

Allen Park Belleville Brownstown Twp. Dearborn Heights Ecorse Lincoln Park	Downriver Utility Wastewater Authority 25605 Northline Road • Taylor, Michigan 48180	River Rouge Riverview Romulus Southgate Taylor Van Buren Twp. Wyandotte
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REQUEST FOR PROPOSALS (RFP-2020-04)

**COMMERCIAL ROOFING CONSTRUCTION SERVICES FOR
2020 EMERGENCY ROOF REPAIRS AND MAINTENANCE AT THE
DOWNRIVER WASTEWATER TREATMENT FACILITY
797 CENTRAL ST, WYANDOTTE, MI**

Proposal Due Date: September 25, 2020 @ 3p

NOTICE TO COMMERCIAL ROOFING ENTITIES

OHM Advisors Inc. (OHM), on behalf of the Downriver Utility Wastewater Authority (DUWA), is requesting Proposals from Commercial Roofing Contractors entities to provide roof repairs (the PROJECT) at the Downriver Wastewater Treatment Facility (DWTF) located at 797 Central Street, Wyandotte, MI 48192. It is DUWA's intent to award a single contract to a selected entity to deliver the PROJECT.

The PROJECT will be awarded to the contractor that provides the best value, based on cost and qualifications. Procurement and selection shall be made without any lobbying and/or direct contact with DUWA (and its 13 municipal members). All expenses associated with the preparation and submission of a Proposal for this PROJECT shall be the sole financial responsibility of the interested bidders.

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SECTION 1 - SUBMISSION REQUIREMENTS

Submit an electronic bid package, including the bid form, to DUWA@ohm-advisors.com by the deadline. To be considered, Proposal packages must arrive by the time and date shown.

Proposal packages must be addressed and submitted to DUWA on or before:

3:00 p.m. EST on Friday, September 25, 2020

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SECTION 2 – PROCUREMENT PROVISIONS

2.0 RFP PROCEDURES

2.1 Availability of RFP documents

The complete set of the RFP documents (including all attachments) are available for download from the DUWA website (www.duwauthority.com). Interested bidders will be notified of the posting by DUWA's System Manager via email. To be included on the 'interested bidders' list, you must e-mail your contact information to Lambrina Tercala at Lambrina.Tercala@ohm-advisors.com. Proposers are solely responsible for any reproduction costs.

2.2 Issuance and Acknowledgement of Receipt of Addendum

DUWA will notify interested bidders of available addenda via email. The addenda, when released, will be available for download from DUWA's website at: www.duwauthority.com.

It is solely the responsibility of each of these proposers to ensure that they receive any and all addenda. Proposers shall acknowledge receipt of addenda in their Submissions.

2.3 Requests for Clarification

Proposers should submit Requests for Clarification in written form via email to Lambrina Tercala as set forth below. Requests for Clarification must be submitted prior to 12:00 p.m. local time on Wednesday, September 23, 2020. All questions received by this time and date will be responded to, in writing, by issuance of an addenda, no later than Thursday, September 24, 2020. Requests for clarification received after this time and date will not receive a response, except in the sole discretion of DUWA. Anonymity of the source of specific questions will be maintained in the written responses. Responses to all questions will be emailed to all registered RFP recipients.

All requests for clarification must be sent via email to the following:

Lambrina Tercala, PE, Project Manager, OHM Advisors
 Phone: (734)-466-4430
 Email: Lambrina.Tercala@ohm-advisors.com or DUWA@ohm-advisors.com
 Subject: RFP-2020-04 DUWA Critical Roof Repairs

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2.4 RFP Optional Pre-Proposal Site Meeting

DUWA will conduct an optional pre-proposal site meeting with interested proposers on Tuesday, September 22, 2020 at 10a. Proposers must email their interest for a meeting to Lambrina Tercala by Friday, September 18, 2020. The intent of the meeting would be to communicate PROJECT information or answer questions to clarify PROJECT requirements and also conduct a site tour of the PROJECT areas.

All personnel who want to participate shall bring their own personal protective equipment, which includes as a minimum: hard hat, safety glasses, appropriate footwear, and facial covering. COVID screening (questions and temperature check) will be completed at admissions into the plant.

2.5 Proposal Validity for 60 Days

The offer represented by each proposer's Proposal will remain in full force and effect for sixty (60) days after the Proposal Due Date. If award has not been made within sixty (60) days after the Proposal Due Date, each proposer that has not previously agreed to an extension of such deadline shall have the right to withdraw its Proposal.

2.6 Procurement Schedule

The following is the anticipated RFP schedule and related project dates and is subject to change by DUWA:

Table 2.6: Procurement Schedule Milestones and Dates

Milestone	Date
Invitation to Submit Proposals	September 14, 2020
Optional Pre-Proposal Meeting	September 22, 2020 @ 10a
Requests for Clarification Deadline	September 23, 2020 @ 12p
Deadline for RFP Submittal	September 25, 2020 @ 3p
DUWA Board Approval of Selected Contractor	October 8, 2020
Negotiations	Early October 2020
Issue NTP	Mid-October 2020

DUWA reserves the right, at any time, to make additions, modifications or deletions to any of the events or dates that comprise the RFP Schedule. Such changes shall be made by RFP Addendum.

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SECTION 3 - PROJECT TERMS and CONDITIONS

3.1 Regulatory Compliance

The construction must comply with the requirements of all applicable local, State and Federal agencies. Each portion of the work shall be performed by a person licensed, equipped and experienced to do work in the particular field. Please review Public Contract Code and Public Law, which include requirements for performance of the work by Contractors and Subcontractors. Both shall furnish certified payroll records and participate in an approved apprenticeship program as required by Federal and State requirements. The labor compliance and apprenticeship requirements will be monitored throughout the construction process. If the Contractor is not in compliance it shall be in default of its contract.

3.2 WIFIA Requirements

The Contract is expected to include WIFIA requirements including NEPA, Davis-Bacon, American Iron and Steel, and all other federal cross-cutter provisions apply. For further details see their website at: <https://www.epa.gov/wifia>

ATTACHMENTS

Attachment A – Bid Form (page 6 of 107 of this PDF)

Attachment B – Scope of Work (page 9 of 107 of this PDF)

Attachment C – Site Plan Sketches (page 19 of 107 of this PDF)

Attachment D – Sample Agreement with DUWA (page 23 of 107 of this PDF)

Attachment E – Exhibit A: General Conditions (page 48 of 107 of this PDF)

BID FORM

TO: DUWA@OHM-ADVISORS.COM FROM: _____

1. Pursuant to and in compliance with the invitation to bid and the proposed contract documents relating to:

Emergency Repairs and Maintenance – 2020
RFP 2020-04

The undersigned, having become thoroughly familiar with the terms and conditions of the proposed Scope of Work documents and with local conditions affecting the performance and cost of the work at the place where the work is to be completed and having fully inspected the site in all particulars, hereby proposed and agrees to fully perform the work within the time stated in strict accordance with the proposed contract documents, including furnishing any and all labor and materials, and to do all the work required to construct and complete said work in accordance with the contract documents, for the following sum of money:

A. Base Bid:

All labor, materials, services, and equipment necessary for completion of the work as stated in the "Request For Quotation-2020 Emergency Repair and Maintenance – Scope of Work".

	Base Bid	Added Optional Work
• Mobilization and Administration	\$ _____	
• <u>General Conditions:</u>	\$ _____	
• <u>Item #1:</u> 96 Hrs @ \$ _____ /hr:	\$ _____	
• <u>Item #1:</u> Materials Allowance:	\$ 1,500.00	
• <u>Item #2:</u> (EPDM Wall Cover)	\$ _____	
• <u>Item #3:</u> (2 Curb Adaptors)	\$ _____	
• <u>Item #4A:</u> (Unplug Drain up to 20')	\$ _____	
• <u>Item #4B:</u> (50' optional added work)		\$ _____ <i>add</i>
• <u>Item #5A:</u> (Remove Debris)	\$ _____	
• <u>Item #5B:</u> (Unclog 1st Drain, 20')	\$ _____	
• <u>Item #5B:</u> (Unclog 2nd Drain, 20')	\$ _____	
• <u>Item #5B:</u> (50' optional 1 st drain)		\$ _____ <i>add</i>
• <u>Item #5B:</u> (50' optional 2 nd drain)		\$ _____ <i>add</i>
• <u>Item #5C:</u> (Patch Brick – Option 1)	\$ _____	
• <u>Item #5C:</u> (Patch Brick – Option 2)		\$ _____ <i>add</i>
• <u>Item #6:</u> (EPDM cover)	\$ _____	
• <u>Item #6B:</u> (Plywood Entire Wall)		\$ _____ <i>add</i>
• <u>Item #7:</u> 24 Hrs @ \$ _____ /hr:	\$ _____	
• <u>Item #7:</u> Materials Allowance:	\$ 500.00	
Total for all Base Bid work	\$ _____	Total Add \$ _____



B. Unit Pricing

For changing specified quantities of work from those indicated by the scope of work upon written instructions of the owner, the following unit prices shall prevail. The unit prices include all labor, overhead, and profit, materials, equipment, etc. Only a single unit price shall be given, and it shall apply for either more or less than shown on the drawings and called for in the specifications or included in the base bid. In the event that more or less units are used than was included in the base bid price, a change order shall be issued adjusting the final contract amount accordingly.

1. T&M Work Item #1: \$ _____ per hour.
2. T&M Work Item #7: \$ _____ per hour.
3. Clean up to 50' of Drain \$ _____ each occurrence

C. Performance and labor and material payment bonds:

By signing and submitting this bid, the bidder certifies that he/she is able to furnish performance bonds and labor and material bonds in amounts sufficient to cover the total proposed cost of the work. The bonds will be amended and maintained current as required by owner with all additions or deletions from the contract work. (Note: Cost of Bonds is not to be included in the Base Bid Pricing. If Owner requires a bond, that cost will be added).

I certify that I have contacted and received a guaranteed commitment from _____ for performance and labor and material bonds in the amount of \$ _____ for this project.

Authorized Signature _____
(Principal of Firm)

D. Time of commencement, completion and damages:

1. It is the intent of DUWA to award the contract to the selected Contractor by October 9, 2020. All awarded work must be completed no later than December 1, 2020.
2. After the award of the contact, Contractor shall commence work in ____ calendar days (but not later than November 1, 2020) and substantially complete the Base Bid work within ____ calendar days once they begin to work on site. Contractor shall than fully complete the base bid work within 7 days following substantial completion. If awarded the either the larger option work for Item 5C Masonry Work or Item 6 add the following number of Calendar Days:
 - A. Item 5C (Option 2) full brick restoration ____ days added
 - B. Item 6B Full Gable Wall Removal/Plywood ____ days added



3. Time is expressly declared to be of the essence in completion of the work covered by these contract documents, and the contractor shall be liable for actual damages for delay in completion of work. Actual damages include, but are not limited to, increased construction management fees, additional inspection fees, and all other costs incurred as a result of the delay in completion. Where, under the contract, additional time is allowed for the completion of the work, the new time limits will be of the essence of the contract.

2. Additional Information

- A. I understand that the owner reserves the right to reject this bid, but that this bid shall remain open and not be withdrawn for a period of sixty days from the date prescribed for its opening.
- B. If written notice of the acceptance of this bid is mailed or delivered to the undersigned within sixty days after the date set for the opening of this bid, or at any other time thereafter before it is withdrawn, the undersigned will execute and deliver the contract documents to the owner in accordance with this bid as accepted, and will also furnish and deliver to the owner any required documents or bonds, such as performance bond, labor and material payment bond, and proof of insurance coverage, all within fifteen days after personal delivery or after deposit in the mail of the notification of acceptance of this bid.
- C. Notice of acceptance or requests for additional information may be addressed to the undersigned at the address set forth below.
- D. The names of all persons interested in the foregoing bid as principals are:

IMPORTANT NOTICE: If the bidder or other interested person is a corporation, give legal name of corporation, state where incorporated, and names of President and Secretary; If a partnership, give name of firm and names of all individual copartners composing the firm; if bidder or other interested person is an individual, give first and last names in full.

Business Address:

Telephone Number: _____

Sign Here: _____
SIGNATURE OF BIDDER

Date of Proposal _____



DUWA 2020 Emergency Roof Repairs and Maintenance
797 Central Street, Wyandotte, Michigan
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REQUEST FOR QUOTATION

SCOPE OF WORK
(2020 Emergency Roof Repairs and Maintenance)

PART 1 – GENERAL

1.01 SCOPE

- A. General – The 2020 Emergency Roof Repairs and Maintenance project calls for selected repairs on three building structures at this site. The work is to address immediate repair needs on some areas as well as address maintenance needs on other areas. Pricing shall be provided as described in the following paragraphs and also later in this document.
- B. Type of Contract – This work is expected to be bid as a single Lump Sum price for the work described. Some “unit price” work may occur that could increase or decrease the final amount of actual work performed by a small percentage.
- C. Description – The work includes roof repair work (including some wall repair) at the Main Processing Building, the Administration Building and the Maintenance Building at the site. The site is located at 797 Central Street, Wyandotte, Michigan. The Owner is requesting one Base Bid price for the all of the described work with the expectation that the work will be awarded in the late summer or early fall of 2020 and the project completed in the fall of 2020. At this time, the work is not expected to include any significant roofing work and is expected to include less than \$25,000 in maintenance and repairs, which the Owner hopes will occur within a 2 week calendar window from start to finish of work on site.

The vast majority of roofs are gravel surfaced coal tar pitch membranes that are estimated to be 20 years in age and are not under any current warranty. There are a few small roof sections on these buildings with newer EPDM membranes, but no significant work is planned for those EPDM roof areas.

- D. The Work included in this contract for this project consists of furnishing all labor, materials, services, and equipment required in conjunction with or properly incidental to the work, as shown and described herein. All work shall be performed in conformance with accepted roofing/construction industry practices and in accordance with the material manufacturer’s normal/standard installation requirements.

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- E. The attached drawings and this scope of work document are intended to be a schematic representation of the existing conditions and overall design intent. Contractor is responsible to review existing conditions and develop the specific scope of work for the project, which shall meet the design intent as well as be in accordance with all applicable building codes.
- F. Contractor's Duties, Contractor shall:
1. Except as specifically noted, provide and pay for (a) labor, materials and equipment, (b) tools, construction equipment, and machinery, and any other services necessary for the proper execution and completion of the Work. Currently, the Owner plans that the successful contractor will be provided a source of water and electricity and that they will also be allowed to utilize facility building bathrooms. A such, there is no expectation that they will need to provide portable sanitation units (Port-O-Johns).
 2. Secure and pay, as necessary, for the proper execution and completion of Work, at time of receipt of bids, (a) permits, (b) government fees, (c) licenses. [Special Note: City Permits are not expected to be pulled for this limited amount of repair and maintenance work. If it is learned that City Permits are required, the costs of permits will be either paid by the Owner or added to the project as an exact pass through cost.]
 3. Give required notices.
 4. Coordinate all Work with Owner, or their designated representative.
 5. Comply with codes, ordinances, rules/regulations, orders and other legal requirements of public authorities which bear upon performance of Work.
 6. Enforce strict discipline and good order among employees. Do not allow foul language or other unprofessional behavior on the job-site.
 7. Under no circumstances leave any roof or siding exposed to the elements that could result in water intrusion into the roof or walls. Even if the weather forecast does not call for precipitation, the buildings must be made watertight upon completion of each day.

