENGINEER.
17. **Field Order.** A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contact Price or Contract Time.
18. **General Conditions.** That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.
19. **Laws and Regulations.** Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, authorities and courts having jurisdiction.
20. **Record Drawings.** The Drawings issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders or other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.
21. **Resident Project Representative ("RPR").** The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the site during the Construction Phase. The RPR will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term RPR includes any assistants of RPR agreed to by OWNER. The duties and responsibilities of the RPR are set forth in Exhibit A hereto.
22. **Samples.** Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portions of the Work will be judged.
23. **Site.** Land or areas indicated in the Contract Documents as being furnished by

OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of Contractor.

24. **Shop Drawings.** All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to OWNER to illustrate some portion of the Work. OWNER may then transmit the Shop Drawings to ENGINEER.
25. **Specifications.** That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
26. **Substantial Completion.** The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
27. **Supplementary Conditions.** That part of the Contract Documents which amends or supplements the General Conditions.
28. **Total Project Costs.** The sum of the Construction Cost, allowances for contingencies, the total costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER.
29. **Work.** The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to the Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
30. **Work Change Directive.** A written directive to Contractor issued on or after the effective date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

**SECTION A - ENGINEERING SERVICES**

OWNER does hereby employ ENGINEER and ENGINEER does hereby agree to perform the following services on the terms and conditions hereinafter set forth.

The services to be provided by ENGINEER comprise the professional disciplines and expertise necessary to achieve the Project in the best interest of, and within the amount authorized by, the OWNER for this purpose.

The description of each phase of Engineering Services in the Agreement intends to define, but not exclude, any regular or normal service necessary to accomplish an effective, efficient, and economical Project within accepted requisites and standards of professional practice in the profession.

**ITEM NO. 1: The Preliminary (Study) Phase.**


(Review list of services, modify as appropriate for specific project)

When directed by OWNER, ENGINEER shall proceed with the Preliminary Phase of the Project, which shall include, but not be limited to, the following services:

1. The establishment of the scope of the Project in conjunction with OWNER and the governmental authorities having jurisdiction to approve all or portions of the Project designed or specified by ENGINEER.
2. The study and selection of a cost effective final route and location for the Project that is acceptable to OWNER and the municipalities affected by the construction, which are the following: \_\_\_\_\_.
3. A determination of the basis for design of the Project.
4. An investigation of existing and proposed utilities and other appurtenances for possible Project conflict.
5. A preliminary environmental analysis, as required.
6. Preliminary design calculations, as required, to determine the approximate size of pipe enclosures, ditch cross sections, and volumes of storm water detention to be provided, if applicable, and any other related or necessary calculations.
7. A study and investigation of easement requirements.
8. A determination of the geographical area to be served by the Project.

9. The preparation of an estimate of probable cost for use in budget preparation, which shall include the probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional and related services of ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services considered as part of the Total Project Costs. ENGINEER shall submit its estimate of probable cost for approval by the Drainage Board for the \_\_\_\_\_ Drain.
10. Attendance at meetings with the OWNER, affected municipalities, regulatory agencies and/or homeowner associations, as may be required.
11. Other Preliminary Phase services that (i) should be provided in accordance with professional engineering standards of practice and would be expected of an engineer performing this work competently, and (ii) are reasonably necessary for the Project.

Should ENGINEER determine that there are additional Preliminary Phase services that should be provided that substantially increase the scope of the Preliminary Phase services to be furnished hereunder as part of the Preliminary Phase, ENGINEER shall so notify OWNER in writing and receive prior written approval from OWNER, before proceeding with the provision of such services. No payment, of any nature whatsoever, will be made to ENGINEER, for such additional services, without such prior written or verbal approval by OWNER's Chief Engineer or the Engineer assigned to the Project by OWNER, provided that any verbal approval must be confirmed, in writing, by OWNER, as soon as practicable. Authorization for such services, in accordance with this provision of this Agreement, shall be in the form of an Engineering Work Order, issued by OWNER, stating the scope of the additional services, and the basis for payment.

The findings and recommendations of the ENGINEER determined in the Preliminary Phase of the Project, including schematic layouts, sketches and conceptual design criteria, as may be applicable, including preliminary facility sizing, shall be summarized in the form of a Preliminary Engineering Report. Four (4) copies of the Preliminary Engineering Report, in binder format, shall be submitted to the OWNER prior to proceeding with the Design Phase of the Project.

#### **ITEM NO. 2: The Design Phase.**

(Review list of services, modify as appropriate for specific project)

After completion of the Preliminary Phase of the Project and upon acceptance of the Preliminary Engineering Report by the OWNER, the ENGINEER shall proceed with the Design Phase of the Project. Within \_\_\_\_\_ days of the date of this Agreement, ENGINEER shall complete the following:

1. Select a final route for the proposed drainage improvements, taking into account existing appurtenances, conflicts and underground utilities.
2. Perform all field surveying and topographic work necessary to properly design the Project, including road ditch/culvert improvements as necessary.

3. Prepare Drawings and Specifications to enable taking construction Bids for the Work.
4. Prepare a cover sheet for the construction plans, with geographical area to be served by the Project, route of drainage improvement and location plan included. As appropriate, establish baselines and benchmarks for locating the Work, which in ENGINEER's judgment are necessary to enable Contractor to proceed.
5. Coordinate with the OWNER the selection of a qualified geotechnical consultant to perform the required soils analysis and recommendations, assist the OWNER in negotiating the fee for these services, recommend locations for soil borings and provide survey elevations at boring locations and provide all other necessary information regarding the Project to the geotechnical consultant so that he may perform the required soils analysis. Owner shall directly contract with geotechnical consultant and be responsible for payment of his services.
6. Prepare hydrologic/hydraulic design calculations to support the sizing of the drain to be constructed as part of the Project; calculations must be made part of the construction plans and include, but not be limited to the following: basis of design for facility sizing, hydrologic/hydraulic and detention calculations, drainage areas served, sub-areas, run-off coefficients, anticipated storm flows, in cfs, hydraulic gradients.
7. Prepare a description of the geographical area to be served by the Project, including the acreage contained therein; also provide runoff co-efficients for use by the OWNER in the preparation of apportionments.
8. Advise the OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to the Total Project Costs known to ENGINEER, itemized as provided in Item No. 1, Paragraph 9.
9. Provide sufficient surveying control to enable owner to construction stake the project. Such control shall include the following:
  - a) A set of benchmarks (N.G.V.D. or other agreed upon datum), set at a maximum of 1,000 foot intervals with witnesses and/or coordinate location.
  - b) In all areas where the proposed facility is not easily located from parcel property lines, a traverse line marked with iron stakes and described with angles, bearings and distances shall be established in relationship to the centerline of the proposed facility.
  - c) Where the proposed facility is easily located from existing property lines, sufficient property irons and/or subdivision monuments shall be identified or set to permit locating said facility.
  - d) In all areas along section lines and road centerlines, a centerline alignment shall be provided including stationing, control points with coordinates, centerline data and curve data.

