

CONSTRUCTION CONTRACT

between

WAYNE COUNTY

and

[CONTRACTOR]

For

Road Improvements

Related to

[Road]

Control No. [__-__-__]

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GENERAL PROVISIONS

THIS AGREEMENT (“Agreement” or “Contract”), made and entered into by and between the County of Wayne, a body corporate and charter county (hereinafter referred to as the “County”), and [Contractor], a Michigan [corporation/limited liability company] with principal offices at [Address] (hereinafter referred to as the “Contractor”).

For and in consideration of certain payments to be made to the Contractor by the County, hereinafter more particularly described and set forth, the Contractor agrees, in accordance with its’ proposal submitted under Control No. [], general specifications of the County, plans on file in the office of the County Purchasing Division, and supplemental specifications attached hereto, if any, to do the following described work:

ROAD IMPROVEMENT WORK FOR []

Description: []

TOTAL CONTRACT NOT-TO-EXCEED AMOUNT:

[] US Dollars

\$[]

CONTRACT TERM

This Contract is effective upon Wayne County Commission approval, if necessary, and execution by all parties, including the Wayne County Chief Executive Officer, and will terminate on [].

The Contractor agrees to furnish all necessary machinery, tools, equipment and other means of construction; do all the work; furnish all the materials except as otherwise specified herein; and to complete the work herein described in strict accordance with the specifications and in strict conformity with the requirements of this contract, the IFB/RFP issued under Control No. [] and of the other provisions and supplementary specifications as may be attached, at the above not to exceed amount, as authorized by Commission Resolution No. _____ dated _____.

SECTION 101: DEFINITION OF TERMS

101.01 General

Wherever in these Contract Documents the following terms or pronouns in place of them are used, the intent and meaning shall be interpreted as follows:

101.02 Abbreviations

Wherever the following abbreviations are used in these Specifications or on the Plans, they are to be construed the same as the respective expressions represented:

AAN	American Association of Nurserymen, Inc.
AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America, Inc.
ANSI	American National Standards Institute
AREA	American Railway Engineering Association
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWS	American Welding Society
AWWA	American Water Works Association
CRSI	Concrete Reinforcing Steel Institute
FS	Federal Specifications
MDOT	Michigan Department of Transportation
MIOSHA	Michigan Occupational Safety and Health Administration
MMUTCD	Michigan Manual of Uniform Traffic Control Devices (Current Edition)
NCPI	National Clay Pipe Institute
NEMA	National Electrical Manufacturers Association
OSHA	Occupational Safety and Health Administration
PCI	Prestressed Concrete Institute
SAE	Society of Automotive Engineers
SSPC	Steel Structures Painting Council

101.03 Definitions

Terms used in the Contract which are defined in the Contract Documents shall have the meanings designated in the Contract Documents. Words and abbreviations which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Terms which are defined in the Contract Documents shall have their meanings as defined, whether or not such terms are capitalized, unless the context clearly indicates otherwise. In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Contract governs first, then the Special Provisions, then the Supplemental Specifications, then the Project plans and drawings, then the Standard Plans, and then the Standard Specifications. Terms used in the Contract may modify the Invitation For Bid or interpret sections of the Invitation For Bid, including but not limited to the Contract, the Special Provisions, the Supplemental Specifications, the Project plans and drawings, the Standard Plans and the Standard Specifications, along with any other addendum that maybe issued, which are all incorporated herein and are collectively the **Contract Documents**.

Addenda/Addendum. Written or graphic documents issued prior to the execution of the Contract which modify or interpret the Contract Documents, Plans and Specifications, by additions, deletions, clarifications or corrections.

Adjustment. A monetary revision to a Contract Unit Price or to the entire Contract.

Advertisement. The public announcement inviting Contractors to submit proposals for Work to be performed and materials to be furnished.

Angle of Crossing. The acute angle between the intersecting centerline of the road and the stream, highway or railway crossed.

As-Builts (As-Built Drawings) Reproducible construction drawings revised to show significant changes made during the construction process; usually based on marked-up prints, drawings and other data furnished by Contractor to the Engineer..

Base Course. The layer or layers of specified material placed on a Subbase or Subgrade to support a surface course.

Bid. The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

Bidder. Any person, firm or corporation submitting a Bid for the Work.

Bidding Documents. The Plans, together with the Invitation For Bid and all Addenda to same issued prior to receipt of Bid.

Bid Guaranty. The security designated in the Bidding Documents to be furnished by the Bidder as a guaranty of good faith to enter into a Contract for the Work contemplated if it be awarded to him.

Bridge. A structure with a total clear span of more than 6000 millimeters (20 feet) measured along the centerline of roadway face to face of abutments at the bridge seats, and carrying traffic over a stream, water course or opening.

When used in a general sense, the term "bridge" includes grade separation.

Calendar Day. Every day shown on the calendar, beginning and ending at midnight. Unless otherwise designated, the word "day" shall mean Calendar Day.

Calendar Date Contract. A Contract where the Project is required to be physically complete or open to traffic is designated by a date certain.

Calendar Day Contract. A Contract where the time required to physically complete the Project or open it to traffic is designated by the number of Calendar Days.

Certification of DBE Contractors. The process by which the County establishes that a Contractor meets the Federal requirements as a DBE.

Change. Addition to or deletion from a Contract item or condition.

Change Order. A written order signed and issued by the Director of Purchasing and also by any other officer authorized to sign and issue the original Contract, directing the Contractor to make changes which the "Changes (**Increased or Decreased Quantity**)," clause, **103.04**, of the Contract authorizes the County to order without the consent of the Contractor.

Construction Influence Area (CIA). The Project and the area surrounding the Project, as shown in the Contract, that defines the limits of responsibility for traffic control.

Contract/Contract Documents. The written agreement covering performance of the Work, as provided in the Specifications. The Contract shall include the Bidding Documents, Performance Bond, Payment Bond, Standard Specifications, Supplemental Specifications, general and detailed Plans, all supplemental agreements entered into, and all general or Special Provisions pertaining to the Work or materials therefore, and shall be in force until the Work is completed or the Contract terminated. This agreement is a Michigan contract and shall be governed by the laws of the State of Michigan unless expressly stated otherwise. In the event that any provision to this agreement is deemed invalid, the remainder of this agreement shall not be affected thereby.

Contract Authorization. The regulation form prepared by the Engineer as a recommendation for changes or modifications to the Contract.

Contract Item (Pay Item). An item of Work in the Contract.

Contract Modification (bilateral change). Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any Contract accomplished by mutual action of the parties to the Contract.

Contract Time. The time assigned in the Contract to perform and complete all the Work, including authorized extensions of time.

Contract Unit Price. The unit price of a Contract Item.

Contractor. The individual, firm or corporation undertaking the execution of the Work under the terms and conditions of the Contract and acting directly or through its agents or employees; a person or company who agrees to furnish materials and labor to do Work for a certain price. The Contractor must perform work amounting to not less than forty percent (40%) of the original total contract price.

Controlling Operation. The operation that, if delayed at the time of consideration, would delay the opening to traffic or completion of the entire project. The operation may be either on or off the job site. The size of the operation is not a factor.

Coordination Clause. A clause in the Contract that requires the Contractor to coordinate construction activities with other agencies, utilities or Contractors.

Culvert. A structure, not classified as a bridge, carrying traffic over a stream, water course or opening.

Design Professional. The County professional staff or the person, firm or corporation with whom the County entered into a Contract with to provide professional advice and consultation concerning the design and construction of the Project.

Disadvantaged Business Enterprise (DBE). In connection with a contract which is funded in whole or in part from state or federal government sources, a business which has been certified as a disadvantaged business enterprise pursuant to the rules and regulations of such governmental source. For purposes of this Contract, DBE includes small business enterprises (SBE), minority business enterprises (MBE), and women business enterprises (WBE) as defined in the section 120.251 of the Wayne County Code. The DBE must have a certificate evidencing that status issued by Wayne County Human Relations division or such other form accepted by Wayne County Human Relations.

Earth Grade. The completely graded roadway before placing of subbase, base course or surfacing material.

Engineer. The Director of Engineering for the Wayne County Department of Public Services, the

Assistant Director of Engineering, their duly designated representatives, or the Engineer designated by the County.

Final Completion. The point where the Contractor's obligations under the Contract are complete and accepted by the Owner and final payment becomes due and payable. Contractor shall achieve Final Completion within 60 days of Substantial Completion.

Extension of Time. Additional Contract time authorized by the County in writing.

Grade Separation. A structure which provides for highway traffic to pass over or under another highway or the tracks of a railway.

Highway. The Right-of-Way and all the facilities which have been or may be constructed therein for the use and benefit of the traveling public.

Inspector. A designated representative of the Engineer assigned to make any or all necessary inspections of the Work performed and materials furnished by the Contractor.

Invitation For Bid. The principle County document which together with the Drawings sets forth the general and project specific information needed by a Contractor in order to submit a Bid. It includes the notice of advertisement, the itemized bid sheets, Specifications and order pertinent Bidder forms and instructions.

Laboratory. The testing laboratory of the County, or any other testing laboratory that may be designated or approved by the Engineer to inspect and determine the suitability of materials.

Labor dispute. A controversy between the Contractor and the Contractor's employees, union, bargaining agents, suppliers, or suppliers' bargaining agents, or between unions which results in a Work stoppage.

Local Traffic. Traffic that has origin or destination within the CIA.

Major and Minor Items of Work. All items having an original value equal to or greater than five percent (5%) of the original Contract amount shall be considered a major item or items. All other original Contract Items are considered as minor.

Maximum Unit Weight or Maximum Density. The value of the weight per unit volume established for material.

Notice to Proceed. Written notice to the Contractor to begin the Contract Work. When applicable, the notice will include the starting date of the Contract Time.

Pavement Structure. All combinations of Subbase, base course, and surface course, including shoulders, placed on a Subgrade.

Payment Bond (Lien Bond). The bond executed by the Contractor and his Surety (upon forms provided by the County) guaranteeing the payment of all labor and material claims in connection with the Work as provided by law.

Performance Bond. The bond executed by the Contractor and his Surety (upon forms provided by the County) guaranteeing performance of the Work in accordance with the intent of the Plans and Specifications and the terms of the Contract as provided by law.

Plan Grade. Vertical control grade shown on Plans.

Plan Quantity. The original Contract quantity of an item of Work.

Plans. County approved drawings which show the scope, extent and character of the construction Work to be furnished and performed by the Contractor and which have been prepared or approved by the Design Professional and are referred to in the Bidding Documents. Shop drawings are not Plans as so defined. Plans may be in electronic format.

Progress Clause. A part of the proposal stating starting, all intermediate and completion dates, and/or number of work days, and other restrictions or conditions.

Project. The total construction of which the Work to be provided under the Contract Documents may be the whole, or part as indicated elsewhere in the Contract Documents.

Project Limits. The physical limits given in the Contract showing the points of beginning and ending of the Work included in the Project.

Proposal. A Bidder's written offer to perform Work at quoted prices.

Qualified Products List. A listing of specific materials which have been pre-qualified for use on Projects and is contained in the Materials Sampling Guide.

Right-of-Way. A general term denoting land, property or interest therein acquired for or devoted to a highway, as shown on the Plans.

Roadbed. That portion of the Roadway between the outside edges of the finished shoulders, or the outside edges of berms of curbs, gutters, when constructed.

Roadside. That portion of the Right-of-Way outside of the Roadway.

Roadway. That portion of the Right-of-Way required for construction of the road, limited by the outside edges of slopes and including ditches, channels, and all structures pertaining to the road.

Seasonal Limitation. The time during which construction of Work items will be suspended unless otherwise specified in the Contract.

Shoulders. That portion of the Roadbed from the outside edges of the surfaced area to the inside edges of the slopes of ditches in cuts or top of slopes in fills.

Sidewalk. That portion of the roadway primarily constructed for pedestrian use.

Special Provisions. The specific clauses setting forth conditions or requirements peculiar to the Project under consideration, covering Work and materials involved in the proposal and estimate which are not thoroughly or satisfactorily stipulated in the Standard Specifications or Supplemental Specifications.

Specifications. The Standard Specifications, Supplemental Specifications, Special Provisions, and all written or printed agreements and instructions pertaining to the method and manner of performing the Work, or to the quantities, or the qualities of the materials to be furnished under the Contract.

Whenever reference is made to standards of AASHTO, ASTM, or other Standards as specified in Subsection 101.02, titled "Abbreviations", it shall be understood that the Specification, or method, current at the date of advertisement for Bids shall apply. Current ASTM Specifications, or methods, shall be either Standard or Tentative Standard Specifications or methods, but shall not include Tentative Revisions of ASTM Standards which are printed with a view of eliciting criticism. Current AASHTO Specifications shall mean Standard Specifications or Standard Methods of Test but shall not include Interim Specifications or

Methods. AASHTO Interim Specifications or Interim Methods of Test shall apply only when specifically named.

Standard Plans. Drawings approved for repetitive use, showing details to be used where appropriate. The Standard Plans that apply to the Project will be designated in the Contract.

Standard Specifications. All provisions and requirements contained in the 2012 edition of the Michigan Department of Transportation Standard Specifications for Construction.

Structure. A Bridge, Grade Separation, Culvert, head wall or retaining wall. When used in the general sense, the term "structure" includes catch basins, manholes, inlets and building structures.

Subbase. The layer of specified material placed on the Subgrade as a part of the pavement structure.

Subcontract. An agreement to execute a part of the Contract Work made between the Contractor and an individual, firm or corporation having a direct Contract with the Contractor or with any other Subcontractor for the performance of a part of the Work on the Project.

Subcontractor. An individual, firm or corporation having a direct Contract with the Contractor or with any other Subcontractor for the performance of a part of the Work on the Project.

Subgrade. That portion of the earth grade upon which the Subbase, base course or the surface course, including curb and gutter, are to be placed.

Substantial Completion. The point at which construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project for the use for which it is intended. This occurs when (a) the portion of the Work is designated in a Certificate of Substantial Completion prepared by the Engineer, (b) appropriate public authorities authorize the occupancy or use, and (c) occupancy or use is authorized by all applicable local, state, and federal laws. The date of Substantial Completion shall be established by a certificate of Substantial Completion signed by the Owner and Contractor. The Certificate shall list the items to be completed or corrected, and establish the time for their completion and correction within the time frame for the Date of Final Completion.

Substructure. All of that part of a Bridge structure below the bridge seats or below the skewbacks of arches, including back walls, wingwalls and wing protection railings, except back walls designed integrally with the Superstructure.

Superintendent. The executive representative designated by the Contractor to be present on the Project during the progress of the Work; who shall be the authorized representative of the Contractor and who shall receive and fulfill instructions from the Engineer, and supervise and direct the operations of the Contractor or Subcontractors.

Superstructure. All of that part of a Bridge structure above bridge seats or skewbacks of arches not classified as Substructure.

Supplemental Specifications. Special written or printed clauses supplemental to or superceding the Standard Specifications setting forth requirements peculiar to the specific Work included in the Contract.

Surety. The individual or corporate body which is authorized to do business in the State of Michigan and which is bound with and for the Contractor for the acceptable performance of the Contract and for the payment of all lawful debts incurred in fulfilling the Contract.

Surface Course. The top layer of pavement structure.

Temporary Road. A temporary road includes all Roadways, Culverts and Structures necessary to facilitate the movement of Highway and pedestrian traffic around a construction operation until such time as the traffic may use the permanent route.

Temporary Route. An existing road over which traffic is temporarily diverted.

Temporary Structure. A temporary Bridge, Culvert or Grade Separation required to maintain Highway and pedestrian traffic during the construction or reconstruction of a Bridge, Grade Separation or Culvert. The temporary structure shall include the necessary earth approaches, surfacing and guard rail thereto.

Traffic Control Devices. Signs, signals, lighting devices, barricades, delineators, pavement markings, traffic regulators and all other equipment for protecting and regulating traffic in accordance with the MMUTCD, unless otherwise specified in the Contract.

Traffic Lane. The portion of the traveled way used for the movement of a single line of vehicles.

Traffic Regulator. A person assigned to direct traffic, dressed and equipped as specified in the MMUTCD.

Traveled Way. The portion of the roadway designed for the movement of vehicles, exclusive of shoulders and auxiliary companies.

Utility. Properties of railway, telegraph, telephone, water, sewer, electric, gas, petroleum, cable television and similar companies.

Wayne County Code. The complete codification of the general and permanent ordinances of the County of Wayne, Michigan, copies of which can be found at the Purchasing Office, 500 Griswold Street, Detroit, MI 48226.