1.02 CONTRACTS

- A. Construct Work under a Lump Sum Agreement, which will include specific allocations for various work items. Actual payment will be based upon the actual amounts of "authorized" Work which is performed. Authorized Work is work that is

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authorized, in writing, before the start of the work by the Owner, or the Owner's representative. The Owner will not be obligated to pay for Work performed that is not authorized in advance, in writing.

- B. Form of Agreement and General Conditions are expected to be the AIA Document A101, 2017 and AIA Document 201, 2017. Which are referenced as attachments to this scope.

1.03 POTENTIAL WORK BY SUBCONTRACTORS

- A. Masonry Restoration.

1.04 OWNER-FURNISHED PRODUCTS

- A. None.

1.05 CONTRACTOR USE OF PREMISES

- A. The contractor will note that the site is to remain open to use at all times, unless otherwise scheduled. Work will be performed during normal working hours (no earlier than 7:30 AM and no later than 6:00 PM), unless otherwise approved. The Contractor will work closely with DUWA's Contract Operator, Veolia NA and any selected observation/testing company during the construction work. Work on Saturday will need to be approved by the Owner or their designated representative in advance. Selected Contractor shall coordinate working hours and days for work with Veolia NA in advance.
- B. The Contractor will be responsible for barricading the Work areas, as well as maintaining control of the barricades through the entire project. Maintain protection for persons walking along or in the general vicinity of, the building to prevent injury and/or damage from falling materials.
- C. The Contractor will be responsible for ensuring all safety rules and regulations are followed by all contractor representatives, material delivery personnel, employees and agents.
- D. Any damage to the existing property caused by the Contractor's operations shall be repaired by the Contractor at no cost to the Owner prior to final acceptance of, and payment for, the Work.
- F. Contractor shall provide with their bid the proposed construction time for work on this project.

1.06 SUMMARY OF WORK – BASE BID

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A. The Base Bid scope of work is to include the following:

Item #1 – Building “O” The Maintenance Building.

1. The work at the Maintenance Building will include several types of maintenance and repair, including: removal of debris, 3 course flashing the top of sagging wall flashings, repair of damaged drain flashing(s), adhering loose and deteriorated EPDM membrane on the taller parapet walls, and penetration flashing upgrades. Because of the nature of this work, the work on the Maintenance Building shall be done on a time and materials basis (T&M). Each bidding Contractors is to include an estimate of 96 manhours of work (~4 person crew for 3 days at 8 hours per day), as well as \$1,500 for materials to perform the requested maintenance and repairs at the Maintenance Building.
2. Item 1A. Contractor shall walk the roofs and collect large debris, including accumulated moss and remove debris from site.
3. Item 1B. Contractor shall upgrade the seal of the Section 2 roof area to the higher Section 1 wall (approximately 200 linear feet), by lifting the metal counterflashing so as to nail the top of the existing membrane flashing and apply a new 3 course application of mastic and 6” fabric to seal the upper edge of the existing BUR flashing that has slid down over time. Contractor may elect to remove the metal counterflashing and reset it, or merely lift the metal by hand to allow the new upgrade flashing. The intent of this work is to reduce the chance of the existing flashing slipping further and becoming exposed to the weather.
4. Item 1C. Contractor shall remove and reset at least one, if not two roof drain flashings that have become pulled and wrinkled. This shall include removing the existing lead and gravel guard, spudding back the gravel, application of a 5 course of mastic and fabric for approximately 40”x40” centered at the drain and resetting a new 2# lead and new gravel guard.
5. Item 1D. Contractor shall lift all “loose” pieces of EPDM membrane on the high parapet walls of Section 2 and apply new bonding adhesive so as to re-adhere the loose portions of EPDM and brush or roll the EPDM for adhesion.
6. Item 1E. Walk and inspect each penetration flashing and provide upgraded seals with either roof cement and fabric or liquid applied flashing and mesh. The goal of this item is to upgrade flashings that may become leak sources in the next 5 years.

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7. Item 1F. Walk and inspect the metal counterflashing to wall joint seals and upgrade those seals by either the removal and replacement of sealant, or the addition of sealant, tooled smooth.
8. Item 1G. Leaks were reported near the Mechanical Room Door on Section 4. It is not clear if the leaks are in the Section 4 roof membrane, from the masonry wall, or in the wall of Section 1 above. Item 1G shall be to get with facility personnel and identify the locations of these reported past leaks and perform surface repairs to address items that may be identified as possible leak entry sources so as to stop leaks in the areas reported.
9. Contractor shall provide daily tabulation sheets including photographs of the "T&M work" that was performed. This will be required as a basis for payment.

Item #2 – Building Section NN – New EPDM On 4 Foot Masonry Wall.

1. At the short 4 foot transition wall between Sections NN and MM, it is suspected that water is entering through the brick and that there is no through wall flashing to stop water entry. Rather than remove the brick and install a through wall flashing, the "repair" will be to adhere new 60 mil EPDM membrane directly to the masonry wall. The length of wall to be covered is approximately 27 feet. The new EPDM shall extend up and over the upper stone parapet of the higher roof and extend a minimum of 6" onto the lower stone coping of the lower roof.
2. Work shall include cleaning and preparing the surface to receive new EPDM flashing. As the adjoining Building MM was a building addition, the base of the new EPDM flashing shall incorporate a new foam rope expansion joint to allow building movement.
3. Work shall include extending the new membrane at least 1 foot past the interior building corner where Section NN transitions to Section OO. That vertical wall has an expansion joint in the vertical wall and a new foam rope shall be installed at that vertical transition to allow the new membrane cover to expand with building movement.
4. The work shall include installing a new horizontal termination bar at approximately 24 inches up the wall to ensure that the membrane will not easily come loose. The termination bar shall be secured at 12 inches on center. A new cover strip shall be installed over the termination bar.
5. A termination bar shall be installed at the two vertical ends of the new EPDM wall covering, secured 12 inches on center with sealant applied at

the exposed edge.

6. Pricing for this work shall be a single lump sum amount.

Item # 3 – Roof Section “OO” – Replace Two Curb Adaptors

1. On Section “OO” there are two fan curbs, each approximately 30”x30”. Both of these curbs have older and failed (rusted) Z shaped metal curb adaptors. The work shall be to replace the rusted and failed curb adaptors with new minimum 20-gauge metal curb adaptors.
2. Work shall include removing the fasteners in the top curb so that the old adaptors can be removed/lifted.
3. Furnish and install the new curb adaptors. The new adaptors shall be minimum 20-gauge galvanized steel and shall be sized with nominal 3 inch vertical legs and a nominal 4.5 inch horizontal leg.
4. The new adaptors shall be secured with a minimum of 1 fastener per each side onto the existing curb. The lifted cap shall be re-secured with a minimum of 4 screw (either one per side or two fasteners on opposite sides).
5. Work shall include removing all debris from site.
6. Contractor shall coordinate work with the facility to verify that for the short time that the curb is out of use is not a problem for the facility.
7. This work is to be billed as single lump sum for the two adaptors.

Item #4 – Roof Section “PP” – Unclogging a plugged drain

1. One of the three primary drains on Section “PP” was found plugged. What has caused the plug and exactly what may be needed to unplug that drain has not been fully determined.
2. Item 4A. The work shall be to remove the strainer dome and then use a drain snake to snake the existing line for a distance of not less than 20 feet.
3. With the expectation that the clog will be found within the first 20 feet the work shall be considered to be completed and the strainer dome shall be reset. Contractor shall pour a minimum of 10 gallons of water down the drain to verify that it is flowing freely as a field verification.

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4. Item 4B. However, if snaking the drain up to a distance of 20 feet does not clear the problem, the work shall be enhanced to snake the line up to a distance of 50 feet with a larger auger. If this work unclogs the line, the work shall be considered to be complete and the strainer dome shall be reset. Contractor shall pour a minimum of 10 gallons of water down the drain to verify that it is flowing freely as a field verification.
5. If Contractor performs the larger and more costly 50 foot cleaning, they shall be paid for BOTH the work scope items 4A and 4B as listed in the bid pricing. Else they shall only be paid for the work scope Item 4A pricing. If the 50 foot snake does not clear the line, Contractor shall still be paid for BOTH work scope items 4A and 4B, but shall also propose a next step action for Owner review.

Item #5 – Building RR Roof Section. 4 Items.

1. Work on Building RR may include as many as four separate items. Item 5A shall be cleaning and removing debris. Item 5B shall be unclogging up to 2 primary roof drains. Item 5C shall include patching cracked masonry brick on an adjoining wall corner. Item 5D shall include resetting a loose section of counterflashing.
2. Item 5A. Contractor shall remove debris (including grass and moss) from the roof surface and removing it from site. Work shall be priced lump sum.
3. Item 5B. Work shall include clearing two separate drain lines, similar as were described in Item 4. The base bid pricing shall be listed as a lump sum price for each drain with the initial work to perform up to 20 feet of cleaning. The work shall also include priced line items to clean up to 50 feet of drain line. Contractor shall be paid for each item that is performed.
4. Item 5C. At one penthouse masonry wall, there are current large open cracks in the masonry. The mortar joints at these cracks are approximately 3/4" wide and there is an estimated 30 linear feet of cracked mortar joint. The cracking is mainly vertical and is located near a corner. The repair work for this failed brick will be decided after review of the pricing. One repair option (Option 1 – Temporary Mortar Repair) is to rake the open joints and just apply new mortar repair product from a caulk gun into the open cracks and tool smooth. This very limited repair will not likely last long and would only be a finger in the dike approach. The other repair option (Option 2 – Long Term Masonry Restoration) is to provide a vertical brick expansion joint along the one side of the corner where the cracking is the worst and replace the cracked and loose brick for along the new expansion

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joint for the full height of the penthouse at that corner. This second option would be expected to provide many years of service and that work, if authorized would need to be performed by a specialty masonry subcontractor (and not by roofers). In the bid form there will be two line items for this 5C work with the first line item a lump sum cost for the Option 1 work and the second for Option 2 work. The Owner will select which option then would like once they receive the repair pricing quote. With their quote, bidders should provide the name of the planned Masonry Subcontractor should the Option 2 work be selected. For the larger masonry repair scope, the Masonry Subcontractor will become responsible for evaluating and determining the best placement and size for the new vertical expansion joint and what materials will be best suited. Pricing listed for Option 2 shall be show as the "additional cost" beyond Option 1 pricing.

5. Item 5D. At one corner of the new steel deck additional portion of Building RR, the surface mounted counterflashing has come loose. The loose piece is approximately 4 feet in length. The scope of repair would be to remove this piece, apply new 3 or 5 course mastic and mesh to the top of the exposed BUR flashing and install a new piece of surface mounted counterflashing (secured 12 inches on center) and apply a neat bead of sealant where the top edge of the new metal counterflashing will meet the masonry wall. Work shall be priced as a lump sum.

Item #6 – Section TT – Temporary Repair of the Failed Penthouse Gable Wall.

1. At one end of the raised penthouse wall on Section TT the existing stucco wall has failed. The wall is approximately 18 feet in length and ranges from about 7 feet to 9 feet in height (approximately 150 square feet in total). Approximately half of the stucco materials has fallen from place (most of the lower half) and has exposed the wood framing beneath. The work in this scope is to provide a temporary wall covering over the entire gable wall and does not include a longer term restored wall construction.
2. Work shall include removing the debris from the fallen wall and removing it from site. This includes removing the stucco that is already very loose, but has not yet fallen.
3. Work shall include installing new plywood, to infill the area of fallen or removed stucco and securing that plywood to the vertical framing at not to exceed 18 inches on center at each stud. The new plywood shall be nominal $\frac{3}{4}$ " material so as to nearly match the stucco thickness. The work shall also include placing some additional plates and screws through the upper portion of the stucco wall where it has not fallen to help secure those materials in the short term. Rough spacing for added fasteners would be

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18 inches on center at each vertical framing member to help steady and secure the remaining stucco.

4. Work shall then include installing a new fully adhered (and mechanically attached) EPDM membrane laid over the infilled plywood and partially remaining stucco wall and securing the new EPDM at the outer boundary of the wall with new termination bar. Contractor shall install vertical termination bars in every other vertical wall stud and then apply a 6" cover strip over those termination bars once in place. Vertical termination bars shall be installed at the wall ends and across the top diagonal portion of the wall and sealed for temporary water resistance.
5. As an enhanced option for Item #6, provide Item #6B work to remove 100% of the stucco wall and install new plywood and new EPDM to the entire gable end on that side of the penthouse. The Owner will decide on what scope they would like to have done after they review the received pricing. Pricing listed for Item #6B shall show the "additional cost" for removing all of the stucco and installing a full layer of new 3/4 plywood at this wall prior to the application of the new EPDM.

Item #7 – "Other" T&M Unit Price Work

1. While Item #1 included up to 96 hours of T&M work for use on the Maintenance Building, Item #7 includes another 24 hours of T&M work that may be requested or found needed (discovered) to be performed on buildings other than the Maintenance Building. Each bidder shall include an allowance 24 hours and \$500 of materials for T&M pricing with their bid.
2. If any work in Item #7 is authorized, Contractor shall provide daily tabulation sheets including photographs of all "additional T&M work" that is discovered and corrected. This will be required as a basis for payment.

1.07 SUMMARY OF WORK – BID PRICING

- A. The Contractors shall fill in the provided Bid Form when submitting their quotation:

1.08 CONTRACT REIMBURSEMENT RATES

- A. The Contractor is authorized to perform up to and including the allocated Work, as listed in the Authorized Contract Award without obtaining additional authorization from the Owner or their designated representative. The successful Contractor shall ask for and receive authorization prior to performing Work above and beyond the allocated Base Bid authorized amounts.

DUWA 2020 Emergency Roof Repairs and Maintenance
797 Central Street, Wyandotte, Michigan
RFP 2020-04 ROOF DESIGN SERVICES

- B. Should additional items or Work be needed during construction, pricing will be negotiated during the construction.

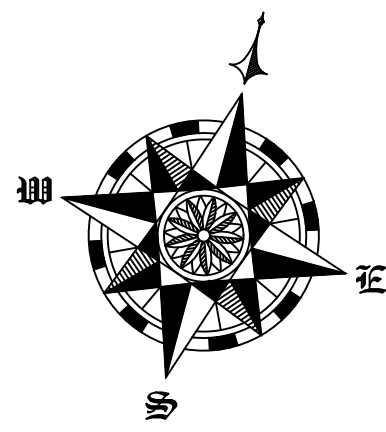
PART 2 - PRODUCTS

2.01 Roofing Products

- A. EPDM: The EPDM for Items #2 and #6 shall be a nominal 60 mil unreinforced sheet and shall be a fire rated product. Product may be Carlisle, Firestone, JM, or other major roofing system manufactures. New bonding adhesive, seam tape, new termination bar, new water cut off mastic and new lap sealant shall be manufactured by the sheet system manufacturer. Color shall be black.
- B. All related EPDM "accessory products", such as fasteners, screws, T-patches, cover strips, etc., shall all be made by the same EPDM roofing manufacturer as is being installed for this project.
- C. Nails for securing old BUR shall be minimum 1.5" galvanized nails, with 5/16" diameter head. Nails for securing new wood sheathing shall be minimum 2" spiral or ring shank nails.
- D. Wood Sheathing shall be a nominal 3/4" plywood (minimum 5 plies).
- E. Roof cement shall be asphalt based, non-asbestos, and be recommended for use in combination with coal tar membranes.
- F. Elastomeric caulking shall be Sonolatic NP-1, manufactured by Sonneborn or SikaFlex, manufactured by Sika, Quad Sealant by OSI, or similar.
- J. All other materials not specifically described but required for a complete and proper installation of the work shall be as selected by the contractor and subject to the approval of the owner.