All survey control data provided to owner shall include coordinates for traverse points, property irons, monuments, proposed catch basins, manholes, etc.

10. Investigate the existence of any wetlands that may affect the Project and, if necessary, coordinate with OWNER the selection of a qualified environmental wetlands specialist to perform a wetlands analysis so that any wetlands can be accurately delineated on the plans, assist the OWNER in negotiating the fee for these services, and provide all necessary information regarding the Project to the environmental wetlands specialist so that he may perform the required analysis. OWNER shall directly contract with environmental wetlands specialist and be responsible for payment of his services. If ENGINEER elects to perform the wetland investigation and analysis, ENGINEER shall be paid an additional fee for its services.
11. Make recommendations to the OWNER concerning easement and right-of-way needs, show limits of all easements and easement conditions on the plans and/or specifications, including current sidwell numbers for acreage parcels and lots, lot numbers and street addresses. Surface topography must include all features of natural or man-made origin, subsurface structures and utilities, except house or building connections. The extent of tree and shrub locations, etc. within proposed easements shall be governed by the following conditions:
  - a) In landscaped areas, all trees and shrubs shall be identified, located and physically numbered with a numbered metal tag.
  - b) In undeveloped field areas, where tree cover is sparse, trees shall be identified, located and physically numbered with a numbered metal tag.
  - c) In forested undeveloped areas, the tree area limits shall be outlined, typical tree species and average size shall be identified, and tree coverage density shall be estimated. Further, any tree that is 4" in diameter or larger shall be identified, located and physically numbered with a numbered metal tag.
12. [Provide tree identification and prepare a submittal as required by the City of \_\_\_\_\_'s Woodlands Ordinance in addition to Item 11 as described above.]
13. Provide technical assistance, criteria, written descriptions, and design data for OWNER's use in securing necessary permits from or approvals of governmental authorities such as the Road Commission for Oakland County and Michigan Department of Environmental Quality. For the Project, such permits include:
  - a)
  - b)
  - c)
14. Prepare a soil erosion control plan and sequence of construction.
15. Provide topographic detail with spot elevations or elevation contours as appropriate for project (normally a minimum at two (2) foot vertical intervals, two hundred (200) feet in width, the outside limit being no closer than one hundred (100) feet from the centerline of construction.).
16. Furnish a reasonable number of construction Drawings and Specifications, as required, for all necessary approvals, bidding and actual construction purposes.

17. Assist OWNER in securing Bids and analyzing Bids received, prepare a tabulation of Bids received, make recommendations as to the award of the Construction Contract, and prepare Contract Documents.
18. Provide other Design Phase services that (i) should be provided in accordance with professional engineering standards of practice and would be expected of an engineer performing Design Phase services competently, and (ii) are reasonably necessary for the Project.

Should ENGINEER determine that there are other Design Phase services that should be provided that substantially increase the scope of the Design Phase services to be furnished hereunder, ENGINEER shall so notify OWNER in writing and receive prior written approval from OWNER, before proceeding with the provision of such services. No payment, of any nature whatsoever, will be made to ENGINEER, for such additional services, without such prior written or verbal approval by OWNER's Chief Engineer or the Engineer assigned to the Project by OWNER, provided that any verbal approval must be confirmed, in writing, by OWNER, as soon as practicable. Authorization for such services, in accordance with this provision of this Agreement, shall be in the form of an Engineering Work Order, issued by OWNER, stating the scope of the additional services, and the basis for payment.

Final Drawings and Specifications, or other Construction Documents or Construction Contract Documents submitted by ENGINEER to OWNER for review and approval or to any Contractors for bidding or negotiation, shall be prepared using, ENGINEER's professional judgment and in accordance with the standard of practice in the industry, be complete and unambiguous and in compliance with applicable codes, ordinances, statutes, laws and regulations in effect as of the date of the Agreement, except to the extent expressly and specifically otherwise stated in detail in writing by ENGINEER at the time of such submission. The enactment or revisions of codes, laws or regulations subsequent to the date of this Agreement may be the basis for modifications to ENGINEER's scope of services, times of performance, or compensation. By submitting Final Drawings and Specifications, or other Construction Documents for Construction Contract purposes, ENGINEER acknowledges that ENGINEER has informed OWNER in writing of any tests, studies, analyses or reports that are necessary or advisable to be performed by or for OWNER at that point in time.

ENGINEER shall be responsible for the professional quality, technical accuracy, and coordination of all Drawings, Specifications and design documents relating to ENGINEER's design and used on the Project, regardless of whether such Drawings, Specifications or other design documents are prepared by ENGINEER or by ENGINEER's consultants. If preliminary or design development work has been performed by others engaged by ENGINEER, ENGINEER is nevertheless fully responsible for and accepts full responsibility for such earlier work when ENGINEER performs subsequent phases of the basic services called for under this Agreement, as fully as if the preliminary, schematic and design development work had been performed by ENGINEER itself. ENGINEER shall be responsible for coordination and internal checking of all Drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each Drawing were prepared by ENGINEER. Such review and responsibility does not extend to confirming or checking the accuracy of manufacturer's specifications or product data.