Work. The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work includes and is the result of performing or furnishing labor and furnishing and incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract Documents, Change Orders, Contract Modifications, and any other documents upon which Work is performed on the Contract.

Work Day Contract. A Contract where the time required to physically complete the Project or open it to traffic is designated by the number of work days.

Working Day. Any day when, as determined by the Engineer, it is possible for the Contractor to effectively carry out Work on the Project.

Working Drawing(s). Supplemental design sheets or similar data that the Contractor may be required to submit to the Engineer. Examples of these include, but are not limited to, stress sheets, shop drawings, erection plans, falsework plans, framework plans, cofferdam plans, and bending diagrams for reinforcing steel.

Work Order. A written order by the Engineer requiring performance by the Contractor.

SECTION 102. SURETY AND INDEMNIFICATION

102.01 Bonds Required

The Contractor has furnished a satisfactory Performance Bond executed by the Contractor and its Surety (upon forms provided by the County) guaranteeing performance of the Work in accordance with the intent of the Plans and Specifications and the terms of the Contract as provided by law.

The Contractor has furnished a satisfactory Payment Bond executed by the Contractor and its Surety (upon forms provided by the County) guaranteeing the payment of all labor and material claims in connection with the Work as provided by law.

If, in the opinion of the County of Wayne, the financial position of the Surety shall no longer serve the best interest of the County and the public is no longer adequately protected, the County may require the Contractor to provide a new acceptable Surety. The Contractor shall not be reimbursed for substitution of the new Surety.

102.02 Indemnification

To the fullest extent permitted by law, the Contractor hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever (including death resulting therefrom) to all third persons, whether employees of any tier of the Contractor or otherwise, and to all real or personal property of third parties, and for all environmental claims, liabilities, demands, obligations, and actions at law and equity of third parties and for all other economic losses, including, but not limited to, loss of use and loss of revenue of third parties caused by, resulting from, arising out of or occurring in connection with Contractor's representations, performance or obligations under this Contract, or in preparation for the services to be provided under this Contract, or any extension, modification, or amendment to the services provided by Change Order, Contract Modification or otherwise, or violation of any Environmental Law or improper use of Hazardous Materials. The Contractor shall indemnify, defend and hold harmless the County from and against all such liability, damages, obligations, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants), excepting claims arising solely from the gross negligence of the County. Nothing in this Section, or elsewhere in this Contract, shall be deemed to relieve the Contractor of its duty to defend the County, as specified herein, pending a determination of the respective liabilities of the Contractor and the County, by legal proceeding or agreement. The County will cooperate with the Contractor in the defense against the suit. In no event shall the Contractor make any admission of guilt or liability on behalf of the County without the County's prior, written consent. Contractor's obligation to indemnify under this Article arises whether the damage or injury is caused by Contractor and/or any of its subcontractors or agents or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable.

For purposes of this Article, the term "County" includes the County of Wayne and all other associated, affiliated, or subsidiary agencies, branches, divisions, or departments, now existing or to be created, and their respective agents, employees, officers, directors and elected officials.

Contractor's indemnity obligation applies irrespective of whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, or other tort. This indemnity survives delivery and acceptance of all services provided under this Contract.

If Contractor provides services to County on County's premises, Contractor will examine the premises to determine whether they are safe for such services and will advise County promptly of any situation it deems to be unsafe. Contractor exclusively shall be responsible for, shall bear, and shall relieve County from liability for all loss, expense, damage or claims resulting from bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person or person, or on account of damage to or destruction of property, including that of County, arising out of, or in connection with the performance of any services on County's premises except that Contractor shall not be responsible for or relieve County from

liability for claims arising solely from the gross negligence of the County.

Contractor's employees, subcontractors and agents (a) will not possess, use, sell or transfer illegal drugs, medically unauthorized drugs or controlled substances, or unauthorized alcohol, and will not be under the influence of alcohol or drugs on County's premises and (b) must comply with the County's Administrative Personnel Order 1-2001 (a copy of which may be obtained from the County) prohibiting, among other things, the carrying of firearms, concealed or not, on County's premises.

All royalties or other charges for any Contractor provided patent, copyright, trademark, trade secret, or other proprietary right to be used in the performance of the Services shall be considered as included in the price of the Services. Contractor warrants that any products sold or processes used in the performance of this Contract do not infringe upon or violate any patent, copyright, trademark, trade secret or any other proprietary rights of any third party. If a third party makes a claim against the County, the County must promptly notify the Contractor. The Contractor must defend the claim in the name of the County, at the Contractor's expense. The County will cooperate with the Contractor and/or its suppliers in the defense against the suit. In no event shall Contractor make any admission of guilt or liability on behalf of the County without the County's prior, written consent. The Contractor must indemnify the County against any loss, cost, expense or liability arising out of the claim, whether or not the claim is successful.

If the County's use of any portion of the products or documentation provided by Contractor as part of its Services under this Contract is enjoined by a court of competent jurisdiction, Contractor shall at its option and expense and within five (5) days of the enjoinder:

- a) Procure for the County the right to use such infringing portion;
- b) Replace such infringing portion with a non-infringing portion providing equivalent functionality; or
- c) Modify the infringing portion so as to eliminate the infringement while providing equivalent functionality.

Contractor may delegate its responsibilities under this Article to the manufacturer of the allegedly infringing product, provided Contractor has received the advance, written consent of the County. Such consent will not be unreasonably withheld or delayed.

Contractor and anyone directly or indirectly employed or otherwise retained by it shall (a) comply with all Environmental Laws in connection with the performance of this Contract and (b) not use any Hazardous Materials in connection with the performance of the Contract in such manner as would violate any Environmental Law or would cause any damage or risk of any damage to the environment, or in such manner as to leave any residue which could be hazardous to persons or property or cause liability to the County. The indemnity obligations of this Article shall apply to any and all losses, injuries, claims, actions (at law or in equity), proceedings, liabilities, demands, obligations, fines, penalties, cost and expense, including legal fees and disbursements, resulting from, arising out of or occurring in connection with the Contractor's violation of this Section.

In the event that any claim for damages is made, asserted or threatened against the County and/or its officers, agents, employees or elected officials and/or a lien is recorded against the County's property as a result of the Contractor's failure to pay for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Services to be provided under this Contract, upon written notice, the County may withhold from any payments due or to become due to the Contractor under this Contract an amount sufficient, in its judgment, to (1) satisfy, discharge, and/or defend against any such claim or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and/or (3) compensate the County for and

indemnify and hold it harmless against any and all losses, liability, damages, costs and expenses, including legal fees and costs, which may be sustained or incurred in connection therewith. If the amounts withheld under the Contract are insufficient to compensate the County for its losses, damages, costs and expenses, the County may require the Contractor to make immediate payment of any such deficiency or offset such deficiency against the compensation to be paid the Contractor in any concurrent, successive or future contracts between the parties.

In furtherance of but not in limitation of the indemnity provisions in this Contract, the Contractor hereby expressly and specifically agrees that its obligation to indemnify, defend and save the County harmless as provided in this Contract shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under worker's compensation laws.

The Contractor further agrees that this indemnity does not constitute or act as a waiver of any governmental immunity the County, its agencies, officers, employees, agents or elected officials enjoy under applicable statutory or common law.

102.03 Waiver of Subrogation

The Contractor shall waive any rights of subrogation for personal injury or property damage against the County of Wayne, its employees and agents arising from this Contract. In the event of any payment by any insurer of the Contractor under any policy of insurance, the insurer of the Contractor shall not be subrogated to any of the Contractor's rights of recovery therefore against the County of Wayne, its employees and agents; and the Contractor shall neither execute nor deliver instruments and papers nor do anything whatever to secure any such rights for the insurer of the Contractor. The Contractor shall do nothing after loss to secure such rights for the benefit of the insurer against the County of Wayne, its employees and agents. The Contractor waives any and all rights of recovery against the County of Wayne, its employees and agents for insured losses occurring to any property insured by the Contractor arising from this Contract.

The County of Wayne shall not, under any circumstances, be liable to the Contractor or any person for any personal injury or property damage occasioned by any defect or malfunction of equipment or property, or from the escape of steam or water, or for any damage or injury occasioned by water or ice being on the premises or Work site or coming from any source. The Contractor shall be solely responsible for providing all services and products arising from this Contract in a safe and proper fashion as specified in the section "Protection of Persons and Property."

The Contractor will be solely and completely responsible for conditions of the job site, including safety of all persons and property during the performance of the Work. This requirement will apply continuously and not be limited to normal Working hours.

The Contractor shall furnish such watchmen, guards, fences, warning signs, lights and walkways, and shall take all other precautions as shall be necessary to prevent damage to persons or property. All structures and improvements in the vicinity of the Work shall be protected by the Contractor, and if such property is damaged, injured or destroyed by the Contractor, his employees, Subcontractors, or agents, it shall be restored to a condition as good as when he entered upon the Work.

The safety provisions of applicable laws, including but not limited to building and construction codes, shall be observed. Machinery, equipment, and all hazards shall be guarded (or hazards eliminated) in accordance with the safety provisions of the latest edition and any supplements thereto of the Manual of Accident Prevention in Construction, heretofore published by the Associated General Contractors of America, to the extent that such provisions are not in contravention to applicable law.

The duty of the Engineer to conduct construction inspections of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on or near the

construction site or sites.

102.04 Insurance

a) Insurance Required of the Contractor: Prior to commencement of the Work, the Contractor shall purchase and maintain and ensure that any Subcontractor hired by the Contractor purchases and maintains, during the term of the Project such insurance as will protect him/her, the County, and the Engineer from claims, demands and lawsuits arising out of the Work described in this Contract and performed by the Contractor, Subcontractors(s), or Sub-Subcontractors. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor or any of its Subcontractor's responsibility for payment of damages resulting from his/her operations under this Contract. The Contractor shall advise all insurance companies to familiarize themselves with the conditions and provisions of this Contract dealing with waiver of subrogation, insurance and indemnification, and failure of the Contractor to so notify the aforesaid insurance companies shall in no way relieve these aforesaid insurance companies from their obligation under this Contract.

If the County of Wayne or the Engineer shall determine that the insurance requirements contained in this Contract are no longer sufficient to protect the County of Wayne, the County of Wayne or the Engineer may require the Contractor to obtain additional insurance. The Engineer and the Contractor shall agree upon the price or sum for this additional insurance which shall not be greater than the price that the Contractor pays for the aforesaid additional insurance.

The insurance shall provide that the inclusion of more than one corporation, person, organization, firm or entity as a named insured or an additional insured in the policy shall not in any way affect the rights of any such corporation, person, organization, firm or entity either as respects any claim, demand, suit or judgment made or brought by or in favor of any other named insured or additional insured, or by, or in favor of any employee of such other insured or additional insured. This policy shall insure each such corporation, person, firm or entity in the same manner as though a separate policy had been issued to each; but nothing herein contained shall operate to increase the insurance company's or insurance companies' liability as set forth elsewhere in this policy beyond the amount or amounts for which the insurance company or insurance companies would have been liable if only one person or interest had been named as insured.

The Contractor shall purchase and maintain and ensure that any Subcontractor hired by the Contractor purchases and maintains the following insurance:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than **\$5,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Contract or the general aggregate limit shall be twice the required occurrence limit.
2. Umbrella or Excess Liability Policy in an amount not less than **\$3,000,000**. Umbrella or Excess policy wording shall be at least as broad as the primary or underlying policy(ies) and shall apply both to the Contractor's general liability and to its automobile liability insurance and shall be written on an occurrence basis. The County, officials, employees and others as

may be specified in any "Special Conditions" shall be named as an additional insured under this policy.

3. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 {hired) and 9 (non-owned), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
4. Workers' Compensation insurance as required by the State of Michigan, with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease.
5. Professional Liability (if Design/Build) Insurance appropriate to the Contractor's profession, with limits no less than **\$3,000,000** per occurrence or claim, **\$3,000,000** aggregate.
6. Builder's Risk (Course of Construction) insurance utilizing "All Risk" (Special Perils) coverage form, with limits equal to the completed value of the project and no coinsurance penalty provisions.
7. Contractors' Pollution Legal Liability and/or Asbestos Legal liability and/or Errors and Omissions (if project involves environmental hazards) with limits no less than **\$1,000,000** per occurrence or claim, and **\$2,000,000** policy aggregate.

If the Contractor maintains higher limits than the minimum insurance coverage required in **Section 102.04(a)**, the Contractor shall maintain the coverage for the higher insurance limits for the duration of this Agreement.

b) Additional Insured Status. The County, its officers, officials, employees, volunteers, and others as may be specified in any "Special Conditions" shall be additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 1 0 11 85 or both CG 20 1 0 and CG 20 37 forms if later revisions used).

c) Primary Coverage. For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

d) Notice of Cancellation. Each insurance policy shall state that coverage shall not be canceled, except with notice to the County.

e) **Waiver of Subrogation. Contractor grants to the County a waiver of any right to subrogation which any Insurer of the Contractor may acquire against the County by virtue of the payment of any loss under such Insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.**

f) **Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.**

g) All insurance must be effected under valid and enforceable policies, issued by recognized, responsible insurers qualified to conduct business in Michigan which are well-rated by national rating organizations. All companies providing the coverage required shall be licensed or approved by the Insurance Bureau of the State of Michigan and shall have a policyholder's service rating no lower than A: VII as listed in A.M. Best's Key Rating guide, current edition or interim report.

h) **Claims-made Policies. If any of the required policies provide coverage on a claims-made basis:**

1. The Retroactive Date must be shown and must be before the date of this Agreement or the date the Contractor starts to perform the services.

2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of this Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to this Agreement's effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Agreement work.

i) **Verification of Coverage. Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Article. The County shall receive and approve all certificates and endorsements before the Contractor begins providing services. Failure to obtain the required documents prior to commencement of services shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by the Article, at any time.**

j) **Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance satisfying all the stated requirements, and Contractor shall ensure that the County is an additional insured on insurance required from subcontractors.**

- k) Special Risks or Circumstances. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- l) The Contractor must submit certificates evidencing the insurance to the Risk Management Division, 500 Griswold Street, 14th Floor, Detroit, Michigan 48226, at the time the Contractor executes an agreement with the Township, and at least fifteen (15) days prior to the expiration dates of expiring policies.
- m) Surety Bonds. The Contractor shall provide the following Surety Bonds: 1) Bid bond; 2) Performance bond; 3) Payment bond; 4) Maintenance bond. The payment bond and the performance bond shall be in a sum equal to the contract price. If the performance bond provides for a one year warranty a separate Maintenance Bond is not necessary. If the warranty period specified in the contract is for longer than one year a Maintenance Bond equal to 10% of the contract price is required. Bonds shall be duly executed by a responsible corporate surety, authorized to issue such bonds in the State of Michigan and secured through an authorized agent with an office in Michigan.

SECTION 103. SCOPE OF WORK

103.01 Intent of the Plans, Specifications and Contract

The intent of the Plans, Specifications and Contract is to provide for the completion of the Work in substantial compliance with the details as shown thereon and as described herein. The Contractor shall furnish all labor, materials, equipment, tools, transportation and necessary supplies, and shall perform all operations required to complete the Work in accordance with the Specifications, and the lines, grades and cross-sections provided for on the Plans, by Change Order or by Contract Modification.

The Contractor shall have the affirmative responsibility to carefully study and compare the Contract Documents with each other and with information furnished by the County. The Contractor shall have the responsibility to immediately report to the County errors, inconsistencies or omissions discovered. If the Contractor performs any construction Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the County, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

103.02 Construction Schedule

The construction schedule or critical path method (CPM) as required in the Invitation For Bid shall be submitted, prior to the pre-construction conference, for review and approval by the county Engineer. Updated construction schedules shall be supplied to the County with each application for payment.

An updated construction schedule will always be supplied when any extension of the Contract Time has been granted by the County. Failure to provide any requested update of the construction schedule is grounds for termination.

The Contractor shall prepare and keep current, for the County's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the County reasonable time to review the submittals.

Approval by the Engineer of any construction schedule indicating completion of the Work in less time than allotted by the Bid forms shall not be construed as an acknowledgment, either express or implied, that the Work can be completed within the time shown on this schedule, and shall not under any circumstances give rise to a cause of action for damages by the Contractor.

103.03 Estimate of Quantities

The quantities as shown in the Bid forms may be approximate and are given only as a basis of calculation for comparing Bids and awarding Contracts. The County does not guarantee that the actual quantities involved will correspond with the estimate.