Attachments: Bid Form
Site Plan Sketches (Showing Building Locations and Repair Locations)
AIA Document 101, 2017
AIA Document 201, 2017

- END OF RFQ SECTION -



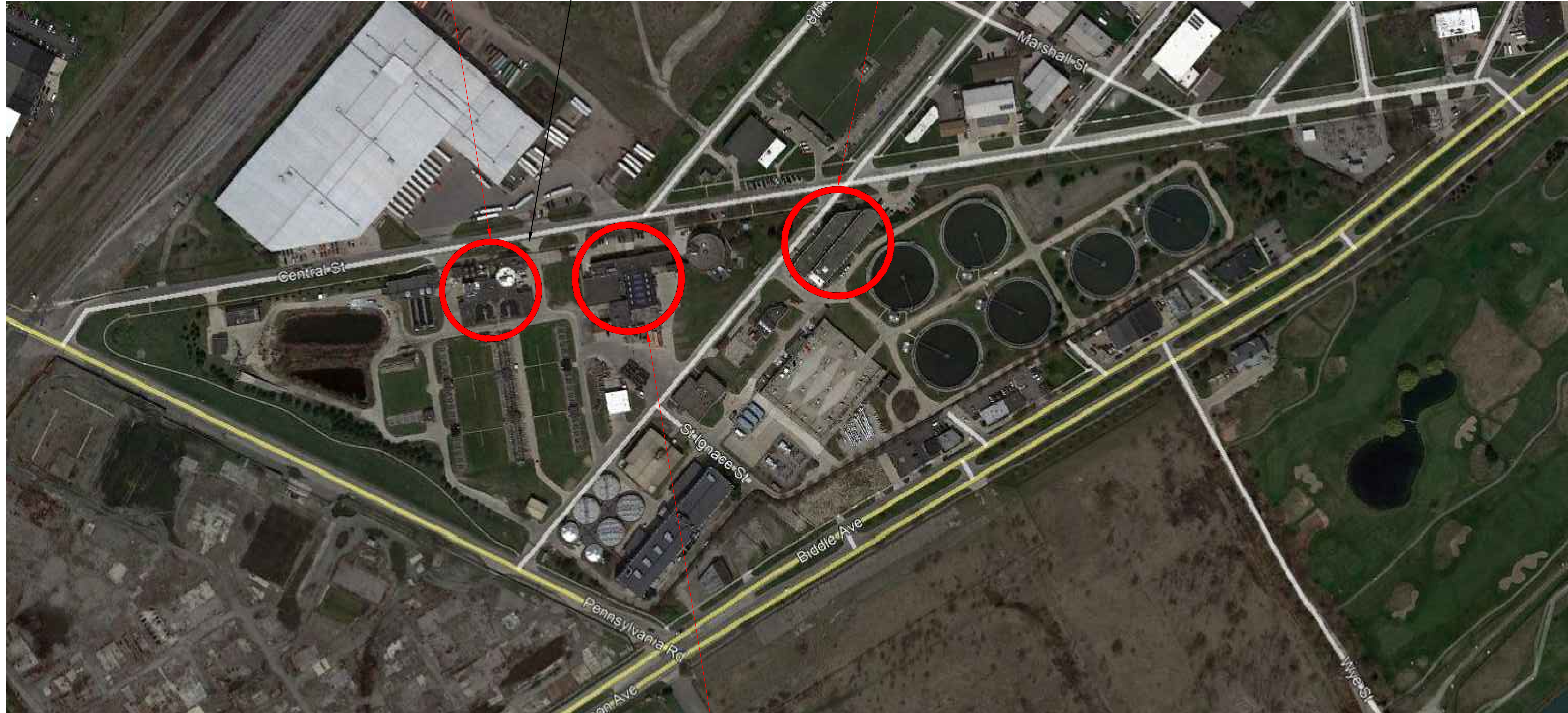
Processing Building
BUILDING NN OO, PP AND QQ - SEE RP-1

DRAWINGS FOR EMERGENCY
REPAIRS AND ROOF
MAINTENANCE WORK - 2020
RFP 2020-04

Maintenance Building
BUILDING O - SEE RP-2

VISITOR PARKING
LOT WAY OF ENTRY

Administration Building
BUILDING RR AND TT - SEE RP-3

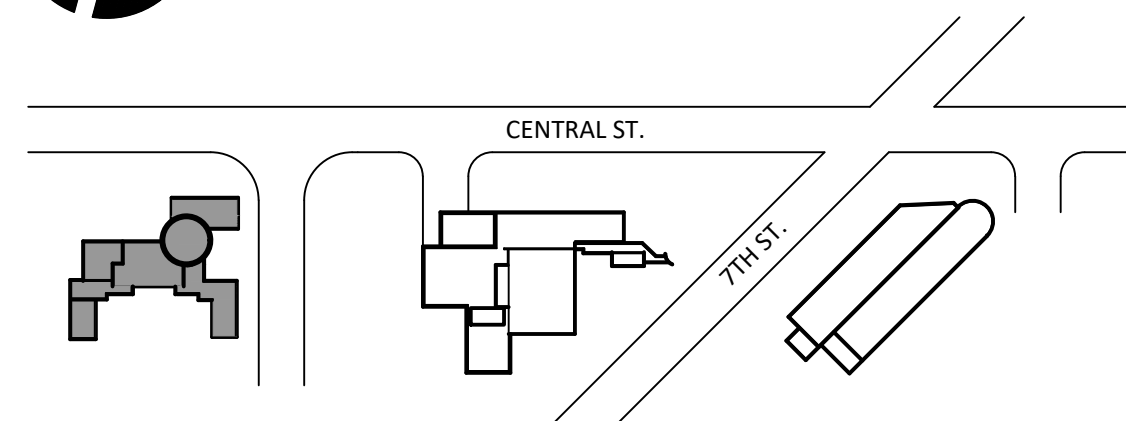
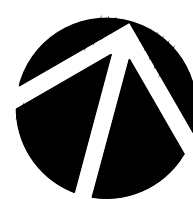


797 CENTRAL STREET,
WYANDOTTE, MI SITE PLAN

01
SP-1

SCALE: N.T.S.

ATTACHMENT C - SITE PLAN SKETCHES



02
RP-1

KEY PLAN

SCALE: N.T.S.

DRAWINGS FOR EMERGENCY
REPAIRS AND ROOF
MAINTENANCE WORK - 2020
RFP 2020-04

ROOF AREAS	
ROOF	SQ. FT.
NN	614
OO	2,799
PP	2,398
QQ	1,787
UU	948
VV	1,066
TOTAL	9,612

REPAIR ITEM #2
LOCATION.
COVER 4 FOOT
WALL WITH
EPDM



44'-4"

ROOF VV

A

C-11

ROOF UU

C-09

ROOF NN

C-13

C-14

C-15

ROOF MM (N.I.C.)

43'-0"

ROOF OO

42'-0"

(N.I.C.)

50'-0" DIA.

34'-0"

72'-3"

REPAIR ITEM #3 NEW CURB ADAPTORS



REPAIR ITEM #4 PLUGGED DRAIN



01
RP-1

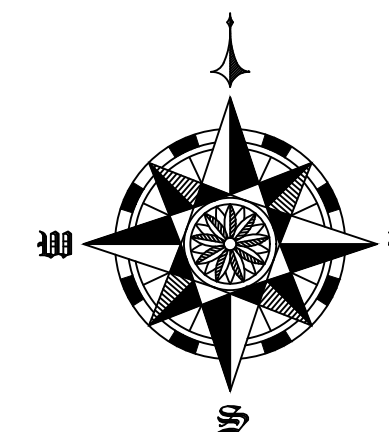
ROOF PLAN - BUILDING NN, OO, PP AND QQ

SCALE: 1/8"=1'-0"

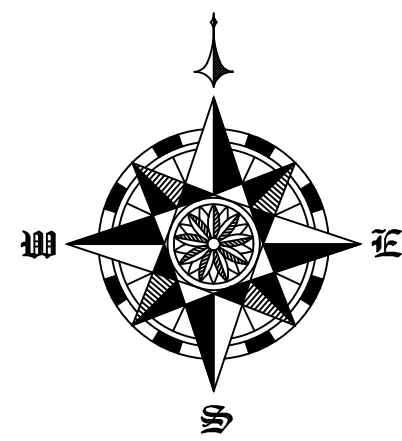
SYMBOL LEGEND

○	PLUMBING VENT (SOIL STACK)	■	PITCH PANS	□	EXHAUST FAN	A	ABANDONED	⊕	CORE SAMPLE	⊙	ROOF DRAIN
∅	HOODED VENT	▤	ROOF HATCH	□	CURB	A	ABANDONED UNIT	▤	LADDER	◁	LIGHT
▤	AIR CONDITIONER	▤	SCUPPER	▤	PARAPET	▤	EXPANSION/CONTROL JOINT	▤	CHIMNEY	◻	VENTILATOR

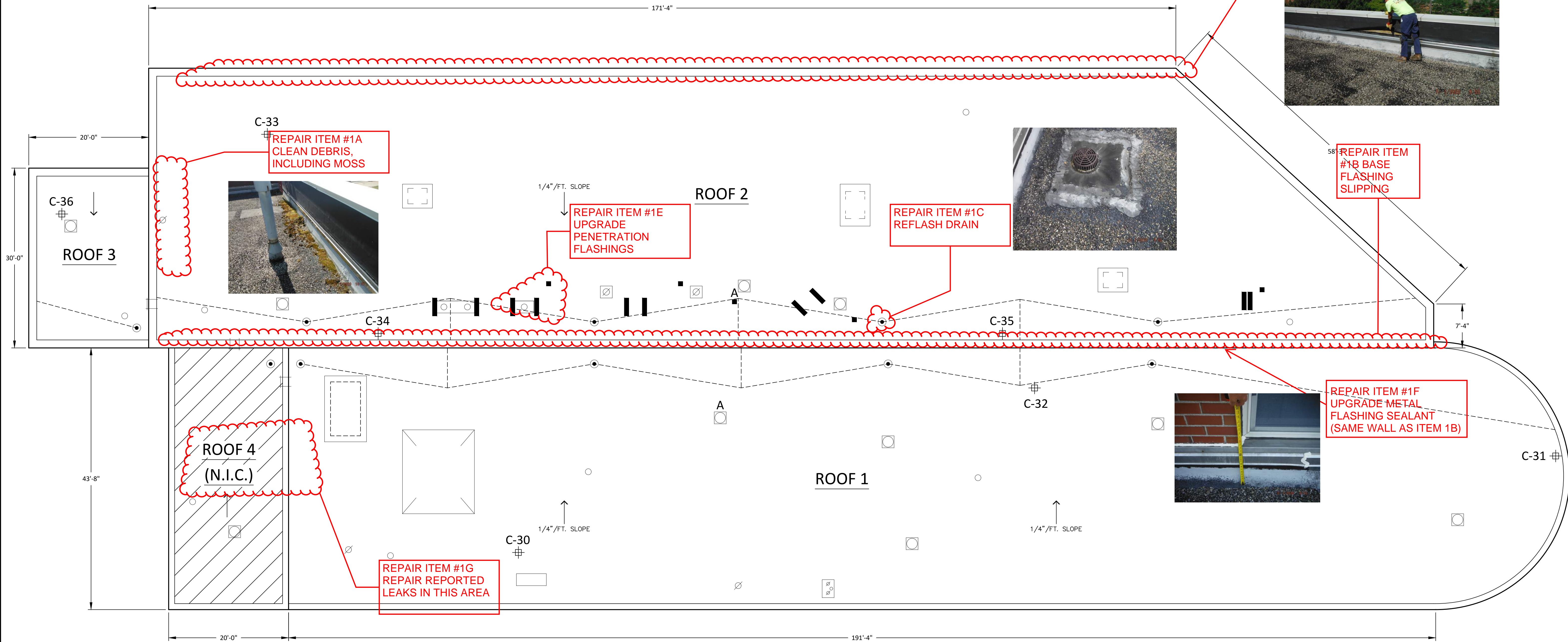
NOTE: THE SYMBOLS SHOWN ARE USED ON OUR DRAWINGS TO INDICATE ROOF FEATURES.
ADDITIONAL SYMBOLS MAY BE SHOWN ON THE DRAWING FOR SPECIFIC PROJECTS.



DRAWING NO. RP-1	DATE 7/19/2020	DRAWN BY MER	PROJECT NO. 0416496	PROJECT NAME DOWNRIVER WASTEWATER TREATMENT FACILITY BUILDING NN, OO, PP AND QQ	TITLE ROOF PLAN
REVISIONS:					
No.: DATE:					
Intertek psi Building Science Solutions Building and Construction 3733 Interchange Drive Farmington Hills Michigan 48335 Tel 248.957.9911					



DRAWINGS FOR EMERGENCY
REPAIRS AND ROOF
MAINTENANCE WORK - 2020
RFP 2020-04



01
RP-2

ROOF PLAN - BUILDING O

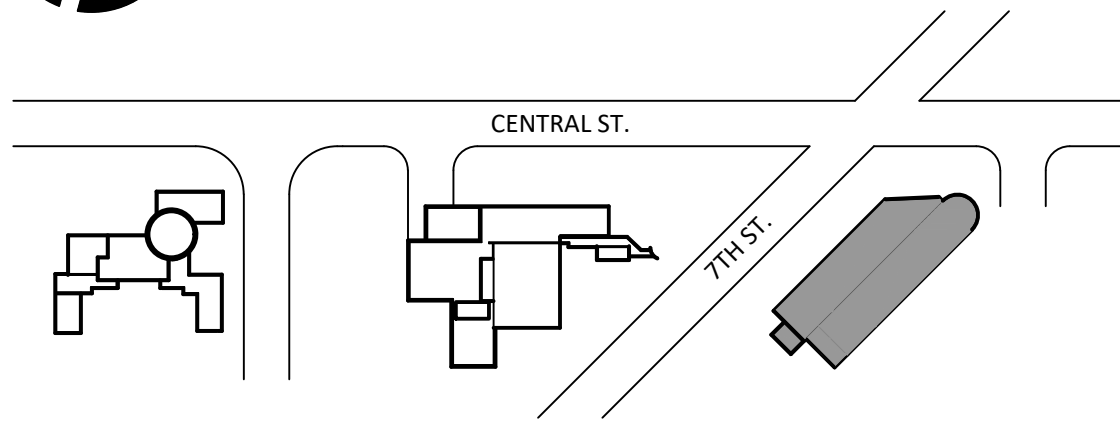
SCALE: 1/8"=1'-0"

SYMBOL LEGEND

○	PLUMBING VENT (SOIL STACK)	●	PITCH PANS	□	EXHAUST FAN	A	ABANDONED	⊕	CORE SAMPLE	⊙	ROOF DRAIN
⊘	HOODED VENT	⊠	ROOF HATCH	□	CURB	A	ABANDONED UNIT	□	LADDER	△	LIGHT
■	AIR CONDITIONER	≡	SCUPPER	≡	PARAPET	≡	EXPANSION/ CONTROL JOINT	□	CHIMNEY	□	VENTILATOR

NOTE: THE SYMBOLS SHOWN ARE USED ON OUR DRAWINGS TO INDICATE ROOF FEATURES.
ADDITIONAL SYMBOLS MAY BE SHOWN ON THE DRAWING FOR SPECIFIC PROJECTS.

ROOF AREAS	
ROOF	SQ. FT.
1	8,878
2	8,499
3	510
TOTAL	17,887



02
RP-2

KEY PLAN

SCALE: N.T.S.