OWNER shall not be responsible for discovering deficiencies in ENGINEER's Drawings, Specifications, or other design documents. At OWNER's election, ENGINEER shall be required to correct all work arising out of ENGINEER's errors or omissions; however, OWNER shall have no obligation to compensate ENGINEER for such corrective services, except to the extent such action is directly attributable to deficiencies in OWNER furnished information.

**ITEM NO. 3: The Construction Phase.**

(Review list of services, modify as appropriate for specific project)

The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractor. If the Project involves more than one prime contract, Construction Phase services may be rendered at different times in respect to the separate contracts.

During the Construction Phase of the Project, ENGINEER shall provide the following services as required during construction:

1. Prepare \_\_\_\_ (\_\_\_) official Construction Contract Documents.
2. Furnish consultation and advice to OWNER during construction.
3. Coordinate and participate in a pre-construction conference prior to commencement of Work at the Site.
4. Assist OWNER in the selection of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials and equipment required by the Contract Documents, Laws and Regulations and ENGINEER shall provide OWNER with an appropriate professional interpretation of the results of all such inspections, tests and approvals. Such construction and field testing includes the testing of soils, asphalt, pipe and concrete.
5. If requested by OWNER, receive and review all certificates of inspections, tests, and approvals required by the Contract Documents, Laws and Regulations. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests. OWNER shall directly contract for such special inspections and tests and be responsible for payment of such services. If ENGINEER elects to perform such special inspections or tests, ENGINEER shall be paid an additional fee for its services and assume responsibility therefor.
6. Prepare required elementary and supplementary sketches to resolve actual field conditions encountered.
7. Review and approve or take other appropriate action with respect to such as detailed construction, erection and Shop Drawings, product data, Samples and other data which Contractor is required to submit, but only for determining (1) compliance with applicable laws, statutes, ordinances, codes, orders, rules and regulations in effect as of the date of this Agreement, and (2) conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequence or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.

8. Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of the Work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents.
9. Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation, recommend disposition of (i) work orders for changes and extras to the Construction Contract and (ii) periodic progress and final payments to the Contractor.
  - a) Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the Work. ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Work (subject to any subsequent adjustments allowed by the Contract Documents), and note the relationship of the payment requested to the schedule of value, work completed and materials and equipment delivered at the Site but not incorporated in the Work.
  - b) By recommending payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of the Work as it is performed and furnished have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in the Agreement and the Contract Documents. Neither ENGINEER's review of the Work for the purpose of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control the Work in progress or the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws and regulations applicable to Contractor's furnishing and performing the Work.
10. Promptly after notice from OWNER that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct an inspection to determine if the Work is Substantially Complete.
11. At the Project's conclusion, prepare and furnish to OWNER two (2) complete sets of reproducible "as-built" drawings, including the geographical area to be served by the Project prepared from field surveyed information provided by OWNER pertaining to final measured quantities, manhole ties, rim elevations and pipe inverts, etc. The "as-built" drawings shall consist of one (1) set of Mylar plan sheets, and one (1) set of compact disk CD(s) compatible to the latest version of Autocad or approved equal and shall be furnished to OWNER within sixty (60) calendar days from the receipt of the survey information.

12. Perform other Construction Phase services that (i) should be provided in accordance with professional engineering standards of practice and would be expected of an engineer performing this work competently, and (ii) are reasonably necessary for the Project.

Should ENGINEER determine that there are other Construction Phase services that should be provided that substantially increase the scope of Construction Phase services to be furnished hereunder, ENGINEER shall so notify OWNER in writing and receive prior written approval from OWNER, before proceeding with the provision of such services. No payment, of any nature whatsoever, will be made to ENGINEER, for such additional services, without such prior written or verbal approval by OWNER's Chief Engineer or the Engineer assigned to the Project by OWNER, provided that any verbal approval must be confirmed, in writing, by OWNER, as soon as practicable. Authorization for such services, in accordance with this provision of this Agreement, shall be in the form of an Engineering Work Order, issued by OWNER, stating the scope of the additional services, and the basis for payment.

**ITEM NO. 4: Construction Surveying Layout, Construction Observation and Resident Project Representative.**

This phase of the work shall be performed by ENGINEER only upon the specific prior written request of OWNER. No payment, of any nature whatsoever, will be made to ENGINEER, for additional work or services, without such prior written approval by OWNER. Authorization for such work or services, in accordance with this provision of this Agreement, shall be in the form of an Engineering Work Order, issued by OWNER, stating the scope of the additional work, and the basis for payment. Those services are as follows:

1. Provide construction surveying layout, including staking and re-staking to establish such lines, points, grades and benchmarks as necessary to locate and control construction in accordance with the construction plans.
2. With the understanding that OWNER has not designated a representative from its own staff to perform a similar observation function, provide the services of a Resident Project Representative ("RPR") and/or inspector(s), on a full time basis, to provide more continuous and extensive observations of the Work. The RPR shall be responsible for continuous, frequent and thorough inspections to provide for the proper progress and quality of the Work in accordance with the construction Drawings and Specifications. Based on the information obtained during such visits and such observations, the RPR shall keep ENGINEER and OWNER informed of the progress of the Work. The duties and responsibilities of the RPR are fully set forth in Exhibit "A" attached hereto.
3. Easement document preparation and negotiation.

**ITEM NO. 5: Engineering Redesign.**

OWNER shall have the right to disapprove any portion of ENGINEER's work on the Project, including, but not limited to, preliminary design phase documents, final design phase documents or Construction Documents, on any reasonable basis, or because in OWNER's opinion, the Construction Cost of such design is likely to render such work or the Project not feasible. In the event that any phase of ENGINEER's work is not approved by OWNER, ENGINEER shall proceed, when requested by OWNER, with revisions to the design work or documents prepared for that phase to attempt to satisfy OWNER's objections. These revisions will be made without adjustments to the compensation provided for hereunder, unless revisions are made to Drawings provided under previous phases, and which were accepted by OWNER, in which case such revision services shall be paid as an Additional Special Service. OWNER may consider ENGINEER's request for an equitable adjustment in compensation where changes to the design of the Project do not result in a change in Construction Cost.