103.04 Changes (Increased or Decreased Quantities)

The Engineer may, at any time, direct changes in quantities and alterations in the Work as are necessary to satisfactorily complete the Project. Such changes in quantities shall not invalidate the Contract or release the Surety, and the Contractor shall perform the Work as altered.

When a major item of work is increased in excess of one hundred twenty-five percent (125%) or decreased below seventy-five percent (75%) of the original Contract quantity an Adjustment, excluding anticipated profit, shall be negotiated to the Contract. The basis for the Adjustment shall be agreed to prior to the performance of the Work. If the basis cannot be agreed upon, then an Adjustment will be made either for or against the Contractor in such amount as the Engineer may determine to be fair and equitable, subject to the provision of Subsection 103.08, titled "Pricing Adjustments". The allowances for increases in quantity shall apply only to that portion in excess of one hundred twenty-five percent (125%) of the original Contract Item quantity, or in the case of decrease below seventy-five percent (75%), to the actual amount of Work performed.

103.05 Modifications (Extra Work)

If, during the performance of the Contract, it shall become necessary or desirable for the proper completion of the Work to order modifications to the Work or material furnished, which are not susceptible to classification under the schedule of prices Bid, the Contractor shall, if authorized in writing by the Engineer, approved by the Director of the Department of Public Services or his/her designee and if signed by the Director of Purchasing or his/her designee, do and perform such Work and furnish such materials. The Engineer shall order the Contractor to complete the work and an equitable adjustment will be authorized as provided in Subsection 103.08, titled "Pricing Adjustments."

103.06 Alteration in Character of the Work

Should the Contractor encounter or the Engineer discover, during the progress of the Work, physical conditions at the site differing materially from those shown on the Plans and Proposal or unknown physical conditions of a nature differing materially from those generally recognized as Work of the character provided for in the Contract, the Engineer shall be promptly notified in writing by the Contractor before conditions are disturbed. The Engineer will promptly investigate the conditions, and if he finds that they materially differ and cause an increase or decrease in the cost of the Contract, an equitable adjustment will be authorized as provided in Subsection 103.08, titled "Pricing Adjustments". Unless such alterations and increases or decreases materially change the character of the Work and the cost thereof, the altered Work will be paid for at the Contract Unit Prices. If, however, the character of the Work and the unit costs thereof are materially changed, it shall be deemed to be as provided in Section 103.05, titled "Modifications."

No adjustment in the contract price or contract time shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions that reasonably should have been disclosed by the Contractor's (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the Contractor had the opportunity to make or should have performed in connection with the Project.

103.07 Changes in Scope / Service

County may request changes to the scope of Services to be furnished or performed by the Contractor under the Contract, as well as changes in the time of performance of the Contract. All such changes shall be authorized by either Change Order or Contract Modification, as those terms are defined in this Contract.

If any such change request increases or decreases the Contractor's cost of, or the time required for,

performance of any part of the Services under this Contract, an adjustment may be made and the Contract modified in writing accordingly.

Contractor shall provide County with a written proposal to County's change request within five (5) business days of receipt of any such request. Contractor's proposal shall describe in reasonable detail the basis for any proposed price or time adjustment. All cost estimates shall include all completed Services, and cover all costs, expenses, overhead and profit of subcontractors, if any.

Contractor acknowledges that any change in the Contract price represents full compensation for all costs associated with the change request, including delay costs, impacts, acceleration, disruption, consequential damages and any other cost of any nature.

If the County does not accept the Contractor's proposal, the County may:

- a) withdraw its change request;
- b) modify its change request, in which case the procedures set forth above will apply to the modified change request; or
- c) issue a Change Order.

Any adjustment in the Contract price shall be computed in accordance with the provisions of Subsection 103.08 of this Contract. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract as changed, provided the County promptly and duly makes provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the required Services under protest, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

No action, conduct, omission, prior failure or course of dealing by the County shall act to waive, modify, change or alter the requirement that Contract Modifications must be in writing and signed by the County and the Contractor. Contractor further acknowledges that Change Orders and Contract Modifications are the exclusive method for effecting any change to the Contract.

No change to this Contract is effective unless it is in writing and references this Contract. If the change is a Contract Modification, it must be signed and acknowledged by duly authorized representatives of both parties. If the change is a Change Order, it must be signed by an authorized representative of the County.

103.08 Pricing Adjustments

Any adjustment in the Contract price as a result of County's exercise of its rights pursuant to Subsections 103.04, titled "Changes (Increased or Decreased Quantities)", 103.05, titled "Modifications", and 103.06 titled, "Alteration in Character of the Work" of this Contract shall be made in one or more of the following ways:

- a) by unit prices specified in the Contract;
- b) by unit prices subsequently agreed upon;
- c) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- d) by the costs attributable to the event or situation, plus appropriate profit or fee, if applicable, as specified in the Contract or subsequently agreed upon;

- e) in such other manner as the parties may mutually agree; or
- f) in the absence of agreement between the parties, by a unilateral determination of the County of the costs attributable to the event or situation, with adjustment of profit or fee, as computed by the County in accordance with generally accepted accounting principles and subject to the provisions of Article 9 of Chapter 120 of the Wayne County Code governing "Appeals and Remedies."

Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of section 120-43 (Cost or Pricing Data) of the Wayne County Code.

103.09 Defective Cost or Pricing Data

If Contractor has submitted a Certificate or Current Cost or Pricing Data with its Bid and the County subsequently determines that such cost or pricing data is inaccurate, incomplete, or noncurrent as of the date stated in the Certificate, Contractor acknowledges the County's right to adjust the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. Judgmental errors made by the Contractor in good faith concerning the estimated portions of future costs or projections do not constitute defective data. The County will presume that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon by the contractor in the formation of its Bid, the County will reduce the Contract price by such amount. In establishing that the defective data caused an increase in the Contract price, Contractor acknowledges that the Purchasing Director or his/her designee has no obligation to reconstruct the negotiation by speculating as to what would have been the mental attitudes of the negotiating parties if the correct data had been submitted at the time of agreement on price.

In determining the amount of a downward adjustment, the Contractor shall be entitled to an offsetting adjustment for any understated cost or pricing data submitted in support of price negotiations for the same pricing action up to the amount of the County's claims for overstated costs or pricing data arising out of the same pricing action.

If the Contractor and the Purchasing Director or his/her designee cannot agree as to the existence of defective cost or pricing data or the amount of adjustment due to defective cost or pricing data, the Purchasing Director or his/her designee shall set an amount in accordance with Subsection 103.08, Pricing Adjustments, of the Contract, the Contractor may appeal this decision as a contract controversy under Article 9 of Chapter 120 of the Wayne County Code.

103.10 Claims for Additional Compensation

In the event the Contractor wishes to make a claim for additional compensation under Subsections 103.04, 103.05, 103.06 or 107.07; he must make his claim in writing to the Engineer before he begins the Work on which he bases the claim or out of which the claim arises or, in the case of a delay or slowdown. Failure to give such notification shall constitute a waiver of the claim for such additional compensation. If the Contractor is directed to proceed, he shall afford the Engineer every facility for keeping records of the actual cost of the Work. The Contractor and Engineer shall compare records and bring them into agreement at the end of each day. Failure to afford the Engineer proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for additional compensation. The filing of such notice by the Contractor and the keeping of costs by the Engineer shall not in any way be construed to prove the validity of the claim.

In any event, unless pursuant to this Subsection no additional compensation shall be paid to the Contractor.

103.11 Use of Materials Found on the Project Site

The Contractor, with the approval of the Engineer, may use on the Project such stone, gravel, sand or other

native material which satisfies the Contract Specifications for its intended use. The Contractor shall not excavate or remove any material from within the Right-of-Way which is not within the earth excavation grading limits or cut sections as indicated by the slope stakes or grade lines.

The Contractor will be paid for material excavated from the Project under the pay item "Earth Excavation" except where such material is included in another Bid item. The native material furnished back to the project will be paid for as Contractor-furnished material at its respective unit price in the Contract. The methods of measurement will be in accordance with the Standard Specifications for the material's intended use. The suitability of job site materials will be based on project samples at the time of construction. This Subsection is not blanket approval for all native materials in whatever quantities may be encountered. If, in the judgment of the Engineer, it is not practical, due to small quantities, to sample and test native materials, this Subsection shall not apply.

103.12 Removal and Disposal of Structures and Obstructions

The Contractor shall remove any existing structure or part of a structure which is to be replaced or rendered useless by new construction. Salvage material derived therefrom shall become the property of the Contractor and shall be disposed of by him except as otherwise provided in the Specifications or the Plans.

Payment for this Work will be made under the pay items identified for such Work in the Proposal. The removal and disposal of structures and obstructions shown on the Plans to be removed and not covered by a separate pay item in the Proposal shall be performed by the Contractor at his own expense and shall be included in other items of Work

Removal that is not shown on the Plans or in the Specifications as included in other items of Work which, in the opinion of the Engineer, requires special equipment will be paid for at a price negotiated prior to the removal, as specified in Subsection 103.05, titled "Modifications."

103.13 Final Cleaning Up

Upon completion and before final acceptance of the Work, the Contractor shall remove and dispose of all falsework, excavated or useless material, rubbish, temporary buildings, bridges and approaches; replace or renew any fences damaged, and restore in an acceptable manner all property, both public and private, which may have been used or damaged during the prosecution of the Work.

The Contractor shall replace signs, mailboxes, or other necessary appurtenances which have been temporarily removed. All excavated material and falsework placed in stream channels during construction shall be removed. The Contractor shall thoroughly clean all pavements, sewers, manholes, catch basins, and other structures affected by his operations whether within or outside of the limits of his Work. The Contractor shall remove from the Right-of-Way and/or the project limits all machinery and equipment and all surplus materials and leave it in a neat and presentable condition, satisfactory to the Engineer.

If the Contractor fails to clean up as provided in the Contract Documents, the County may do so and the cost thereof shall be charged to the Contractor from any available source, including but not limited to progress payments, performance bonds and retainage.

SECTION 104. CONTROL OF THE WORK

104.01 Authority of the Engineer

The Engineer shall in all cases decide every question of an engineering nature which may arise relating to the quality and acceptability of materials furnished and Work performed, the manner of performance and the rate of progress of the Work. The Engineer shall also decide all questions which may arise as to the interpretation of the Plans and Specifications, and any questions involving coordination of various aspects of the Work in the Project between different Contractors.

The administration, inspection, assistance and actions by the Engineer shall not relieve the Contractor from any of his responsibilities or obligations under the Contract. The Contractor shall not request or require the Engineer to undertake such supervisory control or to administrate, to supervise, to inspect, to assist, or to act in any manner so as to relieve the Contractor of his responsibilities or obligations. The presence of the Engineer on the Project shall in no way relieve the Contractor of his obligation to conform to the Local, State and Federal regulations which govern safety requirements on the Project as specified in Subsection 106.10, titled "Patented Devices, Materials and Processes."

This section shall in no way diminish the liability of the Engineer to the County. The County, at its discretion, may claim against the Contractor and/or the Engineer should there be a question as to liability for improper and/or incomplete performance of the Work.

104.02 Plans and Working Drawings

Plans, showing such details as are necessary to give a comprehensive idea of the construction contemplated, will be furnished by the County of Wayne. The Contractor shall submit to the Engineer for review such shop Plans and Working Drawings not furnished by the County as may be required for any part of the finished Work, and he may be required to submit for the Engineer's information Working Drawings for any falsework, forms or other miscellaneous details required in the construction and not a part of the finished Work. The Contractor shall be fully responsible for the correctness of Working Drawings. Dimensions on the Contract drawings which are omitted or needed to complete the Work will, when available, be furnished by the Engineer. The Contractor shall not scale dimensions from the Contract drawings.

The Contractor shall furnish the Engineer with such copies of the Working Drawings as may be required for review, and after approval, sufficient copies for the Contractors and Engineer engaged in carrying out the Work. Upon completion of the Work, the County shall be furnished with one complete set of Working Drawings and shop drawings in the same format provided in ink or pencil on tracing cloth or satisfactory cloth or polyester reproductions, or if requested, in electronic format.

104.03 Deviation from Plans and Specifications

No person except the Engineer shall have authority to revoke, alter, enlarge, or change any provisions of these Specifications or the Plans for the Work, and if the Contractor deviates from them in any particular without a written Change Order from the Engineer, he does so at his own risk; and such Work and payment therefore may not be approved.

104.04 Coordination of Specifications and Plans

In case of discrepancy, figured dimensions shall govern over scaled dimensions and the parts of the Contract will prevail over all other parts in the following order:

- a) General Provisions of this Contract
- b) Special Provisions
- c) Supplemental Specifications
- d) Project Plans and Drawings
- e) Standard Plans
- f) Standard Specifications

104.05 [INTENTIONALLY OMITTED]

104.06 Cooperation of Contractor

The Contractor shall conduct his/her operations so as to interfere as little as possible with those of other Contractors, utilities or any public authority on or near the work as shown on the plans or in the Specifications. The County of Wayne additionally reserves the right to perform other non-specified work by contract or otherwise, and to permit public utility companies and others to do work on or near the project

during progress of the work. The Contractor shall conduct his/her work and cooperate with such other parties so as to cause as little interference as possible with their operations and as the Engineer may direct.

The Contractor shall not take advantage of any apparent error or omission in the plans or specifications, but the Engineer shall be permitted to make such corrections and interpretations as may be deemed necessary for the fulfillment of the intent of the plans and specifications.

No additional compensation will be paid to the Contractor for any delay or inconvenience due to material shortages, or delays due to the operation of such other parties doing the work indicated or shown on the plans or in the Specifications, or for any delays on construction due to the encountering of existing utilities whether or not shown on the plans.

The Contractor shall have a Superintendent, who is a qualified representative in charge of all phases of the Contractor's work and available at all times when the work is in progress. The Superintendent shall be capable and shall not be changed without written notice to the Engineer. The Engineer shall have the right to require removal of the Superintendent should he/she be deemed incompetent or obstructive in carrying out the work. The Contractor shall have the right to appeal the Engineer's decision directly to the County.

The Superintendent employed by the Contractor shall have full authority to act and make decisions for the Contractor in his/her absence.

The Contractor's Superintendent shall give efficient supervision to the work, using his/her best skill and attention. He/she shall be actually present on the work during all regular and other working hours acting in the capacity of Superintendent.

The Contractor shall furnish the Superintendent and each Subcontractor a copy of that part of the plans and specifications pertaining to the work he/she is performing. These plans and specifications shall be kept on the work at all times.

104.07 Construction Stakes

The Contractor will provide all surveying required to construct this project per controls established on the project drawings and specifications.

The general location, alignment, elevation and grade of the Work will be determined by the Contractor who will set such stakes as are necessary to properly mark these elements. After contractor completed the staking, the Engineer or its' agent will inspect the staking. The Contractor shall assume full responsibility for detail dimensions and elevations measured from the lines, grades, and elevations so established.

No claims will be honored for delay of the job for lack of line and grade if the Contractor has not given the Engineer two (2) days written notice prior to the need for such line and grade.

The Engineer may require the Contractor, at the Contractor's expense, to provide such masts, scaffolds, batter boards, straightedges, templates or other devices as may be necessary to facilitate laying out, inspecting and constructing the Work.

The Contractor shall exercise proper care in the preservation of all stakes set for his use or for the use of the Engineer, and if such stakes are disturbed, lost or removed by the Contractor's operations, or by the actions of others when stakes are inadequately protected, they will be replaced at the Contractor's earliest convenience, and the cost of resetting may be charged to the Contractor.

The Contractor shall protect and preserve all land survey monuments of property corners and precise bench marks along the line of his Work. Public land survey comers are to be cooperatively preserved by the Contractor and the Engineer. When it is necessary to remove or disturb the monument of one of these

corners, the Contractor shall notify the Engineer in sufficient time so that it can be properly witnessed and reset by the Engineer. Private property corner monuments (concrete monuments, irons, stakes, etc.) along the Right-of-Way lines, which are disturbed or removed by the Contractor, shall be replaced at the Contractor's expense. The Work shall be done by a Professional Land Surveyor registered in the State of Michigan. Where precise bench marks are disturbed, the County shall reestablish, reset, or replace such precise bench marks, and the cost thereof shall be paid by the Contractor.

104.08 Field Office/Field Laboratory

Unless otherwise provided in the Specifications the Contractor shall furnish and maintain, for the exclusive use of the Engineer, an approved weatherproof building/trailer as a field office for all construction projects. The building shall be located as approved by the Engineer, in full view of the Work, and with at least one window facing construction operations.