DRAWING NO. **RP-2**
DATE: ~~7/9/2020~~

DRAWN BY: **MER**

PROJECT NAME: **DOWNRIVER WASTEWATER TREATMENT FACILITY**
BUILDING O

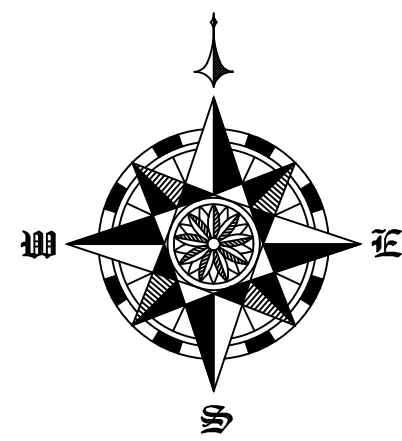
REVISIONS:
No.: DATE: REVISIONS:

Intertek psi
Building Science Solutions
Building and Construction
37-33 Interchange Drive - Farmington Hills - Michigan - 48335 - Tel 248.957.9911

SCALE: **1/8" = 1'-0"**

TITLE: **ROOF PLAN**

PROJECT NO. **0416496**



Wall mounted to access upper roof areas



REPAIR ITEM #5D
LOOSE
COUNTERFLASHING

○	PLUMBING VENT (SOIL STACK)	■	PITCH PANS	□	EXHAUST FAN	A	ABANDONED	⊕	CORE SAMPLE	⊙	ROOF DRAIN
⊘	HOODED VENT	▢	ROOF HATCH	□	CURB	A	ABANDONED UNIT	⊞	LADDER	△	LIGHT
■	AIR CONDITIONER	≡	SCUPPER	≡	PARAPET	≡	EXPANSION/CONTROL JOINT	□	CHIMNEY	⊞	VENTILATOR

NOTE: THE SYMBOLS SHOWN ARE USED ON OUR DRAWINGS TO INDICATE ROOF FEATURES. ADDITIONAL SYMBOLS MAY BE SHOWN ON THE DRAWING FOR SPECIFIC PROJECTS.



REPAIR ITEM #5C
CRACKED
MASONRY



REPAIR ITEM #5B
PLUGGED
DRAIN #1



REPAIR ITEM #5B
PLUGGED
DRAIN #2

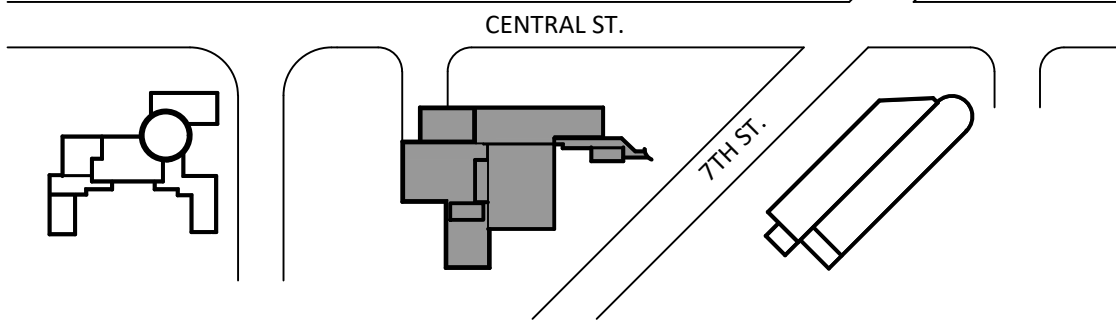
DRAWINGS FOR EMERGENCY
REPAIRS AND ROOF
MAINTENANCE WORK - 2020
RFP 2020-04



REPAIR
ITEM #6
AND #6B
FALLEN
STUCCO
WALL



ROOF AREAS	
ROOF	SQ. FT.
RR CONNECTING HALLWAY	800
RR MAIN	3,119
RR STEEL DECK ADDITION	1,551
RR UPPER PENTHOUSE	414
TT MAIN	7,439
TT PENTHOUSE	648
TOTAL	13,971



KEY PLAN

SCALE: N.T.S.

01
RP-3

ROOF PLAN - BUILDING RR AND TT

SCALE: 1/8"=1'-0"

Agreement

This Agreement by and between: Downriver Utility Wastewater Authority, Inc., (“DUWA”) and _____, the “Contractor” or “Contractor.” DUWA and the Contractor may be referred to in this Contract collectively as the “Parties” or singularly as a “Party.”

In exchange for the mutual covenants and obligations contained herein, DUWA and the Contractor agree as set forth below.

1. General

1.1 **Engagement.** DUWA hereby engages the Contractor and the Contractor hereby agrees to faithfully and diligently perform the Work in accordance with the terms and conditions contained in this Agreement and the Contract Documents. The Agreement shall be administered by DUWA and the Contractor shall perform the work at the direction of DUWA and its Project Representative.

1.2 **Definitions.** The terms, words and phrases used in this Agreement and the Contract Documents shall have the meanings given them in the General Conditions.

1.3 **The Work.** The Contractor shall fully execute the Work described in the Contract Documents, except as specifically defined in the Contract documents to be the responsibility of others.

1.4 The Project.

1.5 **Water Infrastructure Finance and Innovation Act.** All or portions of the Project may be funded by a loan provided under the Water Infrastructure Finance and Innovation Act (“WIFIA” or the “Act”). As such, this Agreement is subject to the requirements of the Act, 33 U.S.C. 3901 et seq., as amended and the implementing regulations at 40 CFR 35.10000 et seq., including the Davis Bacon Act, 40 U.S.C. 3141 et seq., and implementing regulations. The specific WIFIA compliance requirements are included as Exhibit A to this Agreement.

2. Contract Documents.

2.1 This Agreement, together with the documents referenced below form the Contract Documents. The Contract Documents form the entire agreement between DUWA and Contractor and are incorporated into the Agreement by reference as though fully set forth herein. If a conflict exists between the provisions of the Contract Documents, the provision in the Contract Document first listed below shall govern:

- a) Change Orders and Construction Change Directives
- b) Addenda, including but not limited to any addenda, modifications or amendments to this Agreement
- c) This Agreement and the incorporated Exhibits listed below
 - i) Exhibit A: WIFIA Requirements
 - ii) Exhibit B: Insurance and Bond Requirements

- d) Drawings
- e) Specifications

All prior agreements with respect to the matters contained in this Agreement are superseded hereby and each Party confirms that it is not relying on any representations or warranties of the other Party except as specifically set forth in this Agreement. The Contract Documents are intended to be fully complementary. The Contractor shall carefully review all the Contract Documents for any conflicts or ambiguities and will promptly notify DUWA in writing through a request for clarification or information if it notices any conflict between or among Contract Documents.

2.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards.

3 Contract Time.

3.1 **Date of Commencement.** The Date of Commencement of the Work shall be the date a notice to proceed is issued by DUWA to Contractor.

3.2 **Substantial Completion.** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the Work not later than ____ days from the Date of Commencement. If the Contractor fails to achieve Substantial Completion as provided in this Section 1.5, liquidated damage shall be assessed as set forth in Section 3.5.

3.3 **Time is of the Essence.** Time is of the essence in the performance of this Work. Contractor shall make whatever adjustments in working hours, manpower, equipment and any other resources deemed necessary to complete the Work, at Contractor's expense, in accordance with the terms of the Agreement and the specific schedule requirements hereof.

3.4 **Delay.** Delays caused solely by DUWA shall entitle the Contractor to an extension of the Project schedule, but there shall be no adjustment in the Contractor's compensation unless such delay is both unreasonable under the circumstances and beyond the contemplation of the parties as of the Effective Date of this Agreement.

3.5 **Liquidated Damages.** Contractor understands that if Substantial Completion as set forth in section 3.2 is not achieved by the specified dates that DUWA will suffer damages which are difficult to determine and accurately specify. Contractor agrees that if Substantial Completion is not attained on the date set forth in Section 4.3(b), that the Contractor will be assessed One-Thousand Dollars (\$1,000) as liquidated damages for each day Substantial Completion is delayed. Contractor shall not be liable for liquidated damages to the extent any failure to meet Substantial Completion is not due to the fault of Contractor.

3.6 **Force Majeure.** Delays caused as a result of force majeure shall temporarily excuse nonperformance of obligations during the period of time the force majeure prevents performance, other than payment obligations; provided that DUWA may suspend payment with respect to the time period of the force majeure if Contractor is unable to complete the Work. The Party invoking force majeure shall notify the other Party as soon as reasonably possible of the force majeure, and shall specify the particulars thereof (including the expected duration thereof) and what actions have or will be undertaken to correct the force majeure. The Parties shall exercise reasonable good faith efforts to remove the cause or mitigate the effect of the force majeure. The Contractor shall resume performance of the obligations under this Agreement immediately upon passing of the force majeure event. Force majeure events shall include acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns; (i) shortage of adequate power or transportation facilities; and (j) other similar events beyond the reasonable control of the party impacted by the force majeure event.

3.7 **Normal Working Hours.** DUWA will determine the normal working hours for the Work.

4 **Contract Price.**

4.1 **Contract Price.** Subject to the performance by the Contractor of its obligations hereunder, DUWA agrees to pay the Contractor for the performance of the Work a not to exceed amount of _____ Dollars (\$ _____). The Contract Price includes all applicable federal and/or state sales, use, franchise, excise, assessments and other taxes which may now or hereafter be levied. Payments of the Contract Price will be allocated and disbursed on the basis of percentage completion of the major tasks and in the amounts set forth below:

4.2 **Allowances.** Allowances, if any, included in the Contract Price:

Item	Price
------	-------

4.3 **Unit Prices.** Unit prices, if any included in the Contract Price:

Item	Units	Price per Unit
------	-------	----------------

4.4 **Procedure for Payment.** Subject to the conditions in this Article 4 and elsewhere in the Contract Documents, DUWA shall make payment within sixty (60) days after receipt of each properly submitted, accurate and approved Application for Payment (invoice).

4.4.1 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

4.4.2 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Price among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

4.4.3 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

4.5 **Retainage.** Each and any invoice submitted on the Work will be subject to a ten percent (10%) retainage by DUWA. Upon fifty percent (50%) completion of the Phase 2 Work, DUWA shall no longer withhold retainage such that at the time of Substantial Completion, the retainage withheld by DUWA shall have been reduced to five percent (5%). The cumulative retainage invoice shall be paid upon completion and acceptance of the Work by DUWA.

4.6 **Payment to Subcontractors.** Contractor will pay amounts due to its Subcontractors (if any) no later than fifteen (15) Business Days after receipt of payment from DUWA. Contractor shall certify to DUWA in writing at the time of submittal of each invoice that all Sub-Subcontractors, Subcontractors and Suppliers have been paid for work and material from previous progress payments received, less any retainage, prior to receipt of any further progress payments. This provision in no way creates any contractual relationship between any Sub-Subcontractor, Subcontractor or Supplier and DUWA or any liability on DUWA for Contractor's failure to make timely payments to them.

4.7 **Final Payment Conditions.** As a condition precedent to DUWA's Final Payment under this Agreement, Contractor shall furnish certifications, satisfactory to DUWA, that state that no liens of any kind, including, but not limited to, mechanics' liens or other claims arising directly or indirectly out of any act or omission of such Contractor or any of its Subcontractors, Sub-Subcontractors or Suppliers, have been made or attached against the Work or upon any property owned by DUWA. DUWA, at any time, without notice, may pay and discharge liens, claims, and encumbrances filed by the Contractor's Sub-Subcontractors or Suppliers and deduct the amount paid, together with costs and attorneys' fees, from compensation due to the Contractor hereunder.

4.8 **Final Payment Acceptance.** The acceptance by Contractor of the final payment under this Agreement shall constitute and operate as a release to DUWA for all claims and liability to the Contractor, its representatives, subcontractors, sub-subcontractors, supplies and assigns for any additional compensation or payment relating to any and all things done or furnished to the services rendered by the Contractor, except for claims then pending of which notice has been provided in writing to DUWA. However, final payment shall in no way relieve the Contractor of liability for its obligations or for faulty or defective work discovered after final payment.

4.9 **Disputes.** If DUWA disagrees with any portion of a billing, DUWA will notify the Contractor within ten (10) business days of the disagreement, and the Parties will attempt to resolve the disagreement using the methods set forth in the General Conditions. DUWA's payment of any amounts will not constitute a waiver of any disagreement with an invoice.

5 Insurance and Bonds.

5.1 Insurance and Bond Requirements. On or before the date specified in the Notice to Proceed, Contractor shall provide financial security for the performance of its obligations under this contract through one or more payment and performance bonds that guarantee the Contractor's timely performance of its obligations under this Agreement for the benefit of DUWA. The Contractor shall secure such bonds from a company holding Certificates of Authority as acceptable sureties on Federal Bonds and as Acceptable Reinsuring Companies as published in the Department of Treasury Circular 570. The Contractor shall provide the insurance and bonds required in Exhibit B attached hereto and made a part hereof. The Contractor acknowledges that it has read and understands the insurance and bonding requirements set forth in Exhibit B and agrees that it shall comply with the terms and conditions thereof at no additional cost to DUWA.

6 Ownership.

6.1 Work Product. All drawings, specifications and other documents and electronic data furnished by Contractor to DUWA under this Agreement ("Work Product") are deemed to belong to DUWA, and DUWA shall retain the ownership and property interests therein, including the copyrights thereto, in perpetuity.

6.2 Project Ownership. All of the Project equipment, materials and facilities that are designed and constructed by Contractor will be the property of DUWA. Contractor may not treat itself as the owner of the Work or any of the capital improvements thereof for federal tax or any other purpose and will not be entitled to borrow against, or mortgage or otherwise encumber any interest in the Work.

7 Notices.

All notices required or permitted by this Agreement shall be in writing, signed by an authorized representative of DUWA or Contractor and personally delivered, sent by electronic communications via e-mail, sent by recognized overnight courier, or mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the respective parties at the addresses listed below:

If to DUWA:
Gail McLeod, Chair
Downriver Utility Wastewater Authority
25605 Northline Road
Taylor, MI 48180

With copies to:
OHM Advisors
c/o Lambrina Tercala
34000 Plymouth Road
Livonia, MI 48150
Lambrina.tercala@ohm-advisors.com

James G. Fausone
Fausone Bohn, LLP
41700 W. Six Mile Road, Ste. 101
Northville, MI 48168
jfausone@fb-firm.com

If to Contractor :

Notice shall be deemed served upon 1) the date of personal delivery, 2) the date of transmission of the electronic correspondence provided that the sender has received a confirmation of electronic transmission, 3) one day after delivery by a recognized overnight courier, or 4) two days after mailing by registered or certified mail.

8 Miscellaneous Provisions.

8.1 Interpretation. All the terms and provisions of this Agreement shall be deemed and construed to be “covenants” and “conditions” as though the words specifically expressing or imparting covenants and conditions were used in each separate term and provision. The headings in this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of the Agreement or in any way affect the same. As used herein, the singular shall include the plural, and the plural include the singular. Unless the context otherwise expressly requires, the words “herein”, “hereof”, and “hereunder” and other words of similar import refer to the Agreement as a whole and not to any particular Article, Section or other subdivision.

8.2 Amendments. Except for Change Orders, no amendment or modification of this Agreement shall be binding unless in writing and duly executed by all Parties.

8.3 Waiver. No waiver by any Party hereto of any one or more defaults by any other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of any Party hereto to complain of any action or non-action on the part of any other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party (or Parties) so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

8.4 Remedies Cumulative. The remedies reserved for DUWA herein shall be cumulative and additional to any other or further remedies provided in law or equity. Any waiver by DUWA of any provision of this Agreement shall not constitute a waiver of any other provisions of the Agreement.