Should there be substantial revisions to the original program after the approval of the design drawings, which changes substantially increase the scope of design services to be furnished hereunder, ENGINEER shall so notify OWNER in writing and receive prior written approval from OWNER, before proceeding with revisions necessitated by such changes. No payment, of any nature whatsoever, will be made to ENGINEER, for additional work or services, without such prior written or verbal approval by OWNER's Chief Engineer or the Engineer assigned to the Project by OWNER, provided that any verbal approval must be confirmed, in writing, by OWNER. Authorization for Engineering Redesign or revisions to the Drawings and Specifications, in accordance with this provision of this Agreement, shall be in the form of an Engineering Work Order, issued by OWNER, stating the scope of the additional services, and the basis for payment.

**ITEM NO. 6: Additional Special Services.**

ENGINEER shall provide Additional Special Services on an as needed basis upon specific prior written request of OWNER. No payment, of any nature whatsoever, will be made to ENGINEER, for additional work or services, without such prior written approval by OWNER. Authorization for such work or services, in accordance with this provision of this Agreement, shall be in the form of an Engineering Work Order, issued by OWNER, stating the scope of the additional work, and the basis for payment. Those services are as follows:

1. Soil investigations, including test borings, related analysis and recommendations.
2. Detailed shop drawings for special structure, mill, shop and/or laboratory inspection of materials and equipment.
3. Land surveys, establishment of boundaries and monuments, and related office computations pertaining to the land acquisition and easement descriptions or for other reasons.
4. Photogrammetry, if the necessity is confirmed by OWNER and by ENGINEER.
5. Additional copies of reports and Contract Documents above the number specified to be furnished herein.

6. Assistance in connection with Bid protests, re-bidding or renegotiating contracts for construction, materials, equipment or services, provided that such assistance is necessitated as a result of some action or inaction on the part of OWNER.
7. Assistance to OWNER for preparation or appearance as an expert witness in litigation arising from the development or construction of the Project unless such services are required due to ENGINEER's negligent acts, errors or omissions.
8. Preparation of applications and supporting documents for government grants or advances for public works projects, i.e. SRF Funding.
9. Environmental studies and/or reports, additional engineering, etc., as may be required by the Michigan Department of Environmental Quality or other governmental entities as part of their permitting process.
10. Any other services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by ENGINEER or its design requirements when such changes are issued as a result of some action or inaction on the part of OWNER, including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports, drawings, specifications, or Contract Documents, or are due to other causes beyond ENGINEER's control.

Notwithstanding anything to the contrary expressed elsewhere in the Agreement, no additional or other engineering services made necessary by any fault or omission of ENGINEER to properly perform its professional engineering services in conformance with the standard of practice of the profession as contracted for with OWNER, shall be compensated as an Additional Special Service under this Agreement. In the event that ENGINEER's negligent acts, errors or omissions are determined by the final and unappealable ruling of a tribunal having jurisdiction of the claims not to be the sole cause for such additional or other engineering services, ENGINEER shall receive compensation only for those services which are not attributable to its negligent acts, errors or omissions.

**SECTION B - OWNER'S RESPONSIBILITIES SECTION B - OWNER'S RESPONSIBILITIES**

In addition to making proper payment for a performed service or an incurred expense, OWNER may provide, at its discretion, upon the request of ENGINEER, information and services as described in this Section. The cost and accuracy of the information provided shall be the obligation of OWNER (subject to any appropriate conditions or qualifications), but the interpretation, evaluation and use in and for the service or the Project, shall be the responsibility of ENGINEER.

The information or services provided shall not, under any circumstances, be a substitute for or relieve ENGINEER of any responsibility or expense for the services or its duties to render services pursuant to this Agreement in accordance with professional engineering standards of practice of the profession.

The OWNER may:

1. Chair any public hearings.
2. Provide information in the form of tests, surveys and reports or in written requirements or by advice and counsel or by consultant or other service. Such information and service may include:
  - a) A prospectus or statement consisting of information regarding the requirements of the Project.
  - b) Existing studies, reports and other available data pertinent to the Project; obtain or authorize ENGINEER to obtain or provide additional reports and data as required; and furnish to ENGINEER services of others required for the performance of ENGINEER's services hereunder.
  - c) Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractors, and such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the monies paid to him under the Construction Contract.
3. Review and comment on submitted reports, plans, Drawings and Specifications, if necessary, and render timely decisions pertaining thereto. The ENGINEER's duties as set forth in the Agreement shall at no time be in any way diminished by reason of any approval by OWNER of the reports, plans, Drawings and Specifications submitted by ENGINEER nor shall the ENGINEER be released from any liability by reason of such approval by OWNER, it being understood that OWNER at all times is ultimately relying upon the ENGINEER's skill and knowledge in preparing its reports, plans, Drawings and Specifications.
4. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform his services.

5. Secure permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
6. Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decisions with respect to materials, equipment, elements and systems pertinent to ENGINEER's services.
7. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, but Owner shall not be responsible for the failure of any Contractor to perform the Work in accordance with the Contract Documents.
8. Furnish or direct ENGINEER to provide other services as may be required.
9. Bear all costs incident to compliance with the requirements of this Section B.

ENGINEER shall be entitled to use and rely upon all such information and services provided by OWNER or others in performing ENGINEER's services under the Agreement. Nothing contained herein shall relieve ENGINEER of its responsibility to appropriately verify any such information received when such verification would be appropriate for ENGINEER in order to perform his duties in accordance with professional engineering standards of practice of the profession.

**SECTION C - COMPENSATION FOR ENGINEERING SERVICES****ITEM NO. 1: Preliminary (Study) Phase Compensation.**

(Modify in accordance with Design Engineer's Proposal)

The fee for services described under Section A, Item No. 1 (The Preliminary Phase), shall be \$ \_\_\_\_\_, without further written authorization. Payment to ENGINEER shall be made when the Preliminary Engineering Report has been accepted by OWNER and upon receipt of Project funds by the OWNER or receipt of the proceeds from the sale of bonds by the OWNER.