The field office shall be at least fifteen (15) square meters (one hundred twenty (120) square feet) in area. If a trailer is supplied as a field office, it shall be equipped with a 0.9 meter by 0.9 meter (three (3) feet by three (3) feet), minimum, platform with handrails and steps provided at the entry.

The field office shall be provided with at least three single-sash windows, a standard size door with keyed lock and hasp for an external padlock, a wooden locker large enough for the storage of implements and testing equipment, and with one wall-mounted table at least 0.9 meter by 1.8 meter (three (3) feet by six (6) feet) in dimension.

The Contractor shall furnish and maintain in the building a touch-tone type telephone service, facsimile machine, heat, air conditioning and light. The heating and air-conditioning equipment shall be capable of maintaining a temperature of 21°C (70° F) at all times.

The Contractor shall provide, at a location near the field office, a sanitary facility for the exclusive use of the Engineer's personnel. The construction, regular maintenance and final removal of the facility shall be in accordance with local restrictions.

A field Laboratory conforming to the above requirements for a field office shall be provided at each location where plant inspection is furnished during the production of aggregates, concrete or asphaltic mixtures. The field Laboratory shall be further provided with a minimum of a two-burner stove for drying samples and with water and sink for washing samples. Laboratories at plants producing bituminous mixtures shall also be equipped with a hood and exhaust fan to remove fumes developed in the testing process.

The cost and maintenance of the above-described facilities will not be paid for separately but are to be included in the price Bid for various items of Work under the Contract. The field office shall be removed by the Contractor upon completion of the Contract and shall remain his property.

104.09 Authority and Duties of Inspectors

Inspectors may be appointed and directed to inspect all materials used and all Work done. The inspection may extend to all or any part of the Work and to the preparation or manufacture of the materials for use in the Work. Inspectors are not authorized to revoke, alter, enlarge, or relax any of the provisions of these Specifications nor to change the Plans in any particular, nor are they authorized to approve or accept any portion of the completed Work. The Inspector on the Work will inform the Engineer as to the progress of the Work, the manner in which it is being done, and the quality of the materials being used. He will also call to the attention of the Contractor any failure to follow the Plans and Specifications that he may observe. He shall have the authority to prevent the use of any material and to stop any Work being done which does not conform with the Specifications and the Plans until the question at issue can be referred to and be decided by the Engineer. In no instance shall any action or omission on the part of the Inspector be construed as supervisory control of the Work or of means and methods employed by the Contractor and shall not relieve the Contractor from any of his responsibilities or obligations under the Contract.

The Inspector shall in no case act as foreman or perform any duties for the Contractor, nor interfere with the management of the Work by the latter. Any advice the Inspector may give the Contractor shall not be construed as binding upon the Engineer in any way, except as provided in this Section, nor shall it release the Contractor from fulfilling all the terms of the Contract.

104.10 Inspection of the Work and Plant

The Engineer and his representatives shall be allowed access to all parts of the Work at all times and shall be furnished such information and assistance by the Contractor as may be required to make a complete and detailed inspection. Such inspection may include mill, plant or shop inspection of materials and workmanship.

The Contractor shall make available to the County, or its authorized representatives, at any time during normal business hours, the right to inspect that part of the plant, place of business, or work site of the Contractor which the County deems pertinent to the performance of any tier of the Contract by the Contractor. Contractor must include a similar covenant allowing for the right of the County to inspect the facilities of any subcontractor with whom the Contractor has an agreement related to this Contract.

104.11 Removal of Defective and Unauthorized Work

Work done without lines and grades being given, Work done beyond the lines shown on the Plans or as given, Work alone without required inspection, except as herein provided, or any Work done without a written Contract Authorization will not be paid for under the provisions of the Contract. Work so done may be ordered removed or replaced at the Contractor's expense.

All faulty Work shall be corrected by the Contractor without delay. The Contractor shall immediately remove and replace all materials, equipment, apparatus and Work which are unsound, unsightly or defective or which have been damaged by his operations or which otherwise do not meet the requirements of the Contract, all as directed by the Engineer. The foregoing removal, repair, replacement or refinishing shall be at the sole cost and expense of the Contractor, including additional testing and inspections and compensation for Engineers and Design Professionals services and expenses made necessary thereby.

When required by the Engineer, the Contractor shall expose unauthorized or uninspected Work which has already been covered as may be necessary to determine whether the requirements of the Contract have been fulfilled. The cost of such exposure shall be borne by the Contractor. If the Work or materials are defective or otherwise do not meet the requirements of the Contract, the Contractor shall replace and reconstruct same; and costs of all such replacement and reconstruction shall be borne by the Contractor. No extension of time will be allowed for connection of faulty Work.

If the Contractor refuses or neglects to correct any defective Work or to remove unsatisfactory materials from the site of the Work within 24-hours, unless otherwise directed, after written notice to do so have been given him by the Engineer, the County may employ the necessary labor to correct or to remove the defective Work or unsatisfactory materials, and the total cost of the operation shall be deducted from any money that is or may become due to the Contractor. The Engineer shall have the authority to plainly mark all unsatisfactory materials for removal after the 24-hour notice period has expired.

If the County prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the County may do so instead of requiring its removal and correction, in which case the Contract sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

104.12 Contractor's Responsibility for Work

Until the acceptance of the Work by the Engineer, as evidenced in writing, the Contractor shall have the charge and care thereof and shall take every precaution against injury or damage to any part thereof by the action of the elements or from any other cause, whether arising from the execution or from the non-

execution of the Work. The Contractor shall rebuild, repair, restore, and make good all injuries or damage to any portion of the Work occasioned by any of the above causes before final acceptance and shall bear the expense thereof, except damage to the Work due to traffic or ordinary wear and tear on any section of the road opened to through traffic by order of the Engineer.

104.13 Responsibility of Contractor for Damage to Trees and Shrubs

All trees and shrubs which are not designated to be removed shall be protected from injury by the Contractor. When excavating adjacent to trees or shrubs, the Contractor shall exercise due care and caution so as not to unnecessarily disturb or damage the roots of trees or shrubs. Roots that are exposed and injured during excavation shall be cut clean and smooth with an approved root pruning tool prior to backfilling. Other physical damage to the trunk or branches of trees and shrubs shall be repaired at the Contractor's expense by the County's Division of Roads or an approved tree service organization under the direction of the County's Division of Roads.

Trees or shrubs damaged beyond repair, or removed without authorization of the Engineer, shall be replaced in kind or paid for by the Contractor, as directed by the Engineer, prior to final acceptance of the project.

104.14 Cleanliness of the Work

The Contractor shall at all times keep the Right-of-Way and/or any public or private premises temporarily occupied by him for purposes of Work under this Contract free from accumulations of waste material or rubbish caused by his employees or Work. This requirement shall also apply to any areas in the vicinity of the Work, including haul roads, which are affected by the Contractor's construction or hauling operations.

Trucks hauling excavated materials, cement, sand, stone or other loose materials from or to the site shall be tight so that no spillage will occur on adjacent streets. Before trucks start away from the site, their loads shall be carefully trimmed, by hand, if necessary.

Power-driven pickup-type sweeping equipment shall be available to adequately clean daily, or as often as necessary in the opinion of the Engineer, all areas which become a nuisance and a source of complaint due to the operations of the Contractor, Subcontractor, or materials suppliers to the project.

If the Contractor shall fail to keep the above noted areas cleaned of dust or debris resulting from his operations, and thereby shall create any public nuisance, he shall be so notified in writing by the Engineer. If, within two hours after receipt of such notice, the Contractor shall fail to clean such areas satisfactorily, the Engineer shall have the County's Division of Roads, or such other agency as he shall designate, perform the Work; and all costs of such cleaning shall be paid for by the Contractor. If the Contractor fails to reimburse the County for the above costs before completion of the Contract, the costs shall be deducted from monies due or to become due the Contractor.

104.15 Emergencies

The Contractor has a duty to be continually aware and responsible for any condition which could endanger the public or the Work as defined in Subsection 106.12, titled "Public Convenience and Safety." If the Engineer discovers any such endangering condition or situation and is unable to contact the Contractor or if, after notification by the Engineer, the Contractor shall fail to respond immediately with sufficient action to protect the life and health of the workmen or the public and to protect the Work and adjoining public or private property, the Engineer shall have the County's Division of Roads, or such other agency as he shall designate, perform the Work or correct the problem; and all costs of such corrections shall be paid by the Contractor. If the Contractor fails to reimburse the County for the above costs before completion of the Contract, the costs shall be deducted from monies due or to become due the Contractor.

104.16 Final Inspection

The Engineer shall make inspection of all Work included in the Contract, or such portions thereof eligible for acceptance, as soon as possible after notification by the Contractor that the Work is completed or after the Engineer's records show that the work is completed. If the Work is not acceptable to the Engineer at the

time of such inspection, he shall advise the Contractor in writing as to the particular defects to be remedied before final acceptance.

SECTION 105. CONTROL OF MATERIALS

105.01 Source of Supply and Quality

The Contractor shall furnish only materials or fabricated items conforming to the requirements of the Specifications and approved by the Engineer prior to use in the Work. Immediately upon award of the Contract, the Contractor on all Work shall furnish, on forms provided by the County, a complete written statement of the origin, composition and manufacture of all materials or fabricated items required in the Work. The Contractor will not be permitted to change the source of supply without giving the Engineer prior notification. The Contractor may be required to submit preliminary samples of the materials intended for use. If tested materials are transferred from another Contract, the Contractor shall obtain and furnish the necessary documentation to effect the transfer prior to the use of materials in the Work.

If it is found that a source of supply does not furnish a uniform product, or if for any reason the product from any source at any time proves to be unsatisfactory, the Engineer may require the Contractor, fabricator or supplier to furnish acceptable material from other sources; and the Contractor shall have no claim for increased cost on account of such requirement.

All manufactured and fabricated items shall be new unless otherwise specified or approved by the Engineer.

105.02 Samples of Materials

Samples upon which acceptance or rejection of the material is based shall be taken by a representative of the County of Wayne in accordance with the methods designated in the Specifications or as directed by the County's Engineer or his/her designee. The Contractor shall afford such facilities as the Engineer may require for collecting and forwarding samples and shall not use the materials represented by the sample until they have been found to satisfy the requirements of the Specifications. The Contractor in all cases shall furnish the required samples without charge. The producer shall pay the transportation charges from the source to the testing laboratory for samples taken to establish an approved source.

105.03 Tests of Materials

Tests of materials will be made by and at the expense of the Engineer unless otherwise provided.

All materials proposed to be used may be inspected and tested at any time and at any place during their preparation, storage and use, unless otherwise specified. All tests of materials will be made in accordance with methods as described or designated in the Specifications. Plant inspection may be made if the production is sufficient to warrant such action or is in the best interests of the County of Wayne. Where plant inspection is made, the producer shall furnish and maintain, for the exclusive use of the Inspector in making field tests, accommodations as set forth in Subsection 104.08 titled "Field Office/Field Laboratory."

Where strength requirements are specified for culvert pipe, sewer pipe, or drain tile, the manufacturer will be required to provide a suitable standard testing machine for testing his product and shall keep this machine in good Working condition and accurately calibrated. Labor and materials for performing all tests shall be furnished by the manufacturer. When samples of pipe or tile are sent to the Laboratory for testing, the Contractor or manufacturer shall prepay all transportation charges for the samples.

The Contractor shall in no case use materials in the Work until the Engineer has had ample time to perform the necessary sampling and testing. For previously used sources of supply, two weeks shall generally be considered ample time.

105.04 Materials Not Mentioned

The sampling and testing of all materials not specifically mentioned shall be done by generally accepted methods, unless otherwise specified by the Engineer.

105.05 Storage of Materials

The Contractor shall consult with the Engineer before commencing the Work as to available space within the Right-of-Way for temporary storage of materials, location of temporary structures, machinery, equipment and other property of the Contractor, and places of access to the Work. Locations for storage of materials, temporary structures, apparatus, etc., shall be accepted by the Contractor as temporary; and the Contractor shall, at his own expense, promptly move any part or all of same, at any time or times, as directed by the Engineer to avoid interference with, or undue inconvenience to, the Work of other Contractors and/or operations of the County. Private property shall not be used for storage purposes without written permission of the property owner and lessee; and, if requested by the Engineer, copies of such written permission shall be furnished him.

Materials placed on the roadway shall be neatly and compactly piled in such manner as to cause the least inconvenience to property owners and to the general public. No material shall be stored on the pavement or shoulders unless it is barricaded or lighted in accordance with the most current edition of, a manual on uniform traffic control devices prepared by the Michigan State Advisory Committee on the Manual Uniform Traffic Control Devices, in conjunction with the Michigan Department of Transportation and the Michigan Department of State Police.

Materials shall be stored so as to insure the preservation of their quality and fitness for the Work.

Materials that have been stored may be subject to retest and shall meet the requirements of their respective Specifications at the time they are to be used in the Work.

105.06 Defective Materials

All materials which do not meet the requirements of the Specifications at the time they are to be used will be rejected and, unless otherwise permitted by the Engineer, shall be removed in accordance with Subsection 104.12, titled "Contractor's Responsibility for Work."

105.07 Handling Materials

All materials shall be handled in such manner as to preserve their quality and fitness for the Work. Aggregates shall be transported from the storage site to the Work in tight vehicles so constructed as to prevent loss or segregation of materials after loading and measuring in order that there may be no inconsistencies in the quantities of materials intended for incorporation in the Work as loaded and the quantities as actually received at the place of operations.

105.08 Unused Material

All furnished materials, except specially produced materials which are not incorporated in the Work upon completion of the Work items, shall remain the property of the Contractor and shall be removed from the Project prior to acceptance of the Work. Specially produced materials are those which are specifically produced for this Contract only, or for special details in this Contract, and they may be purchased by the County. Purchase of excess specially produced materials will be limited to the amounts which represent the difference between Contract quantities and the quantities actually used, and payments for such purchases will be limited to the Contractor's actual cost of furnishing or producing, delivering and handling as verified by the Engineer with no allowance for profit.

105.09 Brands of Material and Equipment

Special brands or commercial grades of material or equipment specified or shown on the Plans are named for the purpose of establishing a standard of quality or performance desired. Other materials or equipment of equal quality and suitability may be substituted on written approval of the Engineer.

SECTION 106. LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

106.01 Laws to be Observed

In all operations connected with the Work, all Federal and State laws, local ordinances, and laws or by-laws controlling or limiting in any way the actions of those engaged on the Work shall be strictly complied with by the Contractor and all employees working under his direction.

106.02 Non-Discrimination of Employment

a) The Contractor must comply with:

1. Titles VI and VII of the Civil Rights Act (42 U.S.C. § 2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.
2. The Age Discrimination Act of 1985 (42 U.S.C. § 6101-07).
3. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).
4. The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and its associated regulations.
5. The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Persons with Disabilities Civil Rights Act (P.A. 1976 No. 220).
6. The anti-discrimination provisions as required by section 120-192 of the Wayne County Code.
7. Any other appropriate affirmative action provisions as may be required from time to time by the Director of Human Relations of the County. Contractor shall promptly give notice of any such provisions to County during the term of the Contract.

b) The Contractor must not:

1. Refuse to recruit, hire, employ, promote or to bar or discharge from employment an individual, or discriminate against an individual in compensation, terms, conditions or privileges of employment because of race, color, creed, national origin, age marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.
2. Limit, segregate, or classify and employee or applicant for employment in a way which deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects the employment status of an employee because of race, color, creed, national origin, age, marital status, handicap, sex, or sexual orientation, religion, familial status, height or weight.
3. Print or publish or cause to be printed or published a notice, application, or advertisement relating to employment by the Contractor indicating a preference, limitation, specification, or discrimination based upon race, color, creed, national origin, age marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.
4. Except as permitted by rules and regulations promulgated pursuant to section 120-193 of Wayne County Code, or applicable state or federal law, make or use a written or oral inquiry or form of application that elicits or attempts to solicit information concerning the race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation,

religion, familial status, height or weight, of perspective employees. Contractor also shall not make or keep a record of that information or disclose such information.