8.5 Assignment. The Contractor shall not assign all or any part of the Agreement, nor any Work, nor any payments due or to become due hereunder, without first obtaining consent in

writing from DUWA, which consent may be withheld in DUWA's sole and absolute discretions.

8.6 **Severability.** If any clause, provision or section of this Agreement is ruled invalid by any court of competent jurisdiction (or arbitral tribunal), the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof, and the Parties shall substitute such invalid provision(s) with valid ones, which in their economic effect come so close to the invalid provisions that it can be reasonably assumed that the Parties would have executed this Agreement including those new provisions.

8.7 **Survival.** The provisions of Article 8 of this Agreement shall survive the expiration or termination of this Agreement.

8.8 **Setoff.** DUWA is authorized to deduct any sums owed it by Contractor (whether or not the debt arises out of this Agreement) from the payments due Contractor under this Agreement. DUWA may also withhold payment from Contractor in an amount sufficient to protect DUWA from any claims of third parties or any liens which arise as a result of Contractor's or its subcontractors' and sub-subcontractors' performance of the Work.

8.9 **Counterparts.** This Agreement may be executed in counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**DOWNRIVER UTILITY WASTEWATER
AUTHORITY**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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EXHIBIT A
WIFIA REQUIREMENTS

WIFIA ADDENDUM

This WIFIA Addendum to the Purchase Agreement (“Addendum”) is entered into this ____ day of June, 2020, by and between Downriver Utility Wastewater Authority (“DUWA”) and Contractor Waters Pollution Control, Inc., (“Contractor”), each a “Party” and together the “Parties.”

WHEREAS, DUWA and Contractor entered into the Alkali Sewer Rehabilitation Project Agreement to which this Addendum is attached as Attachment B, for certain repair and rehabilitation work on the Alkali Sewer; (“Agreement”),

WHEREAS, Paragraph 13 of the Agreement specifies that the Project may be funded through a loan provided under the federal Water Infrastructure Finance and Innovation Act (“WIFIA”), and therefore the Agreement is subject to the requirements of the WIFIA;

WHEREAS, as part of the application process United States Environmental Protection Agency (“U.S. EPA”) has provided specific contractual requirements that must be included in each contract for any project funded under the WIFIA; and

WHEREAS, this Addendum provides the specific WIFIA requirements.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises of the Parties hereto and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. Debarment and Suspension, Executive Order 12549, 51 FR 6370, February 21, 1986

Contractor certifies that it will not knowingly enter into a contract with anyone who is ineligible under 2 CFR part 180 and part 1532 to participate in the Project. Contractor represents and warrants that it has or will include a term or conditions requiring compliance with this provision in all of its subcontracts under this Agreement.

2. Federal Restrictions on Lobbying, 31 U.S.C. 1352

Recipients of federal financial assistance may not pay any person for influencing or attempting to influence any officer or employee of a federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress with respect to the award, continuation, renewal, amendment, or modification of a federal grant, loan, or contract. Within ten (10) days of the execution of this First Addendum, Contractor shall complete and submit to DUWA the certification and disclosure forms in Appendix A and Appendix B to 40 C.F.R. Part 34. Contractor shall also require all Subcontractors and Suppliers of any tier awarded a subcontract over \$100,000 to similarly complete and submit the certification and disclosure forms pursuant to the process set forth in 40 C.F.R. 34.110.

3. Non-discrimination, Equal Employment Opportunity Requirements

A. Statutory Requirements. In addition to the requirements set forth in the General Conditions included as Exhibit A to the Agreement, Contractor shall comply with the following federal non-discrimination requirements:

(1) Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP).

(2) Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities.

(3) The Age Discrimination Act of 1975, which prohibits age discrimination.

(4) Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex.

(5) 40 C.F.R. Part 7, as it relates to the foregoing.

(6) Executive Order ("EO") No. 11246

B. Executive Order 11246. Contractor shall comply with Executive Order 11246, entitled 'Equal Employment Opportunity,' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 C.F.R. Part 60). Contractor's compliance with Executive Order 11246 shall be based on implementation of the Equal Opportunity Clause, and specific affirmative active obligations required by the Standard Federal Equal Employment Opportunity Construction Contract Specifications, as set forth in 41 C.F.R. Part 60-4. During the performance of the Agreement, Contractor agrees as follows:

(1) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) Contractor will, in all solicitations or advancements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Contractor's legal duty to furnish information.

(4) Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of Contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) Contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, the Agreement may be cancelled, terminated, or suspended in whole or in part and Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) Contractor will include the provisions of paragraphs B(1) through B(8) of this section 3 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each Subcontractor or vendor. Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, Contractor may request the United States to enter into such litigation to protect the interests of the United States.

C. Segregated Facilities, 41 CRF 60-1.8. Contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin cannot result. Contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. Contractor's obligation extends further to ensuring that its employees are not assigned to perform their services at any location, under Contractor's control, where the facilities are segregated. This obligation extends to all contracts containing the equal opportunity clause regardless of the amount of the contract. The term "facilities," as used in this section, means waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, wash rooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees; provided that separate or single-user restrooms and necessary dressing or sleeping areas shall be provided to assure privacy between the sexes.

D. Participation by Disadvantaged Business Enterprises. Contractor shall make a good faith effort to allow disadvantaged businesses to have the opportunity to compete for Project procurements. EPA provide six good faith efforts in the contractor rule and website at: <https://www.epa.gov/resources-small-businesses/disadvantaged-business-enterprise-program-resources>.

4. American Iron and Steel Requirements

Contractor hereby represents, warrants and covenants to and for the benefit of DUWA and the EPA that (a) Contractor has reviewed and understands the American Iron and Steel requirement that all of the iron and steel products used in the Project must be produced in the United States, (b) all of the iron and steel products used in the Project will be and/or have been produced in the United States in a manner that complies with the American Iron and Steel requirement, unless a waiver of the requirement is approved, and (c) Contractor will provide any further verified information, certification or assurance of compliance with this paragraph, or information necessary to support a waiver of the American Iron and Steel requirement, as may be requested by the DUWA or the EPA. Notwithstanding any other provision of this Agreement, any failure to comply with this paragraph by Contractor shall permit DUWA or the EPA to recover as damages against Contractor any loss, expense, or cost including, without limitation, attorney's fees incurred by DUWA or the EPA resulting from any such failure, including without limitation any impairment

or loss of funding, whether in whole or in part, from the EPA or any damages owed to the EPA by DUWA While Contractor has no direct contractual privity with the EPA, as a lender to DUWA for the funding of the Project, DUWA and Contractor agree that the EPA is a third-party beneficiary.

5. Davis Bacon and Related Acts

A. Davis Bacon Act. In any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in 29 C.F.R. § 5.1, the following clauses (or any modifications thereof to meet the particular needs of the agency, provided that such modifications are first approved by the Department of Labor):

(1) Minimum wages.

a) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it

can be easily seen by the workers.

b) The WIFIA assistance recipient, DUWA, on behalf of the U.S. Environmental Protection Agency, shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. DUWA shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

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

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

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

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

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

(2) Withholding. DUWA, shall upon written request of the WIFIA Director or an authorized representative of the Department of Labor withhold or cause to be withheld from Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by Contractor or any Subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the WIFIA Director may, after written notice to Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) Payrolls and basic records.

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

certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

i) Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to DUWA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to DUWA, for transmission to the EPA, Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for Contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to DUWA.

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

- (1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

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

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

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

(4) Apprentices and trainees –

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

accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the WHD Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

(6) Subcontracts. Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA

may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

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

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

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

(10) Certification of eligibility.

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

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

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

B. Contract Work Hours and Safety Standards Act. The following clauses set forth in paragraphs (B)(1), (2), (3), and (4) of this section shall be inserted in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. Contractor or any subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (B)(1) of this section 5 Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (B)(1) of this section 5, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (B)(1) of this section 5.

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

(4) Subcontracts. Contractor shall insert in any subcontracts the clauses set forth in paragraphs (B)(1) through (4) of this section 5 and also a clause requiring Subcontractors to include these clauses in any lower tier subcontracts. Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

C. Contractor shall maintain payrolls and basic payroll records during the course of the Project and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the Project. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the EPA shall cause or require DUWA to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of DUWA, EPA and the Department of Labor, and Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

6. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

EXHIBIT B

INSURANCE AND BOND REQUIREMENTS

Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the Work hereunder by the Contractor, its agents, representatives, employees or subcontractors. The cost of such insurance shall be included in the Contractor's bid.

A. MINIMUM INSURANCE COVERAGE

1. Without in any way limiting Contractor's liability hereunder, Contractor shall maintain the following minimum limits of insurance at its own expense during the performance of the Work, with insurance companies rated A-VII or higher by A.M. Best's, to cover the risk of losses associated with this Agreement:

<u>Coverage</u>	<u>Limits</u>
(i) Workers Compensation	Statutory; including requirements of the Labor Code of the State of Michigan and Employers Liability insurance
(ii) Employers Liability	\$1,000,000 each accident \$1,000,000 each employee \$1,000,000 policy limit
(iii) Commercial General Liability written on ISO CG 00 01 coverage form or its equivalent. No limiting or exclusionary endorsements material to the Contractor's obligations in the Agreement may be attached. Coverage shall include a) contractual liability; b) explosion, collapse & underground perils (XCU); c) third-party over action coverage; d) Riggers Liability endorsement for the use of cranes, booms or other rigging equipment, if applicable; and e) amendment of the aircraft exclusion to include coverage for the use of commercial UAVs (drones), if applicable.	\$5,000,000 each occurrence for property damage and bodily injury (PD/BI) \$5,000,000 general aggregate \$5,000,000 products/completed operations aggregate
(iv) Automobile Liability – covering all owned, hired and non-owned autos (Policy shall be endorsed with MCS-90)	\$2,000,000 combined single limits – each accident
(v) Umbrella/Excess Liability providing coverage at least as broad as the underlying policy(ies)	May be utilized to meet limits outlined above

(vi) Property	Contractor shall be solely responsible for protecting and insuring all property owned or leased or used by the Contractor in conjunction with the Work during the term of this Agreement
(vii) Professional Liability (Errors & Omissions), if applicable to the Work – Coverage shall not exclude Technology Errors & Omissions coverage if the Contractor will have access to any Veolia Systems (including but not limited to any Veolia-owned or managed IT asset (server or application) wherever it is hosted (the public cloud, Veolia’s AWS instance, Veolia’s data center, etc.)	\$2,000,000 each claim \$2,000,000 annual aggregate

2. In the event that the state where the Work is to be provided allows an employer to opt out of Workers Compensation coverage, the Contractor shall nevertheless obtain a Workers Compensation policy complying in all respects with this provision.

3. Prior to providing any Work under this Agreement, the Contractor will provide DUWA with an ACORD certificate of insurance evidencing that the above described coverage are in full force and effect. Contractor will include DUWA, its parent companies, subsidiaries, affiliates, and each of their officers, directors, employees, agents, representatives and Client (if applicable), (collectively “DUWA’s Additional Insured”) as additional insured with respect to coverage (iii), (iv), and (viii), (and (v) if applicable) above. All policies shall be primary and non-contributory, provide a full waiver of the insurer’s right of subrogation in favor of DUWA Additional Insured and/or any sub-Contractor with respect to claims that are covered or should have been covered by valid and collectible insurance provided hereunder and said waiver will extend to any deductibles, co-insurance or retentions. Contractor will not permit cancellation or non-renewal of its insurance coverage to be provided hereunder without thirty (30) days' written notice to DUWA.

4. All policies shall be issued on occurrence-based forms, except for coverage (vii) and (viii), which may be issued on a claims-made form. All claims-made policies will at least be retroactive to the earlier of the date of this Agreement or the commencement of the Contractor’s services in relation to the Work, and shall be maintained for three (3) years after the expiration or termination of this Agreement.

5. These insurance requirements will not be construed in any matter as waiving, restricting or limiting DUWA’s rights or Contractor’s obligations under this Agreement. DUWA does not represent that coverage or limits herein will be adequate to protect Contractor. Contractor remains responsible for any liability not paid by insurance including deductibles and retentions.

B. ADDITIONAL INSURANCE

1. **Builders' Risk Insurance.** Contractor shall procure a builders risk insurance policy for the full replacement value of the Work. Contractor shall purchase and maintain during the life of the Work included below at the base insurance against loss to the Work sufficient to replace the Work. Such coverage shall be written on an "all risk" causes of loss builders risk coverage form at replacement cost and without a co-insurance penalty and as follows:

a. Not limited to the following, policy perils shall include: theft, vandalism, malicious mischief, testing and startup, earth movement, terrorism (certified and non-certified), delay in completion or start up, mold, fungus, collapse, earth movement, flood, civil authority, windstorm, building ordinance and demolition.

b. Not limited to the following, the policy shall cover: underground work, foundations, sidewalks and paving, landscaping, falsework, temporary buildings, trailers, laydown areas, supplies, materials, machinery, equipment, fixtures, debris removal, property in transit, property stored offsite, business interruption costs, extra expense costs and soft costs including but not limited to reasonable compensation for professional fees and general conditions.

c. Losses to the Work shall be replaced by the Contractor at no expense to DUWA. Any deductible or sub-limited deductible shall not exceed \$50,000.

d. The insurer shall waive all rights of subrogation against DUWA.

e. Coverage including permission for temporary occupancy shall be maintained until final acceptance by DUWA and final payment has been made.

f. The policy shall allow for partial utilization of the Work by DUWA and Veolia.

g. The policy shall be maintained in effect until final payment is made unless otherwise agreed to in writing by DUWA with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.

Losses shall be adjusted by and made payable to Contractor as fiduciary for the Builders Risk Insured. Contractor shall pay its subcontractors their just shares of insurance proceeds received by Contractor and shall cause such subcontractors to make payments to their sub-subcontractors in similar manner.

2. Certificates of insurance shall be either emailed in pdf format to: Lambrina.tercala@ohm-advisors.com or mailed to the following postal address:

To DUWA: Gail McLeod, Chair
Downriver Utility Wastewater Authority
25605 Northline Road
Taylor, MI 48180

With copies to:

OHM Advisors
c/o Lambrina Tercala
34000 Plymouth Road
Livonia, MI 48150
Lambrina.tercala@ohm-advisors.com

C. PAYMENT AND PERFORMANCE BONDS

1. The Contractor shall furnish to DUWA and keep in force during the term of the Agreement performance and labor and material payment bonds, guaranteeing that the Contractor will perform its obligations under the Agreement and will pay for all labor and materials furnished for the Work. Such bonds shall be issued in a form and by a Surety reasonably acceptable to DUWA, shall be submitted to DUWA for approval as to form, shall name DUWA as obligee, and shall be in an amount equal to at least 100% of the Contract Price (as the same may be adjusted from time to time pursuant to the Agreement). The Contractor shall deliver the executed, approved bonds to DUWA prior to the execution of the Agreement. Neither the Contractor nor any Sub-Contractor may begin the Work until the required bonds are delivered to DUWA.

2. The costs of all bonds furnished hereunder shall be included in the Contract Price.

3. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds to DUWA or shall permit a copy to be made.

4. If any Surety hereunder makes any assignment for the benefit of creditors, or commits any act of bankruptcy, or is declared bankrupt, or files a voluntary petition for bankruptcy or in the reasonable opinion of DUWA is insolvent, the Contractor shall immediately furnish and maintain another Surety satisfactory to DUWA.

D. GENERAL TERMS REGARDING INSURANCE AND BONDS

1. If DUWA is damaged by the failure of the Contractor to purchase or maintain any insurance or bond required by the Agreement then the Contractor shall pay all costs incurred by DUWA, including but not limited to reasonable attorney's fees.

