

This **AGREEMENT**, hereinafter referenced as "Agreement" or "Contract", is made and entered into this _____ day of _____, 20____ by and between the **County of Oakland** whose address is 1200 North Telegraph Road, Pontiac, MI 48341 by and through its **Water Resources Commissioner, County Agency for the County of Oakland** pursuant to Public Act 342 of the Public Acts of 1939, as amended or _____ Drain Drainage District, by and through its Drainage Board, pursuant Chapter 20 of the Public Act 40 of the Public Acts of 1956, as amended (strike one), hereinafter called the "Owner", and _____, a (Michigan Corporation/Limited Liability Company/ Partnership) whose address is _____, Michigan, hereinafter referred to as "Contractor". In this Contract, either the Owner and/or the Contractor may also be referred to individually as a "Party" or jointly as "Parties."

WITNESSETH

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

1. THE WORK

- A. Contractor shall perform and complete each and every one of the obligations required by the Contract Documents, including, without limitation, furnishing all labor, materials, goods, services and equipment necessary to complete the Project in strict accordance with the Contract Documents. The Contractor shall perform all Work shown and called for on the Drawings and described in the Specifications entitled _____, prepared by _____ who is the Engineer. Contractor acknowledges that there may be items of Work for which the Contractor is responsible to furnish or perform under the Contract Documents that are not shown or specified in the Contract Documents but are necessary for the proper execution, operation and completion of the Work and which are reasonably inferable from the Contract Documents and/or which are required to achieve a fully functional Project. Contractor shall provide all such items of Work as part of the Work without delay in its progress and without any increase in the Contract Times or Contract Price. The Contract Documents are defined in the General Conditions. Terms used in this Agreement shall have the same meaning as those terms defined and used in the General Conditions, which are attached hereto and incorporated herein by reference as if fully restated herein. The priority of Contract Documents is set forth in Article 1 of the General Conditions.
- B. In order to induce the Owner to enter into this Agreement, the Contractor makes the following material representations:
- 1) Contractor has carefully considered all material aspects of the Contract Documents, Work, the Contract Drawings, locality, access routes, availability of materials, and all local conditions and federal, state, local laws and regulations that may affect the cost, progress, performance, or furnishing of the Work;

- 2) Contractor has carefully studied the Project, all real property encompassing and surrounding the Project, all reports of investigations and tests of subsurface and latent physical conditions at the Project or otherwise affecting the cost, progress or performance of the Work;
- 3) Contractor has made or caused to be made all examinations, analyses, schedules, investigations and tests, borings and studies as it deems necessary for the performance of the Work for the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, borings, reports or similar data are required by Contractor for such purposes;
- 4) Contractor acknowledges and agrees that the Contract Times and Contract Price are sufficient in all respects to allow the Contractor to complete the Work in strict accordance with the Contract Documents, including any work inferred therefrom;
- 5) Contractor has given Engineer written notice of all conflicts, errors, omissions and/or discrepancies that it has discovered, or reasonably should have discovered, in the Contract Documents and the written resolution thereof by Engineer, is acceptable to Contractor;
- 6) Contractor acknowledges that the Work, construction, reconstruction, and services will occur during all seasons of the year, including winter and wet weather months and under winter and wet weather conditions; notwithstanding these conditions, Contractor acknowledges that it has informed itself of the weather history of the area of the Site, including without limitation, conditions documented by N.O.A.A. for a 100-year history, and agrees to complete the Work and the Project within the Contract Times without exceeding the Contract Price; and
- 7) Contractor's Proposal is true and accurate in all respects and includes all Work necessary to complete the Project within the Contract Times and without exceeding the Contract Price.

2. THE TIME

- A. Contractor shall be prepared to begin the Work within 10 consecutive calendar days of the execution of the Agreement. Notwithstanding anything to the contrary herein, the Contractor shall not begin the Work unless and until the Owner issues a written notice to proceed ("Notice to Proceed"). The above requirement shall not constitute a representation or guarantee of the date that Owner will issue a Notice to Proceed. Owner shall have _____ calendar days following the execution of this Agreement to issue the Notice to Proceed, during which time the Contractor shall not be entitled to any increase in or change to the Contract Times or Contract Price. The Parties agree the Contract Times are considered essential elements of the Contract Documents.
- B. Contractor agrees to achieve Substantial Completion of the Work within _____ calendar days of the Notice to Proceed and Final Completion of the Work within _____ calendar

days of the Notice to Proceed. Specific interim completion deadlines are addressed in the Contract Documents.

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

Delay Damages which it or any Subcontractor or Supplier may incur as a result of any of the foregoing causes, delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any Force Majeure Event or any act or omission of the Owner, its representatives or agents, it being understood and agreed that their sole and exclusive remedies shall be those set forth herein and the Contract Documents.

3. LIQUIDATED DAMAGES

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

Contractor's liability for) damages suffered or incurred by the Owner as a result of Contractor's defaults unrelated to the late delivery of the Work under the Contract Documents.