**ITEM NO. 2: Design Phase Compensation.**

(Modify in accordance with Design Engineer's Proposal)

The fee for services described under Section A, Item No. 2 (The Design Phase), shall be computed as ninety percent (90%) of the following compensation percentages, as determined from either Curve "A" or Curve "B" as obtained from American Society of Civil Engineers (ASCE) Manual No. 45, applied to the Final Adjusted Construction Cost of the Project, as calculated as follows:

1. Using the said Final Adjusted Construction Cost of the Project, agreed upon appropriate Curve "A" and Curve "B" compensation percentages shall be determined.
2. The Curve "A" percentage shall then be applied to the cost those portions of the project involving special structures such as pumping station, retention treatment basins, meter vaults detention basins, inlet and outlet structures, spillways, flow channels, cunettes, rip-rap and restoration of the basin, etc.
3. The Curve "B" percentage shall then be applied to the remainder of the Project not covered by the Curve "A" percentage.
4. If the Project does not include portions involving special structures, as described above, then only Curve "B" shall apply.

<b>Net Construction Cost</b>	<b>Curve "A" Compensation</b>	<b>Curve "B" Compensation</b>
\$ 100,000	11.63	9.01
200,000	10.25	8.11
500,000	8.52	7.00
1,000,000	7.53	6.22
3,000,000	6.62	5.45
5,000,000	6.42	5.32
10,000,000	6.03	4.97
50,000,000	5.70	4.68

Any intermediate points shall be obtained by straight-line interpolation, rounded off to the nearest two decimal points. Payment to the ENGINEER will not be made until receipt of Project funds by the OWNER or receipt of the proceeds from the sale of Bonds by the OWNER.

Provided that Project funds have been advanced to the OWNER:

1. Monthly progress payments shall be made to the ENGINEER in response to an invoice presented to the OWNER by the ENGINEER. Such monthly progress payments, not to exceed a total of ninety percent (90%) of the total Item No. 2 fee, applied to the preliminary Construction Cost estimate, shall be made within thirty (30) days after the invoice is approved by the OWNER.
2. The remaining portion of the total Item No. 2 fee shall be made to the ENGINEER, if progress payments have been made, or the entire Item No. 2 fee if no progress payments have been made, calculated on the basis of the total Construction Contract bid price of the lowest bona fide Bid accepted by the OWNER when construction Bids have been received, or six (6) months after final construction Drawings and Specifications have been accepted by OWNER, calculated on the basis of the preliminary cost estimate approved by OWNER, whichever occurs first.
3. The final adjusted payment of the total Item No. 2 fee applied to the final adjusted Construction Cost shall be made to the ENGINEER when the final Construction Cost has been determined.

In the event a portion of the Project designed by the ENGINEER is not included in the advertisement for construction bids, the fee shall be computed as the aforementioned ninety percent (90%) applied to the final adjusted Construction Cost of the Project, plus ninety percent (90%) of the ENGINEER's most recent estimate of probable Construction Cost as approved by OWNER of the portion not bid, subject to receipt of Project funds by the OWNER or receipt of the proceeds from the sale of Bonds by the OWNER.

**ITEM NO. 3: Construction Phase Compensation.**

(Modify in accordance with Design Engineer's Proposal)

The fee for services described in Section A, Item No. 3 (The Construction Phase), shall be computed as ten percent (10%) of the compensation percentage determined from either Curve "A" or Curve "B", as obtained from ASCE Manual No. 45, applied to the final adjusted Construction Cost of the Project and calculated as described under Section B, Item No. 2 (The Design Phase). This fee is payable at such times and in such proportions as periodic progress and final payments are made to the Contractor.

**ITEM NO. 4: Compensation for Additional Special Services, Construction Surveying Layout, Construction Observation, and Resident Project Representative.**

(Modify in accordance with Design Engineer's Proposal)

The Additional Fee for any services over and above those described in the Preliminary Phase, Design Phase and Construction Phase sections of this Agreement shall be authorized by written Engineering Work Orders and be paid on the basis of the actual direct wages of ENGINEER's principals and employees engaged directly on the Project, times a multiplier of \_\_\_\_\_. Approved reimbursable expenses shall be billed at ENGINEER's cost plus 10%.

**ITEM NO. 5: Engineering Redesign Compensation.**

(Modify in accordance with Design Engineer's Proposal)

The fee for Engineering Redesign services described in Section A, Item No. 5, to the extent compensable, shall be paid as described in the Engineering Work Order authorizing such services, as follows:

1. If the additional Engineering Redesign is added to the Project prior to receiving construction Bids, and if it involves the addition of an item that increases the estimated Construction Cost of the Project, then ENGINEER shall be compensated as described in Item No. 2 of this Section, governing the compensation for the Design Phase, and Item No. 3 of this Section, governing compensation for construction related services, as a percentage determined from the appropriate compensation curve, applied to the final adjusted cost of the Project, subject to the conditions set forth in Section A, Item No. 5, governing Engineering Redesign.
2. If the additional Engineering Redesign is added to the Project prior to receiving Bids, and does not consist of an item that increases the estimated Construction Cost of the Project, or if the redesign is added after bidding, then ENGINEER is to be compensated when funds are available for the additional work on the basis of actual direct payroll wages times a multiplier of \_\_\_\_\_, subject to the conditions set forth in Section A, Item No. 5, governing Engineering Redesign, and only by written Engineering Work Order.

The OWNER may require ENGINEER to supply copies of supporting cost data and itemized invoices for additional fees.

**SECTION D - ADDITIONAL CONDITIONS****1. No Waiver of Rights/Provision of Legal Defense of Claims**

OWNER's review, approval, acceptance of, or payment for any of the services required under the Agreement shall not be construed to operate as a waiver by OWNER of the rights under the Agreement or of any cause of action arising out of the performance of the Agreement by the ENGINEER. ENGINEER shall be liable to OWNER in accordance with applicable law for all damages to OWNER caused in whole or part by ENGINEER's negligent acts, errors, or omissions in the performance of any of the services furnished under the Agreement which constitutes a breach of this agreement.