2. Any insured loss under the required policies of property insurance will be adjusted with DUWA and will be made payable to DUWA as trustee for the insured. DUWA shall deposit in a separate account, and shall distribute monies received, based on any agreement that the parties in interest may reach. If no other distribution agreement is reached, the damaged Work shall be replaced or repaired, the monies received shall be used for that purpose and the Work involved and resulting costs shall be covered by Change Order. DUWA as trustee shall have the power to adjust and settle any loss with the insurers unless a party in interest objects in writing within fifteen (15) days following the occurrence of loss to DUWA's exercise of this power. If an objection is

made, DUWA, as trustee, shall settle with the insurers pursuant to any agreement that the parties in interest may reach.

3. If by the terms of the insurance a mandatory deductible is required, the Contractor shall be responsible for the deductible amount in the event of a paid claim. The Contractor shall also be responsible for any co-insurance penalties.

EXHIBIT A
GENERAL CONDITIONS
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ARTICLE 1
CONTRACT DOCUMENTS

1.1 DEFINITIONS

Unless the context expressly requires otherwise, defined terms used in the Contract Documents have the meanings set forth below.

1.1 “Acceptance Testing Plan” means the written testing and commissioning procedures to be developed by the Parties, Kruger, and Veolia in accordance with the Construction Documents, Good Engineering and Construction Practices and Prudent Industry Practices.

1.2 “Applicable Law” means any federal, State, local (or other political subdivision) constitution, statute, law, rule, code, regulation, consent decree, consent order, consent agreement, permit, Governmental Approval, any determination or order entered, promulgated or approved by any Governmental Authority having jurisdiction, any common law or principle of common law applicable to, as the case may be, any of the Work, Project, Parties, activities, requirements or obligations of the Parties under the Agreement.

1.3 “Application for Payment” means the Contractor’s certified request for payment for completed portions of the Work and for materials or equipment suitably stored pending their incorporation into the Work .

1.4 “Arbitration Rules” means the Michigan Revised Uniform Arbitration Act, Public Act 371 of 2012, MCL 691.1681 et seq., as amended and Michigan Court Rule 3.602.

1.5 “Authority” means the Downriver Utility Wastewater Authority (DUWA).

1.6 “Business Day” means any day except Saturday, Sunday, and any day on which banking institutions in the State of Michigan generally are authorized or required by law or other governmental actions to close.

1.7 “Change of Law” means any of the following events occurring after the Effective Date:

- a. the adoption, modification or repeal, or change in interpretation or application, of any Applicable Law; or
- b. the modification, change in interpretation or application, or imposition of any material conditions, restrictions or limitations in any Governmental Approval, which imposes limitations, additional costs or burdens with respect to the Contractor’s obligations under this Contract.

1.8 “Change Order” is a mutually agreed upon written instrument that authorizes a change in the Work and an adjustment in the Contract Price or Contract Time or both. All Change Orders will be executed by Contractor and DUWA.

1.9 “Cash Allowance” A sum specified by DUWA included within the Contract Price to reimburse the Contractor for actual purchase/furnished cost of required materials, equipment or other designated items that are to be furnished and incorporated into the Work, as provided in the Contract Documents. Although the scope (i.e., the required quantity) of any portion of the Work covered by a Cash Allowance is sufficiently detailed in the Contract Documents for the equipment and supplemental costs, it is understood that the required materials, equipment or other designated items are either of uncertain purchase cost at the time the Agreement is executed. Any remaining balance of the Cash Allowance upon Final Completion shall be retained by DUWA and not paid to the Contractor.

1.10 “Construction Documents” consist of the detailed plans and specifications, calculations (if required) and other technical documents illustrating the character, nature, detail and scope of the Construction Work to be performed with respect to the Project, based on the approved Proposal, and taking into account the scope of work and relevant design standards, including all paper or electronic plans and specifications prepared by the Contractor and its subcontractors for use in construction, any subsequent modifications, and responses to requests for clarification and information. These documents are complementary and what is required by one such document is required by all such documents.

1.11 “Contract Documents” are those documents set forth in Section 2 of the Agreement and all subsequent contract modifications issued after execution of the Agreement such as Change Orders.

1.12 “Contract Price” means the sum stated in the Agreement that is the total amount payable by DUWA to the Contractor for performance of the Work subject to adjustments through approved Change Order.

1.13 “Contract Time” is the period of time allotted under the Project Schedule set forth in Exhibit E for the Contractor to achieve Substantial Completion.

1.14 “Construction Change Directive” means a written directive issued not to exceed \$5,000, or \$10,000 in the aggregate, by DUWA’s Representative authorizing the Contractor to proceed with a modification to the scope of Work. The Construction Change Directive is not a Change Order and will only be assembled and issued when there is not adequate time to process a Change Order prior to proceeding with revisions to the scope of the Work or where there is disagreement as to whether an item is included scope. The Contractor is responsible for providing rough order of magnitude pricing to DUWA and OHM for use in assembling the Construction Change Directive.

1.15 “Day” or “day” means calendar day unless specifically described as a work day or Business Day or unless statutorily defined.

1.16 The word “delay” means any and every delay, obstruction, hindrance, interference, loss of productivity, or inefficiency of any kind.

1.17 “Detailed Cost Breakdown” means an itemized breakdown of the Work and Contract Price detailing, for each pay item, quantities and dollar amounts required for cost evaluation. The sum of all pay items in the Detailed Cost Breakdown shall equal the Contract Price

1.18 “DUWA” means the Downriver Utility Wastewater Authority

1.19 “Effective Date” means the date agreed upon by DUWA and the Contractor for the effectiveness of the Agreement, which is set forth in the Agreement.

1.20 “Engineer” means a registered professional engineer in the State of Michigan, employed by the DUWA to design the Work. The Engineer has the rights and authority assigned to the Engineer in the Contract Documents.

1.21 “Environmental Condition” means the presence of any Regulated Substance on or at the Project site or any other location included in the sewage collection system or water delivery system, including the presence in surface water, groundwater, soils, or subsurface strata, or the migration of such a Regulated Substance from the Project site.

1.22 “Equipment” means the biosolids dryer and all ancillary equipment as set forth in Exhibit G to the Agreement.

1.23 “Equipment Supplier” means the entity that will supply the thermal biosolids dryer and dewatering centrifuge to be purchased by Contractor.

1.24 “Final Acceptance Test” means the Performance Test performed within twenty-four (24) months of the Initial Acceptance Test.

1.25 “Final Completion” has the meaning as defined in Paragraph 7.1.4 of these General Conditions.

1.26 “Final Payment” means payment by DUWA to the Contractor of the entire unpaid balance of the Contract Prices as adjusted by Change Orders.

1.27 “Free Float” means the amount of time that a Project Schedule activity can be delayed or extended from its early start date without delaying the early start of its successor activity.

1.28 “Good Engineering and Construction Practices” means those methods, techniques, standards and practices which, at the time they are to be employed and in light of the circumstances known or reasonably believed to exist at such time, are generally recognized and accepted as good design, engineering, equipping, installation, construction, commissioning and testing practices for the design, construction and improvement of capital assets in the municipal wastewater treatment and collection or drinking water distribution industry as practiced in the Western United States and particularly in Michigan for facilities of a similar size and nature and in a similar location and for a similar purpose as the Project. Good Engineering and Construction Practices is not necessarily defined as the optimal methods, techniques, standards or practices to the exclusion of

others, but rather to refer to a range of methods, techniques, standards and practices that are reasonable under the circumstances.

1.29 “Governmental Authority” means any legislative, executive, judicial, or administrative department, board, commission, court, agency or other instrumentality of the Federal, State or local government, including a joint powers agency formed by two (2) or more of the foregoing.

1.30 “Governmental Approval” means any permit, license, approval, consent or other authorization which is required under Applicable Law for the Work or for the performance of any of the obligations under this Contract.

1.31 “Indemnified Party” includes DUWA, OHM, Veolia and their respective officers, agents, directors, partners, members, employees, affiliates, parents and subsidiaries.

1.32 “Initial Acceptance Test” means the Performance Test completed within sixty (60) days of startup and commissioning of the Work and Equipment, and prior to Substantial Completion.

1.33 “Intellectual Property” includes Work Product and means any patents, copyrights, trade secrets, licensed software, proprietary technology or systems, or other intellectual property right owned or licensed in accordance with Applicable Law.

1.34 “Law” or “Laws” means all federal, state and local statutes, laws, ordinances and any regulations, orders and administrative guidelines (by whatever title, and without respect to whether enforceable at law) issued thereunder that are applicable to the performance of the Work under this Contract. To the extent that a Permit is required for Contractor to perform the Work, “Law” includes “Permit.”

1.35 “Notice to Proceed” means a written document from DUWA to the Contractor stating the date upon which the Contractor is authorized to begin the Project Work. The date specified in the Notice to Proceed marks the beginning of the performance time of the Agreement.

1.36 “Performance Test” means the 30-day test of the Equipment to determine whether the Equipment meets the performance guarantee provided by Equipment Supplier.

1.37 “Permit” or “Permits” means every permit, license, authorization, certification, permission, or equivalent control document required under any federal, state or local statute, law ordinance, regulation or order.

1.38 “Permitted Delay” means a delay qualifying for an extension of the Contract Time.

1.39 “Person” means any natural person, corporation, limited liability company, partnership, firm, association, Governmental Agency or any other entity whether acting in an individual, fiduciary or other capacity.

1.40 “Progress Payment” means a periodic payment to the Contractor based on DUWA’s approval of the Contractor’s Application for Payment as required pursuant to the terms of the Agreement.

1.41 “Project” means the Project described in the Exhibit B.

1.42 “Project Schedule” means the schedule included in the Agreement as Exhibit E, as adjusted per the Agreement.

1.43 “Provisionary Allowance” means an amount included in the Contract Price to reimburse the Contractor for the cost to furnish and perform Work that is uncertain, i.e., may not be required, or of indeterminate scope, i.e., design information and quantities, complexity, etc. are neither shown nor detailed in the Contract Documents. Work authorized under any Provisionary Allowance may consist of (a) changes required by actual conditions, as determined by the Contracting Officer, that are incorporated into the Work in accordance with the General Conditions, and (b) any other work authorized and completed under the pertinent provisions of the Contract Documents. Unlike a Cash Allowance, payments under a Provisionary Allowance shall include not only the purchase and finished cost of materials and equipment involved, but also all associated labor, Subcontracts, construction equipment and supplemental costs, provided those costs are substantiated as required by the General Conditions. Any remaining balance upon Final Completion shall be retained by DUWA and not paid to the Contractor.

1.44 “Prudent Industry Practices” means those methods, techniques, standards and practices which, at the time they are employed and in light of the circumstances at the time, are generally accepted as reasonably prudent in the wastewater treatment and collection or drinking water distribution industry or recycled water delivery industry as practiced in the Western United States and particularly in Michigan for water and wastewater facilities of a similar size and used for similar purpose as the Project. Prudent Industry Practices is not necessarily defined as the optimal methods, techniques, standards or practices to the exclusion of others, but rather to refer to a range of methods, techniques, standards and practices that are reasonable under the circumstances.

1.45 “Regulated Substances” means any pollutant, contaminant, substance, hazardous substance, hazardous material, toxic substance, toxic pollutant, solid waste, municipal waste, industrial waste, or hazardous waste, petroleum or petroleum-derived substance, asbestos, or polychlorinated biphenyls, that is defined as such in, is subject to regulation under, or may form the basis for any requirement for investigation or remediation, under any Applicable Law.

1.46 “Request for Change Order” means a request from the Contractor for an extension of time or additional compensation served on DUWA’s Representative in accordance with the General Conditions.

1.47 “Schedule of Values” means an initial submittal of reasonable cost breakdown furnished by the Contractor to be approved by DUWA reflecting the portions of the Contract Price allocated to the various portions of the Work and used as the basis for reviewing progress, to be include with the Contractor’s Applications for Payment.

1.48 “Specifications” means a part of the Contract Documents consisting of written requirements for materials, equipment, construction systems, standards and workmanship.

1.49 “Subcontract” means the agreement entered into between Contractor and any Sub-Contractor.

1.50 “Sub-Contractor” is any person or entity retained by Contractor as an independent contractor to perform a portion of the Work and shall include materialmen and Suppliers.

1.51 “Sub-Subcontractor” is any person or entity retained by Sub-Contractor as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

1.52 “Substantial Completion” has the meaning as defined in Paragraph 7.1.3 of these General Conditions.

1.53 “Substantial Completion Date” is the date shown in the approved Project Schedule as the milestone for Substantial Completion.

1.54 “Supplier” means any person or entity retained by Contractor or a Sub-Contractor to provide materials, equipment, or other goods for the Project.

1.55 “Surety” means an entity that guarantees the Work via issuance of performance and payment bonds as required pursuant to the terms of the Agreement.

1.56 “Total Float” means the number of days by which the Work or any part of the Work may be delayed, without negatively influencing the Contract Time or any other milestones set forth in the Project Schedule.

1.57 “Work Product” means any and all plans, drawings, specifications, estimates, calculations, reports, models, and other documents and materials prepared by or on behalf of the Contractor or its subcontractors in connection with the Project, whether in electronic or paper form.

1.58 “Work” or “Construction Work” means all labor, materials, services, equipment, supplies, tools, and appurtenances necessary for the proper design and construction services as further described in Exhibit B, and the Contractor’s obligations under the Contract Documents.

1.2 EXECUTION, CORRELATION AND INTENT.

1.2.1 By executing the Agreement, the Contractor represents that it is financially solvent; that it is qualified to do business in the State of Michigan, that it has all required licenses and permits necessary in connection with performance by the Contractor hereunder (all such licenses and permits shall be at the Contractor's sole cost and expense); that it has the expertise and authority to perform its obligations under the Agreement; that it has inspected the Project and the Work and familiarized itself with the local conditions (including, both all physical conditions and all applicable local codes, laws and regulations) under which the Work is to be performed; that it

is familiar with all federal, state, municipal and county laws, ordinances and regulations which may, in any way, affect the Work or those employed therein, including, but not limited to, those particularly applicable to the Project; and that the Contract Price is the agreed amount for all the Work, including all risks, hazards, and difficulties in connection therewith assumed by the Contractor under the Agreement. Each Sub-Contractor shall review the foregoing representations and shall be deemed to have made the same representations to DUWA in performing any Work on the Project.

1.2.2 The intention of the Agreement is that all labor, materials, facilities, utilities, equipment, insurance, taxes and all other items necessary for the proper execution and completion of the Work are included in the Contract Price. It is intended that all work required for the construction and administration of the Project shall be supplied including all such work that is in the Contract Documents or is reasonably inferable from the Construction Documents and the Contract Documents. Lists of "Work Included," "Scope" or "Description of Work" are not intended to enumerate each and every item of Work or appurtenances required. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

1.2.3 The Agreement is intended to constitute a single agreement and every effort shall be made to construe such documents as being consistent and not contradictory. In the event of any conflict among the Contract Documents, the Contract Documents shall be construed according to the priorities set forth in Section 2 of the Agreement:

1.2.4 Where codes, standards, requirements and publications of public and private bodies are referred to in the Contract Documents, references shall be understood to be to the latest revision prior to the date of the Agreement, except where otherwise indicated.

1.2.5 Where no explicit quality or standards for materials or workmanship are established for work, such work is to be of new, high quality for the intended use and workmanship shall be consistent with the best practices of that particular trade, skill and function.

1.2.7 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

1.2.8 The relationship between the Contractor and DUWA shall be that of an independent Contractor. The Agreement shall not be construed to create any third party beneficiaries or to create any rights in any third parties.