4. ASSIGNMENT OF CONTRACT

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

5. THE CONTRACT PRICE

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

6. PAYMENT PROCEDURES

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

payments on account of Unit Price Work will be based on the quantities completed.

B. Applications for Payments

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

Documents G-702 and G-703 or such other forms as the Owner may allow, which shall be certified with a reference to the Federal False Claims Act. The Application for Payment shall reflect all Work completed since the prior Application (if any) and shall meet all other requirements of the Contract Documents. Each Application for Payment must strictly comply with and include all of the following: (1) a notarized Contractor's Declaration (on a form provided by the Owner) declaring that it has not performed any Work, furnished any material, sustained any loss, damage or delay, for any reasons, including soil conditions encountered or created, or otherwise done anything for which it will ask, demand, sue for, or claim compensation from the Owner other than as indicated on the Contractor's Declaration; (2) receipts or other vouchers showing Contractor's payments for materials and labor, including payments to Subcontractors; (3) a current, properly completed notarized Sworn Statement, on the Michigan statutory form, listing each Subcontractor, supplier and laborer having a contract with the Contractor in the current aggregate amount (including adjustments that have been issued as of that date) (Owner reserves the right to require Sworn Statements from Contractor's Subcontractors); (4) Partial Unconditional Lien Waivers and Releases in the form provided by Owner from each subcontractor, supplier and labor identified on Contractor's Sworn Statement, or Subcontractor's Sworn Statement, if requested; (5) written consent of the Contractor's surety; (6) a copy of the then current Project Schedule Update as returned by Engineer with "No Exceptions"; (7) certified payroll reports if, when and as required by Michigan law, and in a form reasonably acceptable to the Owner; (8) Daily Reports for each day covered by the time period relating to the Application for Payment and in the form required by the Contract Documents; and (9) such other evidence requested by Owner to satisfy Owner that the Work for which payment is requested has been completed in conformance with the Contract Documents, and that all amounts which have previously been paid for Work performed have been properly distributed to the various Subcontractors, Sub-Subcontractors, laborer and suppliers. The Contractor's failure to include the documents and information set forth in items (1) through (9) above shall render the Contractor's Application for Payment as invalid and of no effect, until such time as all the Contract requirements for making the application are fully complied with by the Contractor.

- 7) Each month, Contractor, Owner and Engineer shall meet to review and discuss Contractor's draft Application. Contractor is responsible for submitting the draft Application and scheduling the monthly pay application meeting. Following this meeting, the Contractor shall revise its draft Application for Payment in accordance with the comments of the Owner and Engineer.
- 8) Contractor shall submit the revised Application for Payment to the Engineer, together with all other documents required to be submitted with an Application for Payment, covering all Work performed since the proceeding Application for Payment (if any). Contractor must timely invoice for its Work. Contractor shall submit Application For Payment no later than 14 days before a scheduled meeting of the Owner's Drainage Board, if the Work is being conducted for a Drain Board.

- 9) The Application for Payment shall include all accompanying documents and approvals required by the Contract Documents. If the Contractor is not known to be in default of any of its obligations under the Contract Documents, the Application for Payment will be certified and presented by the Engineer to the Owner with a recommendation for approval of the payment. If the Application is untimely, incomplete, incorrect, fails to include the required documentation, schedules, or certifications, or otherwise fails to conform to the requirements of the Contract Documents, it will not be submitted for approval by the Owner.

C. Payment Dates

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

D. Conditions of Payment

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

E. Withholding of Payment

- 1) The Owner may withhold payment or, because of subsequently discovered evidence or subsequent review of the Work or the Contractor's Applications for Payment, invoice detail and/or submittals, may nullify the whole or any part of any payment previously made, to such extent as may be necessary in its opinion to protect the Owner from loss or expense due to any of the following:
 - a) The Contractor fails to properly respond to notices issued by the Owner pursuant to the Contract Documents;

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

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

F. Retainage from Payments

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

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

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

7. FINAL PAYMENT – FINAL ACCEPTANCE

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

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

8. DISPUTE RESOLUTION

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

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

9. MISCELLANEOUS

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

10. GOVERNING LAW

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

11. CAPTIONS

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

12. SEVERABILITY

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

13. NOTICES

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

If to the Contractor:

Name:

Address:

Contract Number:

Email:

If to the Owner:

Name:

Address:

Contract Number:

Email:

With a copy to:

Name:

Address:

Contract Number:

Email:

14. CONTRACT SUBJECT TO ACQUISITION OF FINANCING AND EASEMENTS
(Strike if not applicable)

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

OAKLAND COUNTY WATER RESOURCES
COMMISSIONER, COUNTY AGENCY FOR THE COUNTY
OF OAKLAND OR _____
DRAIN DRAINAGE DISTRICT (**strike one**)

WITNESS

Signature: _____

Print Name: _____

WITNESS

CONTRACTOR:

Signature: _____

Print Name: _____

Title: _____

Approved as to form:

Oakland County Water Resource Commissioner's Legal Counsel

INSTRUCTIONS FOR EXECUTING AGREEMENT

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

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

(signature)

(Corporate Seal)

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

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

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

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