Notwithstanding any other provision in this Agreement, no provision in this Agreement is intended, nor shall any such provision be construed, as either waiving or constituting a waiver of any public or governmental immunity afforded to the OWNER, and/or OWNER'S agents, employees, representatives as provided by applicable statutes and/or court decisions.

Except as otherwise provided herein, at no cost to the OWNER, ENGINEER shall assist and cooperate with OWNER in the investigation and defense of any claims which arise in whole or part from the designs prepared by ENGINEER or which are alleged to have occurred in whole or in part as a result of the negligent acts, errors, or omissions of ENGINEER in the performance of any of the services furnished under the Agreement.

In the event of litigation that includes any claim or third-party Claim or counter claim that arises out of, is related to, or is connected with, in whole or in part, ENGINEER's obligations hereunder, or the negligent acts, errors, or omissions of ENGINEER, its agents, consultants, employees or representatives, whether actually or alleged to have occurred, and regardless of whether or not such claim, loss, liability, damage, cost or expense is caused or contributed to, in part, by OWNER, ENGINEER, shall provide a legal defense to OWNER, whether that defense is provided by ENGINEER's insurance carrier or at ENGINEER'S own expense.

Notwithstanding the above, ENGINEER's indemnity obligation for OWNER's attorney fees, only, and not otherwise covered and paid by ENGINEER's professional liability insurance, shall be limited to 15% of ENGINEER's design fee for services under this contract, however, the ENGINEER shall not be obligated to pay any portion of a decision, order or award issued by a final and unappealable ruling of a court having jurisdiction of the Claim(s) to a third party for which the court has determined that the OWNER and/or OWNER's agents, employees, or representatives were negligent or at fault. To the extent that the OWNER is found negligent or at fault, the ENGINEER shall be reimbursed for those costs associated with the defense of the OWNER in a percentage consistent with the OWNER's degree of fault as determined by the court.

## 2. Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. ***For cause,***

- a) By either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- b) By ENGINEER:
  - 1) upon seven (7) days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform services contrary to ENGINEER's responsibilities as a licensed professional; or
  - 2) upon seven (7) days written notice if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.
- c) Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. ***For convenience,***

- a) By OWNER upon seven (7) days written notice, without regard to any fault or failure to perform by any party.

## B. Compensation to Engineer



(Modify in accordance with Design Engineer's Proposal)

1. If the termination is for the convenience of OWNER, an equitable adjustment in the compensation of ENGINEER shall be made, but no amount shall be allowed for anticipated profit or unperformed services. In the event of termination during any phase of the Design Phase services, ENGINEER will be paid for services performed or furnished in accordance with this Agreement through date of termination on the basis of the actual direct wages of ENGINEER's principals and employees engaged directly on the Project, times a multiplier of \_\_\_\_; plus non-payroll expenses at invoice cost.
2. If the termination is due to the failure of ENGINEER to fulfill its contractual obligations, including, without limitation, substandard performance by ENGINEER, or careless, or negligent, or incompetent, or deficient services by ENGINEER, OWNER may take over the work and prosecute the same to completion by contract or otherwise and OWNER shall be compensated by ENGINEER for any losses, costs or additional expenses (including, without limitation, legal fees and expenses and internal engineering time and expenses) it incurs by virtue of termination and alternative completion of the work.

## C. Discontinuance of Services; Delivery of Documents to OWNER

Upon receipt of a termination notice, whether for cause or the convenience of OWNER, ENGINEER shall immediately discontinue all services affected (unless the notice directs otherwise), deliver to OWNER copies of all data, Drawings, Specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by ENGINEER in performing this Agreement whether completed or in process, assign to OWNER any subcontracts, purchase orders or other agreements which OWNER requests, and perform any other services upon termination as required in other provisions of this Agreement.

**3. Cooperation With Successor Engineer**

In the event of a termination under this Agreement, ENGINEER consents to OWNER's selection of another ENGINEER of OWNER's choice to assist OWNER in any way in completing the Project. ENGINEER further agrees to cooperate and provide any information requested by OWNER in connection with the completion of the Project and consents to and authorizes the making of any reasonable changes to the design of the Project by OWNER and such other ENGINEER as OWNER may desire. ENGINEER shall not be held responsible for any changes made to the design of the Project by its successor. Any services provided by ENGINEER which are requested by OWNER after termination shall be fairly compensated by OWNER.

#### 4. Ownership of Documents

- A. Unless ENGINEER is in default under this Agreement, at such time as 90% of full compensation has been paid to ENGINEER, all original design drawings and specifications prepared or created by ENGINEER pursuant to this Agreement or any obligation hereunder, shall become the exclusive property of OWNER. Until such time, original Drawings and Specifications are the property of ENGINEER; however, because the Project is the property of the OWNER, ENGINEER may not use the Drawings and Specifications therefor for any purpose not related to the Project without OWNER's consent. OWNER shall be furnished with such reproductions of Drawings and Specifications as OWNER may reasonably require.
- B. Upon completion of the Work or any earlier termination of this Agreement, ENGINEER will revise Drawings to reflect changes made during construction and it will promptly furnish OWNER with two (2) complete sets of reproducible record prints, as previously specified in this Agreement. Prints shall be furnished, as an Additional Special Service, at any other time requested by OWNER.
- C. All reproductions shall be the property of OWNER who may use them without ENGINEER's permission for any proper purpose relating to the Project, including, but not limited to, additions to or completion of the Project. However, any such use or modification without written verification or adaptation by ENGINEER will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's consultants. OWNER shall defend and hold harmless ENGINEER and ENGINEER's consultants from all claims, damages, losses and expenses arising out of or resulting from such unauthorized use or modifications.
- D. ENGINEER shall have the right to retain reproducible Drawings and Specifications. All work sheets, designs, Drawings, survey notes, field notes, or any documents used in preparation of the contract Drawings and Specifications shall be and remain the property of ENGINEER, who shall retain such data and upon request furnish copies of the same to OWNER for its requirements.
- E. Any computer programs or modifications to a program for the specific benefit of OWNER shall become the property of OWNER. Any and all documentation pertaining to any program or modification for the specific benefit of OWNER, shall be surrendered to and become the property of OWNER.
- F. OWNER shall be provided with a copy of the source code and script for any programs provided which are critical to the operation of the system.
- G. Any computer services or products requiring the use of pre-existing or proprietary computer programs or software of the ENGINEER, shall, upon request, be provided for the OWNER's use in effecting completion of the specific objectives of this Agreement and for use by OWNER in operating and maintaining the Project during its useful life.
- H. Notwithstanding any other provisions of this Agreement, all of ENGINEER's pre-existing or proprietary computer programs or software developed by ENGINEER outside of this Agreement shall remain the exclusive property of ENGINEER.