5. Make or use a written or oral inquiry or form of application that expresses a preference, limitation or specification based on religion, race, color, creed, national origin, age, height, weight, marital status, handicap, sex or sexual orientation.
- c) The Contractor must notify any Subcontractor of the obligations relative to non-discrimination under this Contract when soliciting the subcontractor. The Contractor will include the provision of this Subsection in any subcontract, as well as provide the County with a copy of any subcontract agreement.
 - d) The contractor and its Subcontractors must not discriminate against minority business enterprises or women business enterprises (as defined in section 120-251 of the Wayne County Code) in selecting and retaining Subcontractors to perform work on this Contract.
 - e) The Contractor and its Subcontractors must not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Contract, with respect to hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight. This Section does not apply if it is determined by the Division of Human Relations that the requirements are bona fide occupational qualifications reasonably necessary to perform the duties required for employment. The burden of proof that the occupational qualifications are bona fide is upon the Contractor.
 - f) Breach of any of the covenants in this Subsection may be regarded as a material breach of this Contract.
 - g) Contractor acknowledges the right of the Director of Human Relations to sue to enforce the provisions in this Subsection of the Contract.
 - h) If the Contractor does not comply with the non-discrimination and affirmative action provisions of this Contract, the County may impose sanctions, as it determines to be appropriate, including but not limited to:
 1. the withholding of payments to the Contractor under this Contract until the Contractor attains compliance;
 2. cancellation, termination or suspension of this Contract, in whole or in part; and/or
 3. the imposition of liquidated damages (not a penalty) in the amount of as required in Section 107.08 of this Contract per day, for each day that the Contractor shall fail to comply with said requirements, as determined by the Purchasing Director, in consultation with the Director of Human Relations and Corporation Counsel.
 - i) If the Contract is funded, in whole or in part, by federal funds:
 1. Contractor's breach of affirmative action commitments set forth in this Subsection constitutes a material breach of contract sufficient to warrant termination and the imposition of liquidated damages as set forth above, based upon the decision of the director of Human Relations;

2. Contractor must provide immediate notice to the County's Chief Executive Officer, the Director of Human Relations, and the Wayne County Commission when a Subcontractor who was part of the Contractor's affirmative action commitment is terminated or substantially displaced by a Subcontractor who does not qualify as a disadvantaged business enterprise, as that term is defined in section 120-251 of the Wayne Code; and
3. Contractor must establish and implement a good faith plan and goal to eliminate the continuing effects of past discrimination, which is determined by the Division of Human Relations to be appropriate for that purpose, provided the County has been authorized by the funding source to require such an affirmative action commitment from the Contractor.

j) In the event that this Contract is or becomes subject to federal or state law which conflicts with the requirements of section 120-192 of the Wayne County Code, the provisions of the federal or state law shall and the Contract shall be interpreted and enforced accordingly.

106.03 Wages

Contractors and Subcontractors are also required, pursuant to the **Contract Work Hours and Safety Standards Act**, to pay employees one and one half (1 and 1/2) times their basic rate of pay for all hours worked on covered contract work over forty (40) hours in one work week.

If the Project is covered by federal funds, then the Davis-Bacon Act shall govern and an Exhibit ___ covering these requirements will be made a part of the contract.

Apprentices must be employed pursuant to an apprenticeship program recognized by LARA. Trainees must be employed pursuant to a training program certified by LARA.

106.04 Notices

Notices under this Contract shall be delivered by mail to:

For the County

Director of Administration
Department of Public Services
400 Monroe, 3rd Floor
Detroit MI 48226

and

Director of Engineering
Department of Public Services
400 Monroe, 3rd Floor
Detroit, MI 48226

and

Director of Purchasing
Department of Management and Budget
500 Griswold, 15th Floor
Detroit, MI 48226

For the Contractor

Either party may change their designated representative during the pendency of this Contract by written notice to the last named representative of the respective party.

106.05 Ethics in Contracting

- a) The Contractor must comply with Article 12 of Chapter 120 of the Wayne County Code governing "Ethics in Public Contracting."
- b) Contractor's material misrepresentation or delinquency in the disclosures required by section 120-225 of the Wayne County Code constitutes a material breach of this Contract, sufficient to warrant immediate termination and the imposition of liquidated damages (not a penalty) of fifteen percent (15%) of the consideration made or due under the Contract as of the date of termination.
- c) If the County determines that the Contractor has made a material misrepresentation or is willfully delinquent or knowingly evasive in the disclosures required by section 120-225, the Contractor and any other business which has substantially the same principal beneficiaries (as defined in section 120-238 of the Wayne County Code), may be debarred by the Purchasing Director, pursuant to Article 6 of Chapter 120 of the Wayne County Code, from competing for any further County contracts for up to three (3) years.
- d) If the Contract price is in excess of \$20,000, or the terms thereof require the approval of the Wayne County Commission, and the Contractor knowingly collaborates in or induces a violation of any of the ethical standards that are set forth in sections 120-221 through 120-238 of the Wayne County Code, the County has the right to impose any one or more of the following sanctions:
 - 1. Immediately terminate the Contract and require the Contractor to pay the County liquidated damages, and not a penalty, of fifteen percent (15%) of the total Contract compensation;
 - 2. Debar or suspend the Contractor from consideration from competing for further County contracts; or
 - 3. Recover the value transferred or received in breach of the ethical standards by a County employee or other person

106.06 Right to Audit Contractor's Records

- a) Contractor must maintain all pertinent financial and accounting records and evidence pertaining to the Contract in accordance with generally accepted principles of accounting and other procedures specified by the County.
- b) The County has the right to examine and audit all books, records, documents and other supporting data, as the County deems necessary, of the Contractor, or any subcontractors, or agents, performing Work under this Contract, whether direct or indirect, that will permit adequate evaluation of the Work performed by the Contractor and any Subcontractors. Contractor must include a similar covenant allowing for County audit in any agreement it has with a subcontractor or agent related to this Contract. The County may delay payment to the Contractor pending the results of any such audit without penalty or interest.

- c) The Contractor must make available to the County, or its authorized representatives, including the Legislative Auditor General, at any time Monday through Friday, inclusive, between the hours of 8:00 a.m. and 5:00 p.m., at the County's election, at that location among its offices which the Contract is principally performed or which is closest and most convenient for the County's auditors, all records, books, statements, reports, or other pertinent information that the County deems necessary concerning Contractor's and any subcontractor's performance of Work under this Contract, as may be required for audit purposes. Contractor shall make its staff available to answer all questions and provide all information reasonably necessary to complete both a financial and compliance audit of the Contract. If, in the course of the inspections, the representatives of the County should note any deficiencies in the performance of the Work of the Contractor, or any other deficiencies, the alleged deficiencies will be reported promptly to the Contractor, in writing. The Contractor agrees to promptly remedy and correct any reported deficiencies within ten (10) days of notification by the County.
- d) If, as a result of any audit conducted by or for a County, State of Michigan or federal agency relating to the Contractor's performance under this Contract, a discrepancy should arise as to the amount of compensation due the Contractor, the Contractor shall pay to the County on demand the amount of compensation in question. If Contractor fails or refuses to make payment, in addition to any other legal remedies available to the County, the County may retain said amount from any funds allocated to the Contractor but not yet disbursed under the Contract or may offset such a deficiency against the compensation to be paid the Contractor in any concurrent, successive or future contracts between the parties.
- e) A breach of this Subsection constitutes a material breach of the Contract sufficient to warrant termination, the imposition of liquidated damages (not a penalty) of fifteen percent (15%) of the consideration for the Contract, and debarment from further work for the County for up to three (3) years.
- f) Contractor further acknowledges the right of the Wayne County Commission as a third party to sue to enforce this Subsection.
- g) Contractor and its Subcontractor(s) shall maintain all documents pertinent to the Contract or Subcontract(s) for a period of three (3) years from the date each receives final payment under their respective contracts. If the Contract is funded, in whole or in part, by federal and/or state funds, Contractor and its subcontractor(s) shall maintain all such documents for a period of three (3) years after the County completes its final audit. Contractor shall make this a condition of any subcontract with its subcontractors. Contractor shall maintain all documents at that location among its offices in which the Contract is principally performed or which is closest and most convenient for the County's auditors.

106.07 Tax Reporting

The County shall not be obligated to make payments to the Contractor prior to the County's receipt of information necessary to enable it to comply with its reporting or other legal obligations under the Internal Revenue Code and similar provisions of state or local law. Information required by the County may include, but is not limited to, Form W-9, Request for Taxpayer Identification Number, and other information or certifications determined by the County, in its sole discretion, to be reasonably necessary to evidence Contractor's legal status, address, taxpayer identification number, or other information relating to backup withholding pursuant to IRC Section 3406. The County will furnish information returns (including Forms 1099 or other returns, as appropriate) to the Contractor and appropriate government entities by their required due dates and in accordance with applicable law. Any payment due the Contractor shall be reduced by the amount of any required backup withholding, and the Contractor shall have no claim against the County for additional amounts or payments under this Contract for the amount of any backup withholding required by applicable law to be paid over to any government authority.

106.08 Approval of Accounting System

Except in those instances in which the Contract price is fixed, for all contracts over \$20,000, the Contractor shall not begin contract performance unless and until the Purchasing Director has determined, in writing, that the Contractor's accounting system: (a) permits timely development of all cost data in a form reasonably acceptable to the County; and (b) is adequate to allocate costs in accordance with generally accepted cost accounting principles.

106.09 Permits and Licenses

The Contractor shall secure at his own expense all permits and licenses, and shall give all notices necessary to the due and lawful prosecution of the Work. All inspection fees and other expenses occasioned by the Contractor's Work adjacent to a railroad facility, public or private utility, conduit or structure, as determined by the County shall be paid by the Contractor and shall not be recoverable from the County.

106.10 Patented Devices, Materials and Processes

If the Contractor is required or desires to use any design, device, material or process covered by letters patent or copyrighted, he shall provide for such use by suitable legal agreement with the patentee. The Contractor and the Surety shall indemnify, hold harmless, and defend the County of Wayne for any and all claims for infringement by reason of the use of any such patent, design, device, material or process, or trademark or copyright in connection with the Work agreed to be performed under this Contract, and shall indemnify the County of Wayne for any costs, expense and damages which it may be obliged to pay by reason of any such infringement at any time during the prosecution or after the completion of the Work.

106.11 Sanitary Provisions

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Federal, State and local health authorities; and he shall take such precautions as are necessary to avoid creating unsanitary conditions. All sanitary installations for use during construction shall be removed from the Project by the Contractor before acceptance of the Work. The construction, maintenance, and removal of all temporary sanitary facilities shall be included in other items of Work and will not be paid for separately.

106.12 Public Convenience and Safety

The Contractor shall comply with all Federal, State, Municipal and local laws, bylaws, ordinances, and regulations applicable to the Work under this Contract, including OSHA and MIOSHA. He shall furnish and use all material, safeguards, safety devices, and protective equipment as required by such laws, ordinances, or regulations. He shall also be responsible for taking any other needed actions to protect the life and health of the Contractor's and County's employees on the Work and safety of the public, and to protect the Work and adjoining utilities and property during the construction of the Project.

a) Control of Air Pollution: The Contractor shall comply with all Federal, State, and local laws and regulations governing the control of air pollution.

During the construction of any project, adequate dust control measures shall be maintained so as not to cause detriment to the safety, health, welfare, or comfort to any person or cause damage to property or business.

All bituminous and portland cement concrete proportioning plants shall meet the requirements of the rules of the Michigan Air Pollution Control Commission. The Contractor shall notify the Air Pollution Control Division, Michigan Department of Natural Resources, Lansing, in writing, as to the proposed location of any bituminous or concrete plant at least two weeks prior to the production of a mixture.

b) Excavation and Shoring: Excavation and Shoring, as hereinafter specified in the Standard Specifications, are intended only as a guide to the Contractor. When, in the judgment of the Engineer, any

additional excavation, sheeting, shoring and/or bracing is required to adequately protect the Work, the Contractor shall promptly provide the same. This additional Work will not be a pay item unless a method of payment is specified in the Specifications. However, in all situations the Contractor will be responsible for the Work, the safety of the personnel engaged in the Work, and the safety of the public at large.

c) Utilities: For protection of underground utilities and according to Public Act 174 of 2013, the Contractor shall call Miss Dig at 811 or 1-800-482-7171 and provide a dig notice to the Miss Dig notification system at least seventy-two (72) hours, excluding Saturdays, Sundays, and holidays, before beginning each excavation in areas where public utilities have not been previously located. This does not relieve the Contractor of the responsibility of notifying utility owners who may not be a part of the Miss Dig alert system.

The Contractor shall comply with Act 174 of the Michigan Public Acts of 2013, commonly known as "MISS DIG" at points where the Contractor's operations are adjacent to utilities, construction shall not be commenced until all arrangements necessary for the protection thereof have been made.

The Contractor shall cooperate with the owners of any underground or overhead utilities in their removal and rearrangement operations in order that (1) these operations may progress in a reasonable manner, so (2) duplication of rearrangement operations may be reduced to a minimum, and (3) services rendered by those utilities will not be unnecessarily interrupted. The Contractor shall arrange, through the Engineer, for the discontinuance of all Utility services that are to be abandoned as part of the Project. The County will hold the Contractor responsible for any claim arising from his failure to do so.

In the event of interruption to Utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper Utility and shall cooperate with said utility in the restoration of service. If utility service is interrupted, repair work shall be continuous until service is restored.

Sufficient warning lights and safety devices shall be provided and properly maintained by the Contractor. Proper maintenance shall include washing, painting, positioning and any other work necessary for them to perform their intended function. Where sufficient warning lights and safety devices have not been provided by the Contractor, the Engineer shall have the authority, in accordance with Subsection 104.16, titled "Final Inspection", to provide for any additional protective equipment necessary; and the cost thereof shall be deducted from any money due to the Contractor.

106.13 Protection and Restoration of Property

The Contractor shall restore at his own expense any public or private property damaged or injured in consequence of any act or omission on his part, or on the part of his employees or agents, to a condition equal or better than that existing before such injury or damage was done. If the Contractor neglects to restore or correct such damage or injury, the County may, upon forty-eight (48) hours notice, proceed to restore or make good such damage or injury and order the cost thereof deducted from any monies that are due or may become due the Contractor.

When it is possible that construction operations may endanger any railroad facility, public or private utility, conduit or structure the Contractor shall notify the railroad or utility owner of this possibility, and the Contractor shall take such steps as may be required to safeguard and support such railroad facilities, utilities, conduits, or structures. All inspection fees, permit charges and other expenses occasioned by the Contractor's Work adjacent to the railroad facility, as determined by the County, shall be paid by the Contractor and shall not be recoverable from the County of Wayne.

Repairs made by the Contractor shall be done as directed by the Utility owner and at the expense of the Contractor. Where it is the policy of any Utility owner to make its own repairs to damaged conduit or other structures, the Contractor shall cooperate to the fullest extent with the Utility, and he shall see that his

operations interfere as little as possible with these operations, and the Contractor shall assume the cost of any charge against the County therefore.

In cases where existing public and private Utility service connections are encountered, the Contractor shall perform his operations in such a manner that service will be uninterrupted, and the cost thereof shall be at the Contractor's expense, unless otherwise provided. The methods used by the Contractor for maintaining and supporting utilities and their service connections shall be such as to avoid settlement of such utilities (before and after placing of backfill). Support details shall meet the approval of the Utility involved.

106.14 Opening of Section of Highway to Traffic

The Project under construction, or any section thereof, shall not be opened to traffic until so directed or authorized by the Engineer. Whenever any section of the Project is in suitable condition for travel, it shall be opened for traffic prior to completion of the whole Project, when so directed by the Engineer in writing. Such direction shall not constitute partial or final acceptance of the Work or any part of it, or a waiver of any of the provisions of the Contract.

Whenever all of the Project or any section of it has been opened for traffic prior to acceptance and final payment, the Contractor shall conduct the remainder of the construction operations so as to cause the least obstruction to traffic. Provisions for the safety of traffic shall be made as provided in Section 812 "Traffic Maintenance and Control" of the Standard Specifications.

On sections of the Project that are opened to traffic, the Contractor will not be required to bear the cost of damage due to public travel; but other repairs or renewals required due to defective materials, faulty workmanship, natural causes other than ordinary wear, and to operations of the Contractor shall be repaired by the Contractor at his expense as provided in Subsection 104.12, titled "Contractor's Responsibility for Work".

The Contractor shall take the provisions of this Subsection into account in the preparation of his Bid since no additional payment will be made for damages, or as other compensation by reason of claimed interference, delays, or other loss and expense directly or indirectly arising out of the performance of the Contract.

106.15 No Waiver of Legal Rights

The County of Wayne shall not be precluded or estopped by any measurement or estimate made either before or after the completion and acceptance of the Work and payment therefore, from showing the true amount and character of the Work performed and materials furnished by the Contractor, nor from showing that any such measurement or estimate is untrue or incorrectly made, nor that the Work or materials do not conform in fact to the Contract. The County shall not be precluded or estopped, notwithstanding any such measurement of estimate and payment in accordance therewith, from recovering from the Contractor and the Surety such damages as it may have sustained by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Engineer or by his representative, nor any payment for or acceptance of the whole or any part of the Work, nor any extension of time, nor any possessions taken by the Engineer shall operate as a waiver, of any portion of the Contract or of any power herein reserved or any right to damages herein provided. A waiver of any breach of the Contract shall not be held to be a waiver of any other or subsequent breach.

Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

106.16 Personal Liability of Public Officials

In carrying out any of the provisions of this Contract or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the County or its authorized

representatives, either personally or as officials of the County, it being understood that in all such matters they act solely as agents and representatives of the County.

106.17 Use of Explosives

The Contractor shall not use explosives in excavation or for the removal of structures or portions of structures without the written permission of the Engineer.

In addition to the requirements in Subsection 103.12, titled 'Removal and Disposal of Structures and Obstructions' herein and Subsection 2.06.02(a) of the Standard Specifications, the following procedures are required:

a) The Contractor shall request in writing permission from the Engineer to use explosives in the Work. This request must outline precisely where the blasting is to be used and who is to perform the Work. If permission is granted, the Contractor shall designate a person qualified in the use of explosives who shall outline the entire planned use of explosives and shall describe the type of explosive and detonation method to be used.

b) The Engineer may require that a seismometer instrument be used to record and measure the shock wave experienced when blasting. A trial blast may be required to demonstrate the anticipated shock wave.

c) The Contractor shall exercise the utmost care not to endanger life and property, including the new Work, and will be held responsible for all damage due to the use of explosives.

The Contractor shall secure all Federal, State and local permits and licenses necessary to perform this Work. In all operations connected with the use of explosives for blasting, the Contractor shall strictly comply with all laws and ordinances controlling or limiting in any way the actions of those engaged in this Work.

106.18 Construction Equipment Crossing Structure

a) General: Permission for use of construction equipment on structures within project limits will be considered after the concrete has gained design strength.

No equipment that will damage the bridge deck, such as sheepsfoot rollers, paving equipment with flanged wheels or steel-tracked equipment will be permitted to cross the structure without adequate protective devices such as planks or timbers. The use of an earth cushion on the structure will not be permitted.

Permission to operate construction equipment over structures will not constitute a waiver of applicable provisions of Subsection 104.12 titled "Contractor's Responsibility for Work."

b) Overweight Loads of Equipment: When a Contractor requests permission to cross structures with vehicles exceeding the legal load limit, a design analysis of the structure and the proposed loading will be made by the Engineer. If found satisfactory, the crossings will be authorized by Change Order subject to the following provisions:

1. General Requirements: These provisions apply to each case and will not be repeated in the Change Order.

The approaches to a structure shall be graded and maintained flush with the bridge deck for a minimum distance of fifteen (15) meters (fifty (50) feet) at each end of the structure.

A temporary concrete header shall be placed on the pavement seat at each end of the structure. The temporary concrete header shall be separated from the pavement

seat by a wood divider approximately six (6) mm (1/4 inch) thick, or by the use of two thicknesses of heavy building paper or 6-mil polyethylene. The temporary concrete header and divider board shall be removed and disposed of by the Contractor at the time of paving.

All equipment shall come to a complete stop before crossing a structure. Only one loaded vehicle will be permitted on any span of a structure at any one time. Unless otherwise specified, the maximum speed for travel of equipment over the structure shall be eight (8) kilometers (five (5) miles) per hour.

2. Specific Requirements: The following specific conditions under which the crossing are being permitted will be stated in the Change Order:
 - i. The material to be used to cover and protect joints from infiltration and damage.
 - ii. Axle weights loaded and unloaded.
 - iii. Spacing of axles.
 - iv. Spacing of wheels on each axle.
 - v. Tire size.
 - vi. Estimated number of vehicles crossings to be made.
3. Damage to the Structure: The Contractor and the Engineer shall participate in inspections before hauling commences and after its completion to determine any damage to the structure incurred during the hauling period. Any damage to the structure, including joints, that may be incurred as a result of the Contractor's hauling operations shall be repaired by the Contractor at his own expense.
4. Violation of Requirements: In the event of violation, the authorized permission will be immediately revoked. The Change Order giving authorization to haul across a structure in accordance with these Specifications or the subsequent withdrawal of such Change Order will not be considered as the basis of any additional compensation to the Contract or for any adjustment in the unit price for any item.

106.19 Construction Equipment on Pavements

a) General: Permission for use of construction equipment on pavement within Project limits will be considered after: (1) transverse expansion joints have been sawed and temporary or permanent seals placed; (2) relief cuts have been made for transverse Contraction and longitudinal joints; (3) temporary or permanent seals have been placed in transverse contraction joints, if they have been sawed full width; (4) the concrete has gained design strength. Permission to use construction equipment on pavements will not constitute a waiver of applicable provisions of Subsection 104.12, titled "Contractor's Responsibility for Work."

b) Overload Restrictions on Pavement: Overloads will not be permitted on new or existing pavement that will be incorporated in the finished Work. The Contractor may be permitted to cross new or existing roads with vehicles exceeding the legal load limit at designated locations approved by the Engineer under the following conditions:

1. The crossing area, fifteen (15) meters (fifty (50) feet) in width, shall be defined by saw cuts in the pavement and clearly marked by painted lines.

2. Traffic on the pavement shall be maintained by the Contractor during periods of hauling and reconstruction in a manner approved by the Engineer.
3. After the hauling of overloads has been completed, the pavement between the two saw cuts shall be removed and replaced with new pavement of the same type and equal in design characteristics to the original pavement before hauling began. Replacement of such overloaded pavement shall be automatic and required in each instance and shall be at the Contractor's expense.
4. Pavements not yet constructed may be considered for future crossing with loads exceeding the legal limit at designated areas without replacement, provided additional thickness, additional cement and additional reinforcing, as required by the Engineer, are incorporated into the pavement. The cost of the additional Work required shall be borne by the Contractor.

106.20 Control of Water Pollution and Siltation

The Contractor shall conduct his Work in a manner that will not cause damaging siltation or pollution of the water in streams, rivers, watercourses, lakes and reservoirs.

All applicable regulations of agencies and statutes relating to the prevention and abatement of pollution shall be complied with in the performance of the Contract.

Construction operations shall be conducted in such manner as to reduce erosion to the practicable minimum. The Engineer shall have full authority to order the suspension of grading and other operations pending adequate and proper performance of trimming, finishing and maintenance Work, or to restrict the area of erodible land exposed to the elements.

The disturbance of lands and waters within the Right-of-Way that are outside the limits of construction is prohibited, except as found necessary and approved by the Engineer.

The Contractor shall conduct his Work in such manner as to prevent the entry of fuels, oils, bituminous materials, chemicals, sewage or other harmful materials into streams, rivers, watercourses, lakes or reservoirs.

Care shall be taken during any construction and/or demolition to minimize the muddying of a stream, river, watercourse, lake or reservoir. All waterways shall be cleared as soon as practicable of falsework, piling, debris or other obstructions placed during construction operations and not a part of the finished Work.

106.21 Relationship of Parties

The relationship of the Contractor to the County is and will continue to be that of an independent contractor. No liability or benefits, such as workers' compensation, pension rights, or insurance rights, arising out of, or related to a contract for hire or employer/employee relationship, accrues to either party or either party's agent, subcontractor or employee as a result of this Contract. No relationship, other than that of independent contractor will be implied between the parties, or either party's agent, employee, or subcontractor. The Contractor agrees to indemnify, defend, and hold the County harmless against any claim based in whole or in part on an allegation that the Contractor or any of its agents, employees or subcontractors qualify as employees of the County, and against any related costs or expenses, including but not limited to legal fees and defense costs.

For all purposes, County employees will remain employees of the County and the Contractor's employees will remain employees of the Contractor. The Contractor is being retained by the County as an independent contractor to provide services to the County, and is not being retained in any capacity as a joint enterprise or venturer with the County. The Contractor also covenants that none of its employees are or will be, during the period of this Contract, employees of the County.

SECTION 107. PROSECUTION AND PROGRESS

107.01 Subcontracting of Contract Work

A schedule of DBE participation shall accompany each application for payment. That schedule shall list the participation by all Subcontractors for the individual payment period and the Project to date.

The Contractor shall provide the Chief Executive Officer, Director of Human Relations and the County Commission with immediate notice when a Subcontractor who is a part of the Contractor's affirmative action DBE commitment is terminated or substantially displaced by a Subcontractor who is not qualified. The individuals designated in the notice requirement in Subsection 106.04, titled "Notices" shall also be advised.

The Contractor shall not Subcontract any portion of the Contract or of the Work provided therein, except the furnishing of necessary materials, without the written consent of the County of Wayne through its Engineer. Such consent shall not in any way relieve the Contractor of full responsibility for the performance of the Contract.

Contractor will not assign or in any manner transfer this Contract, or any part or parts hereof, or interest herein, or subcontract for any Work, equipment or operations without the prior, written consent of the County. Any unauthorized assignment or transfer will be considered a breach of this Contract and result in the cancellation of the Contract at the County's discretion. If the Contract is not canceled, the assignment shall be deemed null and void. Consent by the County to one or more assignments of this Contract will not operate to exhaust the County's rights under this Section. The sale of fifty percent (50%) or more of the capital stock of the Contractor (if the Contractor is a corporation having less than ten (10) shareholders) will constitute an assignment of this Contract within the meaning of this Section.

If the amount of the subcontract or the nature of the Work to be performed thereunder warrants, the County may require the Subcontractor to furnish, for the benefit of the Contractor, bonds in an amount proportioned to the amount of his subcontract, and for the same purpose and under the same Specifications as those of the general Contract. The Surety on the general Contract shall not be eligible to furnish such subcontract bonds.

The County of Wayne reserves the right to remove forthwith from the job any Subcontractor or his equipment operating in violation of these requirements, and any costs or damages thereby incurred are assumed by the Contractor. It is further understood that the Contractor's responsibilities in the performance of his Contract, in case of an approved subcontracting, are the same as if he had handled the Work directly.

The Subcontractor shall not begin Work until he has been approved by the Engineer and has had his Subcontract with the Prime Contractor executed in a form acceptable to the County. Approval of the subcontracting of any portion of the Work will not be given unless and until it is determined that the Subcontractor is qualified to Bid on Work of the type, magnitude, and scope proposed.

107.02 Prompt Payment

If the Contractor should subcontract a part of its obligations under this Contract to a business which has been certified by the County's Division of Human Relations as a small or Disadvantaged Business Enterprise, the Contractor shall make prompt payments to each such Subcontractor as the subcontract is performed which are at least equal to the prompt payments which are due to the Contractor under the provisions of this Contract and to section 120-46 of the Wayne County Code. Unless alternate terms which have a similar purpose and effect are otherwise agreed upon in writing, the Contractor shall make payment within forty-five (45) days after delivery or satisfaction of the subcontract, or receipt of a complete invoice therefore, whichever is later. If an invoice is filled out incorrectly or contains a defect or impropriety, the Contractor shall notify the Subcontractor of that fact within ten (10) days after receipt of the invoice. The forty-five (45) day period shall be extended by each day over five (5) days which the Subcontractor takes to make a correction. If a payment is past due, the Contractor shall pay to the subcontractor an additional

amount to be calculated on a daily basis which is equal to an annual rate of interest of nine (9%) percent (amount overdue X number of days overdue X .000246575). Interest shall not be if payment is delayed because of good faith disagreement between the Contractor and the Subcontractor regarding contract performance and the dispute is resolved in favor of the Contractor. This provision is expressly intended to create a third-party right which is legally enforceable by Subcontractor. This provision does not, however, create a duty on the part of the County to seek enforcement of a default of this provision or to make payment to the Subcontractor on behalf of the Contractor.

107.03 Prosecution of the Work

The Contractor shall begin Work on the Project in accordance with the project completion schedule within ten (10) days after written notification of the acceptance by the County of the executed documents, unless otherwise directed by the Engineer. The Contractor shall notify the Engineer at least forty-eight (48) hours in advance of the time he intends to start.

Under this Contract, time is of the essence; hence the Contractor has a duty to complete the Work within the time limits set forth in the Contract. If, in the judgment of the Engineer, the Contractor is not proceeding as rapidly as is provided in the project completion schedule, the Engineer may direct the use of extra men and equipment, extra shifts or seven-day-a week operations to insure completion of the Work or any section of the Work within dates specified in the Contract. Any of the above requirements directed by the Engineer shall be performed by the Contractor at no additional cost to the County.

The Contractor's failure to comply with this Subsection shall be cause for termination of the Contract in accordance with Subsection 107.09 titled, "Termination of Contract."

107.04 Limits of Operation

The Contractor shall begin Work and operate as he deems necessary and/or as provided in the project completion schedule incorporated in the Contract, except where the integrity of the Work and/or unforeseen circumstances requires rescheduling of the Work by the Engineer.

Private property adjacent to Right-of-Way shall not be used for disposal of waste material or borrow without written permission of the County or lessee and a permit from the Agency having jurisdiction. Copies of such permission shall be furnished to the Engineer upon request.

Those areas within the Right-of-Way but outside of normal construction limits shall not be disturbed or used except as permitted by the Engineer. Restoration of these areas will be at the Contractor's expense.

The Contractor shall not carry on construction operations on Sundays or legal holidays which are Thanksgiving, Christmas, New Years, Memorial Day, 4th of July and Labor Day, without the permission of the Engineer, except for the purpose of making emergency repairs and for the proper protection of the Work, such as the curing of concrete.

During construction operations, no Work shall be performed by private agreement with property owners adjacent to the Project. Work may be allowed when requested by local municipalities, but only with the written consent of the Engineer.

In case of a dispute arising between two or more Contractors or others as to the respective rights of each under these Specifications, the Engineer shall determine the matters at issue and shall define the respective rights of the various interests involved in order to secure the completion of all parts of the Work in general harmony and with satisfactory results, and his decision shall be final and binding on all parties concerned and shall not in any way be cause for claim for extra compensation by any of the parties.

107.05 Character of Workmen and Equipment

The Contractor shall employ workmen skilled in their various duties. Any superintendent, foreman or

workman who ignores the instructions of the Engineer or Inspector or willfully neglects to perform their Work in accordance with the Plans and Specifications or is intemperate or disorderly shall be removed from the Project by the Contractor upon the written complaint of the Engineer and shall not be employed again in any portion of the Work without the approval of the Engineer.

Should the Contractor fail to remove such person or persons as required above or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Engineer may suspend the Work by written notice until such orders are complied with. In no instance shall any action by the Engineer be construed as supervisory control of the Work or of means and methods employed by the Contractor and shall not relieve the Contractor from any of his responsibilities or obligations under the Contract.

The Contractor shall furnish and use such adequate and proper machinery and equipment as will insure the Work being done in a satisfactory manner. Equipment used on any portion of the Project shall be such that no injury to the Roadway, adjacent property, or other highways will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the Contractor is free to use any methods or equipment that he demonstrates, to the satisfaction of the Engineer, will accomplish the Contract Work in conformity with the requirements of the Contract, except that equipment for a specific task shall be the type generally designed for this purpose.

When the Contract specifies that the construction be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Engineer.

107.06 Temporary Suspension of Work

The Engineer shall have the authority to suspend the Work, wholly or in part, for such period or periods as he may deem necessary, due to unsuitable weather, or for such other conditions as are considered unfavorable for the suitable prosecution of the Work, or for such time as is necessary, due to the failure on the part of the Contractor to carry out orders given or to perform any or all provisions of the Contract or for violation of any of the Contract Specifications.

The County of Wayne may suspend Work when proper inspection by the County is precluded by labor strife, including strikes, walkouts or slowdowns by the County's own employees.

If it should become necessary to suspend Work for an indefinite period, the Contractor has a duty to exercise due care in storing all materials in such manner that they will not become an obstruction, nor become damaged in any way; and he shall take every precaution to prevent damage or deterioration of the Work performed, provide suitable drainage by opening ditches, shoulder drains, etc., and erect temporary structures where necessary. In all cases of Engineer ordered suspension of construction operations, the Work shall not be resumed until permitted by written order of the Engineer. Temporary suspension of Work does not delay implementation of liquidated damages nor does it extend time for performance of the Contract.

The Contractor at his own volition shall not suspend the Work or remove any equipment or materials required for further prosecution of the Work without written authority from the Engineer.

107.07 Time for Completing the Work

Construction time schedule of this project will be in accordance with Wayne County Special Provision 12WC108(A), PROGRESS CLAUSE, located in Appendix D – Bid Documents.