1.2.9 If any provision of the Agreement shall be, to any extent, invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.

ARTICLE 2

DUWA

2.1 INFORMATION AND SERVICES REQUIRED OF DUWA.

Information or services under DUWA's control shall be furnished by DUWA with reasonable promptness after written request to avoid delay in the orderly progress of the Work. The furnishing of such information by DUWA shall not relieve the Contractor from its duties under the Contract Documents, specifically as to inspection of the Project site and the Contract Documents. DUWA makes no representation or warranty with respect to subsurface conditions, or any reports provided by or on behalf of DUWA to the Contractor regarding subsurface conditions.

2.2 DUWA'S RIGHT TO STOP THE WORK.

If the Contractor fails to correct defective Work or fails to carry out the Work or to supply labor, materials and equipment in accordance with the Contract Documents, DUWA may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of DUWA to stop the Work shall not give rise to any duty on the part of DUWA to exercise this right for the benefit of the Contractor or any other person or entity. Should DUWA elect to order the Contractor to stop the Work, the Contractor shall be responsible for whatever measures are necessary to maintain the Project Schedule once the cause for such order has been eliminated and for all costs and expenses associated therewith.

2.3 DUWA'S RIGHT TO CARRY OUT THE WORK.

If the Contractor:

- a. Fails to properly respond to notices issued by DUWA pursuant to Section 2.2 hereof; or
- b. The Contractor has failed to make undisputed payments properly due to its Sub-Contractors, Sub-Sub-Contractors, laborers or materialmen or for material or labor used in the Work; or
- c. Fails to supply the quantity of properly skilled workmen necessary to complete the Work in accordance with the critical path activities as set forth in the Project Schedule; or
- d. Fails to supply materials and equipment as necessary to complete the Work in accordance with the Project Schedule; or
- e. Fails to maintain any insurance coverage required under the Agreement; or
- f. Fails to pay workers' compensation or other employee benefits; or
- g. Fails to pay withholding or other taxes; or
- h. Fails to perform any other material obligation under the Agreement;

then DUWA may, after seven (7) days written notice to Contractor and without prejudice to any other remedy DUWA may have, make good such deficiencies or otherwise rectify such situations to the satisfaction of DUWA unless Contractor shall have commenced corrective action within said seven (7) day period. In such case, the cost of correcting such deficiencies or otherwise rectifying such situations to the satisfaction of DUWA, including compensation for DUWA's separate Contractors' or consultants' additional services made necessary by such default, neglect or failure, shall be offset against any amounts otherwise due to the Contractor. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to DUWA.

2.4 DUWA'S RIGHT TO WITHHOLD PAYMENT.

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

2.4.1 The Contractor fails to properly respond to notices issued by DUWA pursuant Section 2.2 hereof; or

2.4.2 The Contractor is in default of any of its material obligations under the Agreement or otherwise is in material default under any of the Contract Documents; or

2.4.3 Any part of such payment is attributable to Work which is defective or not performed in accordance with the Construction Documents, as determined by DUWA; provided, however, such payment shall be made as to the part thereof attributable to Work which is performed in accordance with the Construction Documents and is not defective, reserving, however, such amount as may be reasonably necessary to protect DUWA with respect to defective Work; or

2.4.4 The Contractor has failed to make undisputed payments properly due in accordance with law or the Subcontract documents to Sub-Contractors, Sub-Sub-Contractors, Suppliers, laborers or materialmen or for material or labor used in the Work; or

2.4.5 Any part of such payment is attributable to Work with respect to which any party has filed an un-discharged claim against any payment or performance bonds; or

2.4.6 Third party claims have been filed that trigger Contractor's indemnity obligation under Section 3.13 Indemnification; or

2.4.7 If DUWA reasonably determines that the portion of the Contract Price then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents after meeting with Contractor and giving an opportunity to prove otherwise, no additional payments will be due the Contractor hereunder unless and until the Contractor, at no cost to DUWA, performs, and pays in full for, a sufficient portion of the Work so that such portion

of the Contract Price then remaining unpaid is determined by DUWA to be sufficient to so complete the Work.

ARTICLE 3

Contractor

3.1 REVIEW OF CONTRACT DOCUMENTS.

3.1.1 The Contractor acknowledges that it has reviewed the Contract Documents and that it is familiar with the Contract Documents. The Contractor hereby specifically acknowledges and declares that the Contract Documents are sufficient to enable it to construct the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations, and otherwise to fulfill all of its obligations under the Agreement. The Contractor further acknowledges that it has visited the Project site, examined all conditions affecting the Work, is fully familiar with all of the conditions thereon and affecting the same.

3.1.2 Each Sub-Contractor shall review the Contract Documents and shall be deemed to have made the same waiver set forth in Paragraph 3.1.1 above in performing any work on the Project.

3.1.3 Before starting the Work, and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the Agreement, General Conditions, Construction Documents, and other Contract Documents and shall at once report to DUWA any error, inconsistency or omission the Contractor may discover. Any necessary change shall be ordered as provided in Article 11, subject to the other provisions of the Contract Documents. If the Contractor proceeds with the Work without such notice to DUWA, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents the Contractor could have discovered such, the Contractor shall bear all costs arising therefrom.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES.

3.2.1 The Contractor shall provide competent supervision, coordination and related services for construction of, and shall cause to be constructed, the Project. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. The Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner. The Contractor shall be liable for all property damage, including repairs and replacements of the Work and economic losses, which proximately result from the breach of this duty.

3.2.2 The Contractor shall be responsible to DUWA for the acts and omissions of its employees. The Contractor shall be as fully responsible to DUWA for the acts of its Sub-Contractors, Sub-Sub-Contractors, their agents and persons directly or indirectly employed by them, and other persons performing any of the Work as it is for the acts and omissions of persons directly employed by the Contractor.

3.2.3 The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of DUWA in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Contractor. No inspection performed or failed to be performed by DUWA hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

3.2.4 The Contractor shall attend meetings scheduled by DUWA to discuss such matters as procedures, progress, problems, scheduling and safety.

3.2.5 At all times the Contractor shall provide a Representative approved by DUWA who (a) will have full responsibility for the prosecution of the Work, (b) will act as agent and be a single point of contact in all matters on behalf of the Contractor, (c) will be present (or its approved designee will be present) at the Project site at all times that the Work is performed and (d) will be available to execute instructions and directions from DUWA.

3.2.6 The Contractor shall maintain daily field reports recording the labor force and equipment employed by the Contractor and Sub-Contractors, materials and equipment received at the Project site or another location, visits by suppliers, significant progress in the Work and completed trade Work within the major Work areas, and other pertinent information. Daily field reports shall be furnished by the Contractor promptly upon request by DUWA. DUWA's review of any daily field report shall not be construed as agreement with any information contained in such report.

3.2.7 The Contractor shall maintain at the Project site a record copy of the Agreement and its Contract Documents in good order and annotated in a neat and legible manner using a contrasting, reproducible color to show (a) all revisions made, (b) dimensions noted during the execution of the Work, (c) all deviations between the as-built installation and the Contract Documents, all approved Submittals and all clarifications and interpretations.

3.2.8 The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times in DUWA. Contractor's right to entry and use thereof arises solely from the permission granted by DUWA under the Contract Documents. Unless otherwise provided in the Contract Documents, all entrances to all buildings and areas of the Project site that are occupied by DUWA shall be provided with safe, secure and convenient access at all times.

3.2.9 If the Work involves modifications to and/or expansion of an existing occupied and/or operating facility, the Contractor acknowledges and agrees that DUWA will continue its operation of the facilities in which the Work is to be performed and that the Contractor will conduct its work so as to cause a minimum of interference with DUWA's operation of the existing facilities. The welfare of DUWA's employees, guests and invitees is to be considered at all times. If the Work involves modifications to and/or expansion of an existing occupied and/or operating facility, all shut downs/outages of building systems, utilities and equipment shall be approved in advance by DUWA. The Contractor shall provide DUWA with reasonable prior notice of any required shutdowns of building systems, utilities and/or equipment, such amount of prior notice to be agreed upon between the Contractor and DUWA. The Contractor will, at the request of DUWA, schedule

any work which otherwise may have an adverse impact upon the health, safety or welfare of DUWA's employees, guests or invitees or the normal facility operations during those times in which said adverse consequences may be minimized.

3.2.10 The Contractor shall retain a competent registered professional engineer or registered land surveyor, acceptable to DUWA, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the Project site and shall establish sufficient lines and grades for the construction of associated work. The Contractor shall certify as to the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries. The Contractor shall establish the building grades, lines, levels, column, wall and partition lines required by the various Sub-Contractors in laying out their work.

3.3 LABOR AND MATERIALS.

3.3.1 Unless otherwise specifically noted in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, insurance, taxes, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall be responsible, at its sole cost and expense, for the cost of hook-up of temporary systems to existing systems, distribution of utilities from existing systems to all areas of the Work, and disconnection of temporary systems at completion of the Work. The Contractor must obtain advance written approval from DUWA for any tie-ins to, and disconnections from, existing DUWA systems.

3.3.2 Prior to specifying any equipment for the Project with a manufacturer's warranty in excess of one (1) year, the Contractor will provide written notice to DUWA specifying the equipment, supplier and proposed terms and conditions of the extended warranty, and DUWA will have the right to review and approve such equipment and extended warranty prior to specification. At DUWA's request, the Contractor will allow Veolia to participate in negotiation of any extended warranty. The Contractor agrees to cooperate with DUWA in obtaining the information requested by DUWA relating to the applicable equipment manufacturer (including credit), the applicable equipment and proposed extended warranties, the operating and maintenance data pertaining to manufacturers' equipment, and information about customary maintenance or repair service, spare parts supply service or personnel support service that the manufacturer of the equipment furnishes.

3.3.3 The Contractor will schedule and coordinate delivery and storage of equipment and materials and the sequencing of its Work with DUWA's current site logistics plan and the most current Project Schedule. The Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the project site or other areas identified in the current site logistics plan for such use, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. The Contractor will maintain its storage area and will keep its storage areas clean, safe, and secure. Any materials or equipment stored offsite will be insured or stored in an insured or bonded warehouse. The risk of loss will

remain on the Contractor for all materials and equipment stored off-site per Section 3.3 of these General Conditions.

3.3.4 All Construction Work at the Project site, or in preparing or delivering materials or equipment to the Project site, is performed exclusively at the risk of the Contractor until the completed Construction Work is accepted by DUWA. The Contractor's interest in the Construction Work will be insured under the builder's risk policy and, subject to the terms and conditions of that policy, the Contractor may be insured for some or all of the risk of loss under this provision. DUWA makes no representations or warranties regarding the scope or adequacy of the builder's risk coverage. Any damage or loss to the Construction Work will be repaired or replaced promptly by the Contractor.

3.3.5 DUWA may, in writing, require the Contractor to remove from the Project any employee or Sub-Contractor or employee of a Sub-Contractor that DUWA deems incompetent, careless or uncooperative and may require the Contractor to replace any such employee or Sub-Contractor or employee of a Sub-Contractor with suitable personnel. The Contractor shall at all times enforce strict discipline and good order among its employees and Sub-Contractors and shall not employ on the Project any unfit person or anyone not skilled in the task assigned to him. All services required under the Contract Documents shall be performed in a competent and professional manner. The Contractor shall develop and administer an effective labor relations program for the Project; and the Contractor shall employ, and require its Sub-Contractors and Sub-Sub-Contractors to employ, only compatible labor. In its labor analysis, the Contractor shall take into consideration scheduled work by DUWA with the objective of eliminating strikes, picketing, hand billing and other similar activities which would disrupt the Project.

3.3.6 The Contractor covenants that all Work shall be done in a good and workmanlike manner and that all materials furnished and used in connection therewith shall be new and approved by DUWA, except as otherwise expressly provided for in the Agreement and its Contract Documents. The Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. DUWA may require the Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of DUWA, would lead to a reasonable certainty that any material used, or proposed to be used, in the Work meets the requirements of the Contract Documents. All such data shall be furnished at the Contractor's expense.

3.3.7 Deviations from the Contract Documents shall not be permitted except for substitutions approved by DUWA in accordance with this Paragraph 3.3.7. Substitutions recommended by the Contractor for the purpose of reducing the Contract Price or Contract Time shall be subject to Subparagraph 3.3.7.1 hereof. Substitutions recommended by the Contractor or a Sub-Contractor for the purpose of reducing cost to the Sub-Contractor or Contractor or offsetting delays for which the Contractor or Sub-Contractor is responsible shall be subject to Subparagraph 3.3.7.2. DUWA shall determine whether the procedures of Subparagraph 3.3.7.1 or 3.3.7.2 shall apply to a specific request for a substitution. No other substitutions or variations from the Construction Documents, except that where "or approved equal" is used, the Contractor shall

have the right, after the Agreement has been executed, to request DUWA's approval of a substitute material generally considered to be equal to that named in the Construction Documents. DUWA, however, shall have no obligation to accept any substitute.

3.3.7.1 On-going value engineering recommendations of the Contractor shall be reviewed by DUWA in its sole discretion.

3.3.7.2 Requests from the Contractor or a Sub-Contractor for approval of any substitution for the benefit of the Contractor or such Sub-Contractor, as determined by DUWA, must be submitted in writing to DUWA, together with all necessary supporting data. Requests for approval of any substitute shall be accompanied by an analysis of any changes in the Work of other trades or Sub-Contractors, redesign, other changes in the Contract Documents or additional costs that will result from the proposed substitute or a statement that no such matters will result and the analysis of whether the proposed substitute is inferior, equal or superior to the product specified.

(i) If a substitution recommended by the Contractor requires changes in the work of other trades or Sub-Contractors, redesign, other changes in the Contract Documents or results in any additional costs whatsoever, the Contractor shall be solely responsible for such costs.

(ii) By making a recommendation for a substitution, the Contractor shall be deemed to represent and warrant that:

(a) The Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to the product specified;

(b) The Contractor will provide the same warranty for the proposed substitute product as for the specified product; and

(c) The Contractor will waive all claims for additional costs related to the proposed substitute product including any which may subsequently become apparent.

(iii) By making a recommendation for a substitution involving redesign by the Contractor or any Sub-Contractor, the Contractor shall also be deemed to represent and warrant that such redesign:

(a) Will be free from errors and omissions;

(b) Will be fit for the purpose specified and will fully satisfy and perform as represented;

(c) Will properly interface with the design and Construction Documents provided by Contractor and other Sub-Contractors (if any); and

(d) Will comply with all applicable laws, regulations, ordinances and requirements of, and conditions of any approvals,

certifications or permits given by, any and all governmental authorities having jurisdiction over the design, construction, existence or use of the Project.

(iv) Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by DUWA.

3.4 DESIGN STANDARDS.

3.4.1 The Project must be designed to comply with the following design standards, as applicable:

3.4.1.1 To the extent practicable and consistent with Prudent Industry Practices, a minimum design life of 15 years for pumps and mechanical equipment, 30 years for above- ground buildings and structures, and 50 years for underground pipes and lines.

3.4.1.2 Reliability criteria as defined in the United States Environmental Protection Agency document “Design Criteria for Mechanical, Electrical and Fluid System and Component Reliability” published in 1974 for the appropriate reliability class of treatment works, as applicable.

3.4.1.3 Performance standards listed in the latest edition of “Design of Municipal Wastewater Treatment Plants” published jointly by the Water Environment Federation and the American Society of Civil Engineers, as applicable.

The above and foregoing criteria are intended solely as design criteria, and will not be construed as constituting any warranty or guarantee of performance by the Contractor.