**5. Insurance**

(Modify in accordance with Attachment "B" and Design Engineer's Proposal)

ENGINEER will, at no cost to the OWNER, obtain and endeavor to maintain for the duration of this Agreement the following insurance coverages with insurance companies licensed to do business in the State of Michigan. The ENGINEER will further endeavor to maintain coverages under claims-made policies for a period of six (6) years following the completion of the project, only if such insurance coverage is commercially available. All such insurance obtained by the ENGINEER shall be non-cancelable by endorsement without thirty (30) days prior to written notice to the OWNER, and shall be evidenced by Certificates of Insurance to be delivered to the OWNER upon execution of this agreement. The ENGINEER will not engage or employ any consultant who does not maintain the insurance coverages referred to in this Agreement. The ENGINEER will endeavor to periodically verify that said consultants are maintaining the insurance coverages required under this Agreement.

- A. Professional Liability/Errors and Omissions Coverage in the minimum amount of \_\_\_\_\_ (\$\_\_\_\_,000,000) Dollars, per occurrence/claim and aggregate, as outlined on Attachment "B".
- B. Commercial General Liability policy (New ISO Designation) in the minimum amount of \$1,000,000 combined single limit per occurrence and aggregate, including contractual liability recognizing this contract.

In the event that ENGINEER and OWNER execute "ADDENDUM TO CONTRACT FOR ENGINEERING SERVICES," wherein OWNER seeks to employ ENGINEER to provide contract administration, construction observation and other services in addition to the services described in this agreement, then the COUNTY OF OAKLAND, THE OAKLAND COUNTY DRAIN COMMISSIONER'S OFFICE, AND THE DRAINAGE DISTRICT, its elected and/or appointed officials employees and agents, shall be named as an additional insureds to this coverage in a form no more restrictive than the current ISO form.

- C. Comprehensive Automobile Liability policy to cover bodily injury and property damage arising out of the ownership, maintenance or use of any motor vehicle owned, non-owned or hired vehicles in the minimum amount of \$1,000,000 combined single limit per occurrence. No fault coverage complying with the statutory requirements of the State of Michigan is also required.
- D. Workers' Compensation Insurance including Employer's Liability to cover employee injuries or disease compensable under the Workers' Compensation statutes of the State of Michigan and the states in which work is conducted under the Agreement, disability benefit laws, if any; or federal compensation acts such as U.S. Longshoremen or Harbor Workers, Maritime Employment, or Railroad Compensation Act(s), if applicable. Self-insurance plans approved by the regulator authorities in the state in which Work on the Project is performed and the State of Michigan are acceptable. Employee's liability coverage shall be in the minimum amount of Five Hundred Thousand (\$500,000) Dollars per occurrence.

## 6. Indemnification

ENGINEER agrees to indemnify and hold harmless the OWNER and OWNER'S agents, employees, against any and all Claims, loss, liability, damages, costs and expenses, including, but not limited to, all reasonable fees and charges of engineers, architects, attorney and other professionals, all internal engineering and other time and expenses incurred by OWNER using its own staff, and all court or other dispute resolution costs, that arise out of and to the extent caused by the negligent acts, errors or omissions of the ENGINEER, its agents, consultants, employees or representatives, regardless of whether or not such claim, loss, liability, damage, costs or expense is caused or contributed to, in part, by a party hereunder. The ENGINEER shall not be required to indemnify or hold harmless the OWNER or other indemnified parties for their own negligence or breach of this agreement.

In this contract, "Claims" means any alleged losses, claims, complaints, demands for relief or damages, suits, causes of action, proceedings, judgments, deficiencies, liability, penalties, litigation, costs, and expenses, including, but not limited to, reimbursement for reasonable attorney fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are imposed on, incurred by, or asserted against the OWNER, or for which the OWNER may become legally and/or contractually obligated to pay or defend against, whether direct, indirect or consequential, whether based upon any alleged violation of the federal or the State constitution, any federal or State statute, rule, regulation, or any alleged violation of federal or State common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and/or whether commenced or threatened.

ENGINEER shall have no rights against the OWNER for any indemnification (e.g. contractual, equitable or by implication), contribution, subrogation and/or any other right to be reimbursed by the OWNER except as expressly provided herein.

## 7. Technical Accuracy

ENGINEER agrees that it shall be responsible for the technical accuracy of its services and documents resulting therefrom and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER furnished information.

## 8. Assignment

ENGINEER shall not assign this Agreement without the written consent of OWNER and ENGINEER shall not unreasonably object to any assignment of this Agreement by OWNER, except to the extent that any assignment is mandated by law or the effect of this limitation may be restricted by law.

## 9. Construction of Document/Governing Laws

If there is a discrepancy between the obligations of the ENGINEER as provided for herein, and those set forth in the General Conditions of the Construction Contract, then the terms of this Agreement shall govern ENGINEER's obligations and responsibilities to OWNER.

Both parties agree that performance under this Agreement will be conducted in compliance with all federal, Michigan, and local laws and regulations. This agreement is made and entered into in the County of Oakland and in the State of Michigan and shall in all respects be interpreted, enforced and governed under the laws of the State of Michigan.

The language of all parts of this Agreement is intended to and under all circumstances shall be construed as a whole according to its fair meaning and not construed strictly for or against any party. Any use of the singular or plural number, any reference to the male, female, or neuter gender(s), possessive or nonpossessive, in this Agreement shall also be deemed to include the appropriate other when the context so suggests or requires.