- a) When the Contract time is specified in Working Days, time will be charged in Working Days starting on the tenth day after Notice to Proceed, or on the date specified for commencing Work as stated in the proposal.

A Working Day will be charged for every day when it is possible for the Contractor to effectively carry out work on the controlling operation, except as noted herein. Sundays or legal holidays on which the Contractor works will be charged as Working Days. Such work shall be in accordance with Subsection 107.04, titled "Limits of Operation."

Working days will not be charged:

1. For Saturdays, unless provided in the Specifications.
 2. For any day on which it is impossible for the Contractor to work on the controlling operations, due to circumstances beyond the Contractor's control.
 3. When operations on a controlling item are suspended by the Engineer, and until the Contractor is ordered to resume such operations.
 4. For any work performed during the period November 15 through April 15, except when otherwise specified on the Plans or in the Specifications.
 5. For work on the controlling operation performed outside of seasonal limitations of that item unless such scheduling is required in the Specifications.
- b) If the Contractor works on the controlling operation on a day when conditions beyond the Contractor's control make it impossible to prosecute the Work with full and normal efficiency the Engineer may count the day as one-half of a Working Day. Full days will be counted when delays or suspension of operations are the fault of the Contractor.

When, in the opinion of the Engineer, the Contractor can work only a portion of a full Working Day on the controlling operation for reasons beyond the Contractor's control, time will be charged as follows:

1. For six (6) hours or more, a full day will be charged.
 2. For more than three hours but less than six (6) hours, a half day will be charged.
 3. For three (3) hours or less, no time will be charged.
- c) The Engineer will notify the Contractor, in writing, as to the number of Working Days charged to the Project each week. The Engineer's statement of Working Days used will be furnished to the Contractor not more than six (6) days after the week covered by the report. If the Contractor is not in agreement with the number of Working Days charged in a report, the Contractor shall notify the Engineer in writing, setting forth the reasons for disagreement, within twenty-one (21) days after the week covered by the report. Failure to notify the Engineer as provided above will constitute a waiver of claim for any additional Working Days, and/or a claim for additional compensation as set forth in 103.10.
- d) If the Contract provides for maintaining through traffic while the Project is being constructed, or if the Contract does not contain a time requirement for opening to traffic, the provisions herein shall apply to the Contract time only.

Extension of time may be granted either with or without liquidated damages and will be stated in the same terms as the original Contract time is stated.

If Contract quantities are increased above the quantities set forth in the Specifications, or extra work not offset by decreased similar Contract items of Work is performed, the time for opening to traffic

and the Contract time will be extended by the Engineer, with or without notice to the Surety, on the following basis:

1. If such work is identified as controlling the progress of the Work, time will be extended equal to the time which is required to do the extra work, or which should be required to complete the increased quantity of a Contract item based on the formula:

$$E = T \times I/Q$$

Where

E = Extension of time in Working Days.

T = Contract time assigned to the item.

I = Increased quantity of a Contract Item.

Q = Contract quantity of an item.

2. If Working Days are chargeable when the Contractor can effectively work on any Contract item, or where the time required to do extra work is not identifiable, time will be extended on the basis of the ratio the total "as constructed cost bears to the total original Contract price. When determining the total "as constructed" cost, only the increased number of work units at the Contract price and the cost of extra work, if any, will be considered.
3. If deemed equitably necessary, a combination of the two foregoing determinations or another equitable basis, supported by an acceptable rationale, will be used to determine extensions.

e) For Calendar Day Contracts and Calendar Date Contracts, an extension of the time for opening to traffic and for Contract time will be allowed, at the direction of the Engineer, for reasons such as, but not limited to:

1. Delay on account of suspension of Work by the Engineer for causes other than negligence, faulty work, failure or refusal to carry out the provisions of the Contract, by the Contractor, or by orders of the Engineer.
2. Delays due to unforeseen causes beyond the control and without the fault or negligence of the Contractor including, but not restricted to:
 - i. Court injunctions which affect in any way the subject matter of the Contract or which affect either party's ability to perform the Contract.
 - ii. Changes in State or Federal law, labor disputes, civil disorder, riots, tornadoes, floods, periods of seasonal suspension by order of the Engineer, etc.
 - iii. Unusually severe weather, which shall mean adverse weather which, at the time of year in which it occurred, is unusual for the place in which it occurred.

To obtain the benefit of this Section, the nonperforming party must promptly notify the other party in writing of the inception of the excusable failure occurrence, and also of its abatement or cessation.

Delays due to the actions of the elements such as normal rains, snows, hail, winds, or drought shall be anticipated by the Contractor in establishing his construction schedule and shall not be reason for extension of time. The normal or mean rain days for each month shall be as follows:

Month	January	February	March	April	May	June

Normal Rain Days	6	5	6	6	5	5
Month	July	August	September	October	November	December
Normal Rain Days	4	4	4	4	5	6

All rain days (excluding Sundays) in excess of the normal rain days shall be considered valid for extension of Contract time.

- f) Requests for extension of time shall be filed in writing by the Contractor with the Engineer not later than seven (7) days following the termination of the delay. In case of delays due to adverse weather, the request for extension of time shall be filed within seven (7) days following the end of the calendar month in which the delay occurred. The Contractor shall set forth fully therein the reasons which are believed to justify the Engineer in granting the request. If the Engineer finds that the work was delayed on account of unusual conditions beyond the control of the Contractor, the Engineer will, with or without notice to the Surety, grant an extension of time for as many Calendar Days, or Working Days, as appear to be reasonable and proper for the time for opening to traffic and the Contract time. The number of Calendar Days, or Working Days, granted for each extension will be recorded by the Contract Modification. The time for opening to traffic and the Contract time as extended shall thereafter be as binding upon the Contractor and Surety as if they appeared in the Contract originally.

The Contractor agrees, that in lieu of any claims for damages, extra compensation, injury, loss, or costs of any kind under this Contract or otherwise as a result of a delay or slowdown, the only remedy available to the Contractor under the Contract or otherwise, shall be request for an extension of time pursuant to this Subsection.

The Engineer, by permitting the Contractor or the Surety to continue and finish all or any part of the Work after the original or extended time, shall not be deemed to waive any rights under the Contract.

- g) Defaults or delays in performance by the Contractor which are caused by acts or omissions of its Subcontractors will not relieve the Contractor of its obligations under the Contract except to the extent that a Subcontractor is itself subject to any delay as cited in e(2) of this Section and the Contractor cannot reasonably circumvent the effect of the Subcontractor's default or delay in performance through the use of alternate sources, work around plans or other means.

107.08 Liquidated Damages

It is mutually understood and agreed that time is of the essence on this Contract. In the event the Work is not completed by the final Contract time limits as extended, the Contractor shall pay the County of Wayne damages. Inasmuch as, the amount of such damages will be extremely difficult to ascertain, the Contractor agrees to pay the County the applicable sum stated in the Schedule of Liquidated Damages as set forth herein. This Schedule shall apply for each and every Calendar Day that the time consumed in said performance and completion extends beyond the final Contract Time, as extended. However, when, the Project is operational after the final time limit, open for the purpose intended, or open to traffic, liquidated damages will be reduced to twenty-five percent (25%) of the amount in the Schedule, which said sum is hereby agreed upon, fixed and determined by the parties hereto as the liquidated damages that the County will suffer by reason of said delay and default and not as a penalty, and the County shall have the right to deduct and retain the amount of such liquidated damages from any money due or which may become due under this Contract.

The Contractor shall complete the Work even after the time limits as extended within the scope of this Contract, and such completion shall in no way operate as a waiver on the part of the County of any of its rights under this Contract.

Schedule of Liquidated Damages

Original Contract Amount		Liquidated Damages Per Calendar Day
From More Than	To and Including	
\$ 0	\$ 50,000	\$ 125
50,000	100,000	200
100,000	500,000	450
500,000	1,000,000	900
1,000,000	2,000,000	1,300
2,000,000	5,000,000	2,000
5,000,000		3,000

On Contracts which have internal “critical operation” time limits, as specified in the Specifications, prior to the final completion time, the Contractor will be assessed liquidated damages for each Calendar Day beyond the “critical operation” time. These damages will be deducted in the same manner and in accordance with the same Schedule outlined above for failure to complete the Project on time. The liquidated damages above shall not be cumulative, nor at any given time shall the liquidated damages exceed the above schedule.

107.09 Termination of Contract

If the Contractor:

- a) Fails to start Work on notice to do so; or
- b) Fails to prosecute the Work with manpower, equipment, construction plant or materials sufficient to complete the Work by the date set for completion and according to the Project completion schedule; or
- c) Performs the Work improperly; or
- d) Discontinues the performance of the Work before completion without prior approval; or
- e) Neglects or refuses to remove rejected materials or to perform anew such Work as shall have been rejected as defective and unsuitable; or
- f) For any other reason fails to carry on the Work in accordance with the Contract; or
- g) Shall become insolvent; or
- h) Shall be declared bankrupt in a court proceedings; or
- i) Shall commit any act of bankruptcy or insolvency; or
- j) Makes an assignment for the benefit of creditors; or
- k) Shall be subject to proceedings for reorganization under the Bankruptcy Act;
- l) Fails to purchase and maintain insurance, payment and/or performance bond, then

The Contractor may be considered to have failed to fulfill its contract obligations.

The Engineer shall give a ten (10) day written notice to the Contractor and his/her Surety, of the happening of any such event, specifying the same, and notifying them of the County's intention to terminate the Contract pursuant to this Subsection. If the County gives written notice pursuant to (1) above the Contractor shall immediately suspend work. If the Contractor or Surety fails to satisfactorily respond or fails to halt the proceedings cited in the notice to the Contractor, the Contract shall be immediately terminated. Suspension of Work does not delay implementation of liquidated damages nor does it extend time for performance of the Contract. The County shall then have full power and authority, without violating the Contract, to take the Work away from the Contractor.

When the County terminates the Contract for one of the reasons set forth above, the Contractor shall not be entitled to receive payment for construction services not performed. The County shall not be liable to the Contractor for loss of anticipated profit, unabsorbed overhead, interest on claims, unamortized depreciation costs, and general and administrative burden if the termination is the result of a delay cited in e(2) of Section 107.07.

The County may, by written Notice to the Contractor, terminate this Contract in whole or in part at any time, either for the County's convenience or because of the failure of the Contractor to fulfill its contract obligations. Upon receipt of such Notice, the Contractor shall:

- a) Immediately discontinue all services affected and/or instructed by the Notice;
- b) Deliver to the County, all data, Drawings, Specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor in performing this Contract, whether completed or in progress within five (5) working days of termination. Any failure or delay by the Contractor to deliver these documents to the County will cause irreparable injury to the County not adequately compensable in damage and for which the County has no adequate remedy at law. The Contractor will pay the County Five Hundred Dollars (\$500.00) per day as damages, and not a penalty, until it delivers the documents to the County. This amount will be offset against any sums due the Contractor.
- c) After securing the Work and the worksite, immediately vacate the same, taking no action which would interfere with or obstruct the commencement, by County or any other person or entity, of efforts to complete the Work.

If the termination is for the convenience of the County, an equitable adjustment in the contract price, representative of the value of the services performed to the date of termination, shall be made, however, no amount shall be allowed for anticipated profit on unperformed services.

If, after notice of termination for default, it is determined that the Contractor had not so defaulted, the termination shall be deemed to have been effected for the convenience of the County. In such event, adjustment in the contract price shall be made as provided above.

The rights and remedies of the County provided in this Subsection, are in addition to any other rights or remedies provided by law or under this Contract.

107.10 Termination By Wayne County Commission

Contractor acknowledges the right of the Wayne County Commission by a two-thirds vote, under circumstances in which the County's Chief Executive Officer is required by the Michigan Standards of Conduct and Ethics Act, MCLA §15.341 *et seq.* to recuse himself or herself from acting on this Contract, to terminate the Contract for (a) an egregious breach of the terms and conditions hereof or (b) a violation of

the ethics and anti-kickback provisions of Article 12 of Chapter 120 of the Wayne County Code and to debar the Contractor from any further work for or sales to the County for up to three (3) years, pursuant to the terms of Article 6 of Chapter 120 of the Wayne County Code.

SECTION 108. MEASUREMENT AND PAYMENT

108.01 Measurement of Quantities

The County shall use MDOT Field manager program for tracking of work and quantities and generating pay estimates.

108.02 Scope of Payment

The Contractor shall accept the compensation as herein provided in full payment for furnishing all necessary materials, labor, tools, equipment and incidentals; and for performing all Work under the Contract; also for all loss or damage arising from the nature of the Work, or from the action of the elements (except as specified in Subsection 107.07, titled "Time for Completing the Work," which may be encountered during the prosecution of the Work), until its final acceptance by the Engineer.

Failure of the Contractor to provide the report pursuant Subsection 103.02, titled "Construction Schedule" and Subcontractor listing pursuant Subsection 107.01, titled "Subcontracting of Contract Work," will result in the payment not being processed.

108.03 Payments for Increased or Decreased Quantities

Whenever the quantity of any item of Work as given in the Specifications shall be increased or decreased, payment for such item of Work shall be at the Contract price for the actual quantities of Work done, except as otherwise provided under "Scope of the Work," Section 103, and in the detailed Specifications for each item of Work.

108.04 Payment Method for Contract Modifications Utilizing Force Account Basis

Force Account Basis: When work performed is to be paid for on a force account basis, the method of construction, type and amount of equipment to be used shall be submitted and approved by the Engineer prior to proceeding with the work. The Contractor shall furnish to the Engineer itemized reports of the costs of all force account work. The reports shall be furnished each week and shall include certification of the payroll involved in the work. Original receipted bills, or a copy thereof, shall show credits for any discounts offered by suppliers, and only the net amount of the bill shall be charged to the force account work.

The Contractor and the Engineer shall compare records of force account work and bring them into agreement at the end of each day. From the weekly reports received from the Contractor, the Engineer will prepare, on regulation forms, itemized statements containing the following detailed information:

- a) Name, class, dates, number of hours worked each day, total hours computed to the nearest half-hour, rate and extension (rate times hours worked) for each employee and foreman engaged.
- b) Equipment description, number of actual hours worked each day, total hours computed to the nearest half-hour, rental rate, and extension (rate times hours worked) for each unit of equipment engaged. The Contractor's weekly report should fully describe each unit of equipment (rating, type of engine, optional equipment, type of blade, size of bucket, etc.).
- c) Quantities of materials, unit prices, and total cost (extensions).
- d) Freight on materials.

The compensation as herein provided shall be accepted by the Contractor as payment in full for all labor, including fringe benefits as hereinafter set forth, equipment and materials used for force account work. The amount shall also represent payment in full for profit, superintendence, general expense, overhead, and the use of small tools and equipment for which no rental is allowed. An additional one (1) percent compensation will be allowed to the Contractor when the work is performed by a Subcontractor. General Foremen and Superintendents shall be classified as management and shall not be considered as a separate cost item for force account purposes.

The force account percentage for labor or wage rates paid by the Contractor to its employees shall cover any possible costs for bond premium, workmen's compensation insurance, personal injury public liability and property damage public liability insurance, unemployment compensation, federal social security payments, payments required to be made to employer and employee trusteeships and fringe benefits which by way of illustration, but not by limitation, include health and welfare, vacation and holidays, etc., required to be paid by the employer, the proceeds from which inure exclusively to the benefit of the employee, and will be made at forty percent (40%) of the labor costs as determined by the hourly rate times the number of hours worked. In addition to this sum, six percent (6%) will be added for any and all other possible cost items aforementioned, for a total forty-six percent (46%) of the labor costs.

The term "actual rate of wage" as used in this Section shall not include items specified in the preceding paragraph. For all employees directly involved in the specific work, the Contractor shall receive the actual rate of wage paid for each and every hour, in accordance with approved labor agreements, plus twenty percent (20%) of the sum, to cover profit, superintendence, general expense, overhead, and the use of small tools and equipment for which no rental is allowed. Therefore, the total amount paid to the Contractor shall be the actual rate of wage for each hour that each employee has actually engaged in force account work plus sixty-six percent (66%).

For materials and supplies furnished by the Contractor and incorporated in the specific work, the Contractor will be paid the actual cost of such materials, including freight charges, verified by original receipted bills, or a copy thereof, plus fifteen percent (15%) of the sum thereof. This overhead applied to material cost shall be considered compensation for the use of materials retained by the Contractor and not incorporated in the finished work, such as tarpaulins, forms, mats, etc. Form lumber used and not incorporated into the work and having a salvage value retained by the Contractor shall be paid for at the rate of fifty percent (50%) of invoice cost, including freight charges, to which a sum of fifteen percent (15%) will be added.