**10. Alternative Dispute Resolution**

Claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement shall be decided as set forth below:

- A. **Facilitation.** OWNER and ENGINEER shall submit their claims, disputes or other matters in question to a neutral Facilitator selected by the parties who will assist in the resolution of the claim, disputes or other matter. Facilitation is defined as: A process to reconcile parties and settle disputes.
- B. **Non-Binding Mediation.** If OWNER and ENGINEER are unable to settle their claims through facilitation, they shall participate in non-binding mediation. The mediation shall be conducted pursuant to the provisions of the Michigan Rules of Court. The mediation shall be without sanctions. The parties shall select the individual mediators and agree on compensation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first referenced in this Agreement.

WITNESSES:

\_\_\_\_\_ By: \_\_\_\_\_

\_\_\_\_\_ Its: \_\_\_\_\_

WITNESSES: \_\_\_\_\_ DRAINAGE DISTRICT

\_\_\_\_\_ By: \_\_\_\_\_  
John P. McCulloch, Chairperson

\_\_\_\_\_

*Approved to form:*

\_\_\_\_\_  
Oakland County Drain Commissioner's Legal Counsel

**EXHIBIT "A"****Duties, Responsibilities and Limitations of Authority  
of Resident Project Representative**

ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants and other field staff to assist ENGINEER in observing the progress and quality of the Work of Contractor.

Through more extensive on-site observations of the Work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work of the Contractor, observe and monitor the proper progress and quality of the Work, and determine if such Work is proceeding in accordance with the Contract Documents. However, ENGINEER shall not, during such visits or as a result of such observations of the Work in progress, supervise, direct, or have control over the Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures selected by Contractor, nor for safety precautions and programs incident to the Work. While ENGINEER shall not be responsible for the acts or omissions of any Contractor, or any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the Work, ENGINEER shall not knowingly permit the Work of such persons or organizations to deviate from the requirements of the Contract Documents.

The duties and responsibilities of the RPR are specifically described as follows:

**A. General**

RPR is ENGINEER's agent at the Site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site Work shall in general be with ENGINEER and Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of the Contractor. RPR shall generally communicate with OWNER with the knowledge of and under the direction of ENGINEER.

**B. Duties and Responsibilities of RPR**

1. *Schedules:* Review the progress schedule, schedule of Shop Drawings submittals and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
2. *Conferences and Meetings:* Attend meetings with Contractor, such as pre-construction conferences, progress meetings, job conferences and other Project-related meetings, and prepare and circulate copies of minutes thereof.
3. *Liaison:*
  - A. Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assist in understanding the intent of Contract Documents; and assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-site operations.
  - B. Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.

4. *Shop Drawings and Samples:*
  - A. Record date of receipt of Shop Drawings and Samples.
  - B. Receive Samples which are furnished at the Site by Contractor, and notify ENGINEER of availability of Samples for examination.
  - C. Advise ENGINEER and Contractor of the commencement of any work requiring a Shop Drawing or Sample if the submittal has not been approved by ENGINEER.
5. *Review of Work, Rejection of Defective Work, Inspections and Tests:*
  - A. Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
  - B. Report to ENGINEER whenever RPR believes that any Work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
  - C. Verify that tests, equipment and systems start-ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel and that Contractor maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and start-ups.
  - D. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
6. *Interpretation of Contract Documents:* Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
7. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
8. *Records:*
  - A. Maintain at the Site orderly files for correspondence, reports of job conferences, Shop Drawings and Samples, reproductions of original Contract Documents including all Work Change Directives, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract. ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing submittals received from and delivered to Contractor and other Project related documents.

- B. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the job site, weather conditions, data relative to questions of Work Change Directives, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
- C. Record names, addresses and telephone numbers of all Contractors, subcontractors and major suppliers of materials and equipment.

9. *Reports:*

- A. Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- B. Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the work.
- C. Report immediately to ENGINEER and OWNER the occurrence of any accident.

10. *Completion:*

- A. Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.
- B. Observe whether Contractor has performed inspections required by laws, rules, regulations, ordinances, codes, or orders applicable to the Work, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- C. Conduct a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.
- D. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the notice of acceptability of the Work.

C. Limitations of Authority by RPR

Residential Project Representative:

- 1. Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items), unless authorized by ENGINEER and approved by OWNER.
- 2. Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
- 3. Shall not undertake any of the responsibilities of Contractor, Subcontractors, Suppliers, or Contractor's superintendent.

4. Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents or unless absent such advice, any work will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated on the Contract Documents.
5. Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work. However, if RPR observes and recognizes a life-threatening situation arising from the Work, as the OWNER's representative, RPR shall have the authority to stop the progress of the Work to protect the safety of any persons, or to protect against property damage. ENGINEER shall not be responsible for any Contractor delay claims as a result of issuing such directive(s), unless such claims arise out of or relate to a negligent act, error or omission of ENGINEER or its RPR.
6. Shall not accept Shop Drawing or Sample submittals from anyone other than Contractor.
7. Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

**EXHIBIT "B"****Insurance Requirements**

Prior to the commencement of the Agreement, ENGINEER shall purchase and maintain during the term of the Agreement such insurances will protect ENGINEER and OWNER from claims arising out of the Agreement and the Project and performed by ENGINEER, subcontractor(s) of ENGINEER and firm(s) and individual(s) providing materials and services to the ENGINEER. Nothing contained in these insurance requirements is to be construed as limiting the extent of ENGINEER's responsibility for payment of damages resulting from its services under the Agreement.

ENGINEER shall purchase and maintain during the term of the Agreement the appropriate professional liability insurance in accordance with the following requirements, unless otherwise requested by OWNER:

<u>Construction Cost:</u>	<u>Professional Liability/Errors and Omissions Coverage in the minimum amount of :</u>
Under \$3 Million	\$2 Million
Over \$3 Million - Under \$30 Million	\$5 Million
Over \$30 Million/Unique Circumstances	To be determined