Where materials used are not specifically purchased for use on this work but are taken from the Contractor's stock, the Contractor shall submit a certification of the quantity, price and freight on such materials in lieu of original receipted bills and invoices.

The County of Wayne will pay sales and/or use tax as required by law on any material that is incorporated into the end product.

For any Contractor-owned machinery and equipment, including the foreman's transportation unit, which is determined to be necessary to use on work done by force account, the Contractor will be paid rental rates as follows:

The rental rate established for each piece of equipment used will be determined by use of the Rental Rate Blue Book for Construction Equipment or the Rental Rate Blue Book for Older Construction Equipment, as applicable. The edition which is current at the time the force account work is initiated will apply.

For the first fifty (50) hours, the rate will be one hundred percent (100%) of the base hourly rate. For all time over fifty (50) hours, the hourly rate will be fifty percent (50%) of the base hourly rate. To the amount computed from these rates, fifteen percent (15%) will be added. This method of determining rates shall

apply to major pieces of equipment and their required appurtenances, such as crane bucket and boom, bulldozer blade, scarifier attachment, etc.

For all equipment, other than appurtenances to larger equipment, for which the monthly rate divided by one hundred (100) is less than \$6.00, the base hourly rate shall be either \$6.00 or the monthly rate divided by sixty-seven (67), whichever is the smaller, to which amount fifteen percent (15%) will be added. This rate shall apply regardless of the number of hours.

In the event equipment is not susceptible to classification in the publications described above but is comparable with similar listed equipment, the listed rates providing the Engineer certifies the similarity of the equipment being priced.

For equipment not listed in either publication, or qualifying under the previous paragraph, the monthly rate shall be reasonable but not more than ten percent (10%) of the current list price of comparable new equipment. The base hourly rate shall then be determined by dividing the monthly rate by one hundred (100), to which rate fifteen percent (15%) will be added. The reduction in rate after fifty (50) hours shall apply if the hourly rate is more than \$6.00.

Any machinery and equipment which may be necessary for the Contractor to rent from another Contractor or equipment rental company will be compensated for at the rental rate which is charged to the operating Contractor, provided that the rental rate is reasonable in comparison to the rate structure provided above for Contractor-owned equipment. To the amount determined by the rental charge, fifteen percent (15%) will be added. The rental rate charged should be based on the longest time unit which would apply. For example, the rental rate for a machine used for three (3) weeks should be based on a weekly rate and not a daily or per hour rate. The rate for a machine used for two (2) days should be based on a daily rate. The rental fees charged to the Contractor must be substantiated by an invoice with adequate evidence thereof of payment.

For any trucks (Contractor-owned or rented) which may be deemed necessary or desirable to use on force account work, the Contractor will be paid a rental price based on rates set forth in the current published rate schedule of the Michigan Public Service Commission. The rate shall apply regardless of the number of hours. For trucks not provided for in this publication or in the A.E.D. book or in the Blue Book, monthly rates shall be established which are reasonable and which shall not exceed ten percent (10%) of the current list price for comparable new equipment. The hourly rate would be one- one hundredth (1/100) of the monthly rate. To this price, fifteen percent (15%) will be added.

In most cases the equipment rental rates are exclusive of the operator's wages and operator's benefits. The only exception to this is when it is necessary to utilize the Michigan Public Services Commission rates, in which case the rental rates are inclusive of the driver's wages and the driver's benefits. The cost of gas, oil, grease, parts, and servicing, including labor and truck for servicing the equipment, shall be included in the fifteen percent (15%) added.

In all cases the rental rates allowed herein include the cost of insurance covering any insurable risk, including fire and theft. The County of Wayne will not be liable for any losses.

The rental rate in these Specifications shall be defined as the rate derived from the respective reference material listed previously in this section.

The time paid for Contractor-owned equipment shall be the period that the equipment is actually in operation on the work. Idle time will not be paid for, except that continuous operating time will be paid for if the idle time between operating periods is less than one hour.

Any machinery or equipment which is rented by the Contractor shall be compensated as described above at

the invoice rate for the total time period required for the equipment on this specific item of force account work. Equipment rented from the Contractor's subsidiary equipment leasing company will be compensated as Contractor owned equipment.

The time eligible for compensation shall also include traveling time to the location of the work when the equipment is moved under its own power. When transportation from one site to another is by other than its own power, the actual operating time during periods of loading and unloading will be paid for at the regular rental rate; and transportation costs will be allowed.

Costs for the utilization of transporting equipment will only be allowed to bring equipment to the project. The return trip will not be compensated for, and no transportation costs will be allowed.

When the periods of work are not consecutive, and the interval between the termination of a period of work and the commencement of the subsequent period does not exceed thirty (30) days, the actual time worked will be paid for on the basis that the periods of work were consecutive; and no additional transportation costs will be allowed.

In the event that machinery or equipment is idled due to the failure of the County to properly provide for the Contractor to proceed with the prosecution of the force account work in accordance with the terms of his Contract, the provisions for "Payment for Idled Equipment and Labor," 108.09, shall apply.

The Contractor, while performing force account work at the request of the County, is operating within the framework of the entire Contract and is subject to all the provisions therein.

108.05 Payment for Deleted Items

The County of Wayne shall have the right to cancel or alter the portions of the Contract relating to the construction of any item or items therein by the payment to the Contractor of a fair and equitable amount covering all items of costs incurred prior to the date of cancellation, alteration, or suspension of the Work by order of the Engineer. The Contractor shall accept payment in full at the Contract Unit Prices for any Work actually performed prior to the date of cancellation, alteration, or suspension of the Work by order of the Engineer. No allowances will be made for anticipated profits in payments to the Contractor for deleted items of Work. The Contractor is prohibited from filing a claim for loss profits on any item or items of Work which are canceled by the Engineer. Acceptable materials ordered by the Contractor and not returnable, or delivered to the Work prior to the date of cancellation, alteration, or suspension of the Work by order of the Engineer and not returnable, will be paid for at the actual cost to the Contractor, and shall thereupon become the property of the County. If the materials are returnable, the County may require the Contractor to return the materials; and, the County will pay only the necessary freight and manufacturer's charges if less than the original cost to the Contractor. The Contractor shall immediately submit certified statements covering all money expended in preparation for any deleted item; and he shall be reimbursed for any money expended in preparation for Work on any deleted item when such preparation has no value to the remaining items of the Contract, or for a proportionate amount based on the total contract price over which such preparation would ordinarily be distributed when other items are included in such preparation.

108.06 Progress Payments

a) The County shall generate pay estimates to the Contractor bi-weekly. The Engineer shall estimate the amount of each Contract Item completed in accordance with the Contract during the period, and the value thereof shall be calculated at the Contract Unit Prices. No partial payment will be processed unless at least \$1,000.00 has been earned during the estimate period.

a) Progress payments shall be pursuant to the Public Agency Construction Contracts Act 1983 P.A. 1980, MCLA § 125.1561 et seq. as follows: ten percent (10%) of the dollar's value of all work in place until work is fifty percent (50%) in place. After work is fifty percent (50%) in place, additional retainage will not be withheld unless the County determines that the Contractor is not making satisfactory progress or for other specific cause relating to the Contractor's performance under the Contract. If the County makes such

a determination, the County will retain an additional ten percent (10%) of the dollar value of work more than fifty percent (50%) in place.

c) If any Work completed by the Contractor or material furnished by the Contractor is determined to be defective, or should a reasonable doubt arise as to the integrity of any part of the Work completed by the Contractor prior to the final acceptance and payment, there will be withheld from the Contractor's progress payments, after the discovery of such Work, an amount equal in value to the replacement cost of the defective or questioned Work until the defects have been remedied or the causes for doubt removed.

108.07 Partial Payment for Materials on Hand

In preparing progress estimates, a partial payment of eighty percent (80%) of the cost of pre-ordered fabricated materials without additional retention may be allowed for such materials which are delivered and stored at the project site and approved by the Engineer for exclusive use on the Project. A receipted vendor's invoice showing the quantities of materials and the amounts paid shall be required prior to payment. Partial payment will not be made for aggregates or items with a shelf life.

All materials must conform to the requirements of the Specifications; however, advance payment for materials will not constitute acceptance, and any faulty material will be rejected although advanced payment may have been made for same in the estimates. Payments will not be made for materials in excess of contract quantities.

108.08 Acceptance and Final Payment

When the Work shall have been completed and the County shall have found that each and every part of the Work has been done in accordance with the Contract, Plans and Specifications or such modifications thereof as have been approved, the same will be accepted; and the Engineer will make a final estimate as soon as practicable of the completed Work; and the total amount due the Contractor less the total amount of all pervious payments will be paid.

Any and all monies due the County by the Contractor on this or other Contracts at the final completion of the Contract shall be deducted from monies due or which may become due the Contractor before final payment.

Before the final estimate shall be paid, the Contractor shall have filed with the County written consent of the Surety to payment of the final estimate and a sworn affidavit that all claims against him by reason of the Contract for labor, materials, supplies, rented equipment, equipment operating and maintenance costs, and damage claims have been fully paid or satisfactorily secured. In case such evidence is not furnished, the County may retain out of any amount due the Contractor sums sufficient to cover all unpaid claims. The filing of willfully false affidavits will disqualify a Contractor from Bidding on future Work.

108.09 Payment for Idled Equipment and Labor

In the event that machinery or equipment is idled due to the failure of the County to properly provide for the Contractor to proceed with the prosecution of the Work in accordance with the terms of his Contract, payment may be allowed on a rental basis for the idled equipment as specified herein. Only machinery or equipment actually on the Project site as required for that phase of construction Work in question will be considered eligible for rental reimbursement. For this idled equipment or machinery, the Contractor shall receive half the applicable hourly rate for operating equipment as specified under "Payment Method for Contract Modifications Utilizing Force Account Basis," 108.04. Payment will be limited to 8 hours in any one day and to forty (40) hours in any one week. No provisions of these Specifications shall entitle the Contractor to rental compensation for idled equipment as specified under "Temporary Suspension of the Work," 107.06 or "Termination of Contract", 107.09.

In the event the Contractor's labor force is idled once the Contractor has entered the Project due to the County's failure to properly provide for the Contractor to proceed with the prosecution of the Work within the terms of the Contract, payment for labor cost may be allowed, provided there is no other location within the Project to which the laborers may be assigned. Payment will be limited to a maximum of eight (8) hours per occurrence and in no case will exceed the amount of the Contractor's obligation as provided by his current labor agreement. No additional compensation for overhead will be allowed.

SECTION 109. MISCELLANEOUS AND CONSTRUCTION PROVISIONS

109.01 Jurisdiction and Law

This Contract, and all actions arising from it, must be governed by, subject to, and construed according to the law of the State of Michigan. The Contractor consents to the personal jurisdiction of any competent court in Wayne County, Michigan, for any action arising out of this Contract. Service of process at the address and in the manner specified in this Contract will be sufficient to put the Contractor on notice. The Contractor will not commence any action against the County because of any matter arising out of or relating to the validity, construction, interpretation and enforcement of this Contract, in any courts other than those in the County of Wayne, State of Michigan unless original jurisdiction is in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court or the Michigan Court of Appeals.

109.02 Successors

The terms, conditions, and covenants contained in this Contract apply and inure to the benefit of, and are binding upon the parties hereto and their respective successors in interest and legal representatives, except as otherwise herein expressly provided. All rights, powers, privileges, immunities and duties of the County under this Contract including, but not limited to, any notices required or permitted to be delivered by the County to Contractor may, at the County's option, be exercised or performed by the County's agent or attorney.

109.03 Amendments

No alterations, amendment, change, or addition to this Contract shall be binding upon the County or Contractor unless reduced to writing and signed by each party.

109.04 Severability

The invalidity or unenforceability of any provision or term of this Contract shall not affect the validity or enforceability of any other provision or term of this Contract.

109.05 Section Headings

The section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Contract, nor in any way affect this Contract.

109.06 Singular/Plural and Gender

When used herein, the singular includes the plural, the plural includes the singular, and use of any gender is applicable to all genders.

109.07 Entire Agreement

This Contract consists of Sections 101 through 109 and the attached documents identified as the Special Provisions, Supplemental Specifications, Project plans and drawings, Standard Plans, and then the Standard Specifications, along with any other addendum that maybe issued. This Contract sets forth all the covenants, promises, conditions, and understanding between the County and Contractor.

[SIGNATURE BLOCKS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, each of the parties has caused this Contract to be executed by its duly authorized representatives on the dates shown beside their respective signatures.

Approved by the County Commission on _____.

Resolution Number _____

FOR THE CHARTER COUNTY OF WAYNE

Signature

Date

Warren C. Evans
Printed Name

County Executive
Title

FOR [CONTRACTOR]

Signature

Date

Printed Name

Title

[]

SURETY FORMS

The attached sample Performance and Payment bonds will be required of the Successful Bidder before a contract award can be finalized.

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS THAT

as principal and _____ as Surety, are held and firmly bound unto the COUNTY OF WAYNE, its Chief Executive Officer, Board of Commissioners, Offices, Department, Agents and Employees as their interests may appear, in the penal sum of DOLLARS (\$ _____), lawful money of the United States, for the payment of which sum of money well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated this _____ day of _____, 20__.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH THAT whereas the above bounden Principal has entered into a certain contract with the COUNTY OF WAYNE, Michigan, bearing the date the _____ day of _____, 20__, for

NOW, IF THE SAID Principal shall in all respects well and truly keep and perform the said contract on its part, in accordance with the terms thereof in the time and manner therein prescribed, and further shall defend, indemnify, keep and save harmless the County of Wayne, its Chief Executive Officer, Board of Commissioners, Offices, Departments, Agents and Employees as their interests may appear, against all liabilities, judgments, costs, damages and expenses which may in any wise come against said County of Wayne, its Chief Executive Officer, Board of Commissioners, Offices, Departments, Agents, Employees, or any of them, as their interests may appear, in consequence of the granting of such contract or which may in any wise result from the carelessness or neglect of said Principal of its Agents, Employees or Workmen in any respect whatever, or which may result on account of any infringement of any patent by reason of the materials, machinery, device or apparatus used, in the performance of said contract, and, moreover, shall pay to said County any sum or sums of money due said County by reason of any failure or neglect in the performance of the requirements of said contract, where the said County shall have elected to suspend the same, and shall pay all claims and damages whatsoever which may accrue to each and every person who shall be employed by said Principal or by its assignee or assignees, Contractors, Subcontractor or Subcontractors, in or about the performance of said contract, then is this obligation to be null and void, otherwise, to remain in full force and effect.

AND PROVIDED, that any alterations which may be made in the terms of the contract, or in the work to be done under it, or the giving by the County of any extension of time for the performance of the contract, or any other forbearance on the part of either the County or the Principal to the other shall not in any way release the Principal and the Surety or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety of any such alterations, extension of time or of forbearance being hereby waived.

WITNESSES:

_____	_____	(Seal)
_____	_____	(Seal)
_____	_____	(Seal)

PAYMENT BOND

KNOWN ALL MEN BY THESE PRESENTS, That _____
as Principal and _____
as Surety, are held and firmly bound unto the County of Wayne, its Chief Executive Officer, Board
of Commissioners, Officers, Departments, Agents and Employees, in the penal sum of _____
_____ DOLLARS (\$) lawful money of the United States, for the
payment of which sum of money well and truly to be made, we bind ourselves, our heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

SEALED with our seals and dated this _____ day of _____, 20__

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH That whereas the above
bounden Principal has entered into a certain contract with the County of Wayne, Michigan, bearing
date the ____ day of _____, 20__, for

NOW, IF THE SAID Principal shall pay, as the same may become duly payable, all
indebtedness which may arise payable by said Contractor to a subcontractor or party performing
labor or furnishing materials, or payable by any subcontractor to any person, firm or corporation on
account of any labor performed, or materials furnished in the erection, repairing or ornamentation
of such building, improvement, or works, in accordance with the provisions of Act No. 213 of the
Public Acts of the State of Michigan, for the year 1963, as amended, then this obligation shall be
void; otherwise to remain in full force and virtue.

AND PROVIDED, That any alterations which may be made in the terms of the contract, or in
the work to be done under it, or the giving by the County of any extension of time for the
performance of the contract, or any other forbearance on the part of either the County or the
Principal to the other shall not in any way release the Principal and the Surety or either of them,
their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to
the Surety of any such alterations, extension of time or of forbearance being hereby waived.

WITNESSES:

_____	_____	(Seal)
_____	_____	(Seal)
_____	_____	(Seal)
_____	_____	(Seal)