3.4.2 Contractor shall comply with National Fire Protection Association (“NFPA”) Design Standards including NFPA 820 (Standard for Fire Protection in Wastewater Treatment and Collection Facilities).

3.5 WARRANTIES.

3.5.1 Contractor expressly warrants that the Work (except for design Work, which shall be performed in accordance with the standard of care required by Section 3.2.1) will be of good quality, free from defects in materials and workmanship, in conformance with all applicable specifications, descriptions, samples, and drawings referred to in this Agreement, merchantable and fit for their intended purposes, and conforming to the Contract Documents and Applicable Laws. Contractor’s warranty excludes damage due to improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

3.5.2 Contractor warrants that the production, packaging, labeling and transportation of all goods will comply with all applicable national, regional, state and local laws, rules, regulations, ordinances and orders.

3.5.3 Contractor warrants that it has the experience and ability as may be necessary to perform all Work with a high standard of quality and that all Work will be performed in a workmanlike, professional manner and in accordance with the highest standards in the industry.

3.5.4 All warranties will survive inspection, testing and acceptance of the Work and expiration or termination of this Agreement. All warranties are considered independent. Each will be separately construed and interpreted without reference to any other warranty.

3.5.5 All materials furnished or installed, including and without limitation, the dewatering centrifuge, shall be subject to a guaranty of the longer of (a) two (2) years from the date of Substantial Completion or (b) such longer period as may be provided in the Contract Documents. All rights acquired by DUWA through guarantees by the Contractor shall inure to the benefit of DUWA, its successors and assigns. In addition to the foregoing, any equipment warranties and warranties from Sub-Contractors or Suppliers, secured by the Contractor, including those in excess of two (2) years, and any additional bond or guaranty which may be required under the Contract Documents, shall also inure to the benefit of DUWA, its successors and assigns. The Contractor shall require that each Sub-Contractor provide a similar warranty and guaranty for the benefit of the Contractor and DUWA. The Contractor shall acquire, catalog and deliver to DUWA all bonds and guarantees under Subcontracts and from material suppliers. The Contractor shall render assistance and cooperate with DUWA in enforcing those warranties from Sub-Contractors and Suppliers which extend beyond the Contractor's warranties.

3.5.6 The Contractor's express warranty herein shall be in addition to, and not in lieu of, any other warranties, guaranties or remedies DUWA may have under the Agreement and its Contract Documents, at law, or in equity for defective work.

3.5.7 For a period of two (2) years commencing from Substantial Completion or the date of a warranty repair, whichever is later, and for longer periods specified in the Contract Documents for certain equipment manufacturers or suppliers, Contractor will provide all labor, materials, and equipment necessary to promptly repair or replace any and all deficient, defective or non-conforming Work, provided that the Work was properly maintained and used, together with any other Work that is damaged during repair or replacement, without expense to DUWA (including any additional re-inspection fees). If operations of the Facility are impaired by the defective or deficient Work or its correction, Contractor shall use such overtime labor and time saving procedures as DUWA may require at Contractor's expense. Establishment of the two (2) year period for correction of Work relates only to the Contractor's express warranty on workmanship and specific obligation to correct defective or non-conforming Work, and has no relationship to statute of limitations periods for legal claims arising from this Agreement.

3.5.8 Contractor shall provide on-site troubleshooting services within five (5) days after receipt of notice in writing from DUWA of a problem with its Work. DUWA is hereby authorized to repair any defective or non-conforming Work, and Contractor and its Surety (if any) shall be liable for the cost thereof, if 10 days after giving of such notice to Contractor, the Contractor has failed to make or undertake the repairs with due diligence. In case of emergency, where, in the opinion of DUWA, delay could cause serious loss or damage, repairs may be made without notice being sent to the Contractor, the expense in connection therewith shall be charged to the Contractor, and its Surety (if any) shall be liable for the cost thereof.

3.5.9 As part of the close-out documentation for Substantial Completion, the Contractor shall execute and submit a completed “Warranty Form” in the format included in Exhibit D to the Agreement, for the Work, and any portion of the Work possessed. The Warranty Form shall be submitted prior to Substantial Completion or within five (5) days of the occupancy or use of a portion of the Project, whichever is applicable.

3.6 TAXES.

The Contractor shall pay all consumer, use, sales and other similar taxes on supplies, materials, machinery, tools, utilities and other equipment and services used or incorporated in the construction of the Project which are required by law to be paid at the time the Agreement is executed, whether or not yet effective.

3.7 PERMITS, FEES AND NOTICES.

3.7.1 The Contractor shall secure and pay for all Permits, and pay all fees necessary for the proper execution and completion of the Work which are legally required at the time the Agreement is executed. If any of the Work is required to be inspected or approved by any Government Authority other than DUWA, the Contractor shall, at its sole cost and expense, cause such inspection or approval to be sought and obtained.

3.7.2 The Contractor shall give all notices and comply with all Applicable Laws, ordinances, rules, regulations and lawful orders of any Government Authority bearing on the performance of the Work.

3.7.3 The Contractor shall comply with all Applicable Laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. The Williams-Steiger Occupational Safety Act of 1970, administered by the United States Department of Labor, is specifically applicable. The Contractor shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including barriers and the posting of danger signs and other warnings against hazards, promulgate safety regulations and notify owners and users of adjacent utilities.

3.7.4 If the Contractor performs, or allows any Sub-Contractor to perform, any of the Work knowing such Work to be subject to an error, inconsistency or omission in the Contract Documents, or contrary to Applicable Laws, ordinances, rules, regulations, codes or orders of any public authority, and fails to give DUWA notice thereof prior to performance thereof, the Contractor shall bear all costs arising therefrom.

3.8 SUBMITTALS SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.

3.8.1. The Contractor will provide DUWA with a submittal schedule that indicates when submittals will be issued and when approval is required, including review periods by DUWA which provide at least 14 days for standard submittals and 30 days for major equipment or electrical submittals (submittals requiring a 30 day review period will be identified by DUWA).

3.8.2. The Contractor will submit to DUWA for review all shop drawings, product data, samples and other submittals required by the Contract Documents in accordance with the submittal schedule and in all cases with reasonable promptness and in such sequence as to avoid delays in the Work or in the activities of the Contractor. The Contractor will not submit any submittal that is merely a tracing or copy of any of the Construction Documents. Each submittal will be prepared by Contractor, its tier subcontractor, or supplier and will be submitted according to the Contract Documents.

3.8.3. As Contractor is a Contractor, the submittals must be prepared by, or under the responsible charge of, a professional engineer or architect registered or licensed in Michigan who will sign and seal all design-build submittals indicating that the design professional is the engineer or architect of record for that scope. Contractor will remain liable and responsible for all design-build submittals notwithstanding any review by DUWA, OHM, Veolia or Contractor's contractors.

3.8.4. Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared for the Work by the Contractor or any Sub-Contractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Shop Drawings are not Contract Documents.

3.8.5. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor or any Sub-Contractor, manufacturer, Supplier or distributor to illustrate a material, product or system for some portion of the Work. Product Data are not Contract Documents.

3.8.6. Samples are physical examples furnished by the Contractor or any Sub-Contractor, manufacturer, supplier or distributor which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Samples are not Contract Documents.

3.8.7. The Contractor shall review, utilizing personnel who are qualified, knowledgeable and experienced in the area of expertise required, approve and only then submit, with reasonable promptness, in orderly sequence so as to cause no delay in the Work or in the work of DUWA or any separate Contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents or subsequently required by DUWA.

3.8.8. Shop Drawings, Product Data and Samples shall be properly identified as specified, or as DUWA may require.

3.8.9. At the time of submission, the Contractor shall clearly inform DUWA in writing of any deviation in the Shop Drawings, Product Data or Samples from the requirements of the Contract Documents.

3.8.10. Shop Drawings and other submittals which are not approved by the Contractor will be returned un-reviewed.

3.8.11. Shop Drawings and other submittals may not be submitted with disclaimers or other exculpatory language inasmuch as it is the responsibility of the Sub-Contractor or Supplier

originating such submission to properly prepare the submittal and the responsibility of the Contractor to verify that the submittal has been properly prepared. Shop Drawings and other Submittals containing disclaimers or other exculpatory language will be returned un-reviewed.

3.8.12. By approving and submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that it has (i) determined and verified all materials, field measurements, field construction criteria, catalog numbers and similar data; (ii) checked and coordinated such Shop Drawing, Product Data and Samples with the requirements of the Work and of the Contract Documents; and (iii) clarified any discovered design ambiguity with DUWA in writing.

3.8.13. DUWA will review and approve or take other appropriate action upon designated Shop Drawings, Product Data and Samples with reasonable promptness so as to cause no delay.

3.8.13.1 The Contractor shall provide all submittals as required by the Project Schedule. The Contractor shall allow for a maximum period of fourteen (14) days for DUWA's review and approval of any submittal not covered by the Project Schedule

3.8.13.2 DUWA's approval of a separate item shall not indicate approval of an assembly in which the item functions.

3.8.13.3 DUWA's review and approval of Shop Drawings and other Submittals that deviate from the requirements of the Contract Documents shall not constitute approval of deviations unless the same are clearly called out as required by the Project.

3.8.13.4 The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by DUWA's approval thereof.

3.8.14 The Contractor shall, at its sole cost and expense, correct any errors identified by DUWA and shall resubmit the required number of corrected copies of Shop Drawings, Product Data or new Samples until approved.

3.8.14.1 The Contractor shall direct specific attention in writing on resubmitted Shop Drawings, Product Data or Samples to revisions other than the corrections requested by DUWA on previous submissions and DUWA's review and approval of resubmitted submissions will not constitute approval of any changes other than those specifically noted.

3.8.14.2 The fees and expenses of DUWA in reviewing and approving more than one re-submittal of a submission shall be charged to the Contractor and off-set against amounts otherwise due and payable to the Contractor if resubmission is required because the original submittal and first re-submittal were not correct and complete. All time consumed by the resubmissions and re-reviews of a particular Submittal shall constitute time required to furnish the particular item, or delays not meeting the requirements for increases to Contract Time or Contract Price, or both.

3.8.14.3 The Contractor shall submit to DUWA final Shop Drawings, as used for construction, marked as such for DUWA's records.

3.8.15 DUWA's review of the Shop Drawings, Product Data or Samples shall not relieve the Contractor of responsibility for a deviation from the requirements of the Contract Documents unless Contractor has informed DUWA in writing of such deviation at the time of submission and DUWA has given written approval to the specific deviation, nor shall DUWA's review relieve the Contractor from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples.

3.8.16 Except as specifically authorized by DUWA in writing, no portion of the Work requiring a Shop Drawing, Product Data or Sample submission shall be commenced until the submission has been reviewed and approved by DUWA. All such portions of the Work shall be in accordance with such reviewed and approved Shop Drawings, Product Data and Samples.

3.9 USE OF SITE.

The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, the Contract Documents and directions of DUWA or Veolia and shall not unreasonably encumber the Project site with any materials or equipment. The Contractor shall abide by and enforce DUWA's or Veolia's instructions, if any, regarding signs, traffic circulation and patterns, advertisements, fires and smoking at the Project site. The Contractor may utilize only such access routes as may be designated by DUWA or Veolia from time to time.

3.10 CUTTING AND PATCHING OF WORK.

3.10.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly and, to the extent required by the Contract Documents, for all cutting, fitting, or patching required in connection with work done by DUWA or DUWA's separate Contractors. DUWA shall not be responsible for any costs arising out of cutting, fitting and patching the work of the various Sub-Contractors and no claims on account thereof will be considered.

3.10.2 The Contractor shall not, and shall not permit any Sub-Contractor to, damage or endanger any portion of the Work or the work of DUWA or any separate Contractors by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of DUWA or any separate Contractor except with the written consent of DUWA and of such separate Contractor. The Contractor shall not unreasonably withhold from DUWA or any separate Contractor its consent to cutting or otherwise altering the Work.

3.11 CLEANING UP.

3.11.1 The Contractor, at all times, shall keep the Project site free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, it shall (i) remove all its waste materials and rubbish from and about the Project, as well as all tools, construction equipment, machinery, surplus materials and temporary installations and facilities; (ii) shall clean and protect all finished surfaces and areas in accordance with the Specifications.

3.11.2 If the Contractor fails to clean up after request from DUWA, DUWA may do so and the cost thereof shall be charged to the Contractor.

3.12 ROYALTIES AND PATENTS.

The Contractor shall pay all royalties and license fees. The Contractor shall indemnify and defend, with counsel reasonably acceptable to DUWA, all suits or claims for infringement of any patent rights or copyrights and shall defend, indemnify and save DUWA harmless from all loss, cost or expense (including attorney's fees) on account thereof. Notwithstanding the foregoing, the Contractor shall not be responsible for infringement of patent rights where a particular design process or product of a particular manufacturer is specified by DUWA and the Contractor has no reason to believe that such design process or product specified is an infringement of a patent.

3.13 INDEMNIFICATION.

3.13.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless Indemnified Parties from and against claims, damages, losses, and expenses (including but not limited to attorney fees) to the extent arising out of or resulting from performance of the Work, Contractor's breach of this Agreement, or failure to perform in accordance with the Contract Documents, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. The Contractor shall not be required to defend or indemnify DUWA for damages to the extent caused by the negligence of DUWA. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.13.1.

3.13.2 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the Indemnified Parties from all liabilities, claims, demands, actions, suits and costs (including, without limitation, reasonable attorneys' fees) if caused by reason of or as result of a notice of lien, claim for lien, lien, or suit to foreclose a lien filed, given, made or maintained by subcontractor, sub-subcontractor or supplier of Contractor provided that the Contractor has received payment pursuant to the terms of this Agreement.

3.13.3 In any and all claims against DUWA or any of its directors, officers, agents or employees by any employee of the Contractor, any Sub-Contractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 3.13.3 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Sub-Contractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

3.13.4 The obligations of the Contractor under this Section 3.13 shall survive the termination of the Agreement.

ARTICLE 4

SUB-CONTRACTORS

4.1 THIRD PARTY BENEFICIARY.

Nothing contained in the Agreement or the Contract Documents shall create any contractual relation between DUWA or any Sub-Contractor or Sub-Sub-Contractor.

4.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

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

4.2.2 The Contractor shall promptly deliver to DUWA a complete executed copy of each Subcontract awarded.

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

4.3 SUBCONTRACTUAL RELATIONS.

4.3.1 By an appropriate written agreement, the Contractor shall require each Sub-Contractor, to the extent of the portion of the Work to be performed by the Sub-Contractor, to be bound to the Contractor by the terms of the Agreement and the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Agreement and the Contract Documents, assumes toward DUWA. Where appropriate, the Contractor shall require each Sub-Contractor to enter into similar agreements with its Sub-Sub-Contractors. The Contractor shall make available to each proposed Sub-Contractor, prior to the execution of the Subcontract, copies of the Agreement and its Contract Documents to which the Sub-Contractor will be bound by this Section 4.3, and identify to the Sub-Contractor any terms and conditions of the proposed Subcontract which may be at variance with the Agreement and its Contract Documents. Each Sub-Contractor shall similarly make copies of the Agreement and its Contract Documents available to its Sub-Sub-Contractors.

4.3.2 The Contractor shall cause all Sub-Contractors, Suppliers, laborers and vendors to agree to indemnify DUWA and hold it harmless from all claims that may arise from such Sub-Contractor's operations to the same extent as the Contractor has indemnified DUWA pursuant to Section 3.13 hereof. Such provisions shall be in a form reasonably satisfactory to DUWA.

4.3.3 The agreement between the Contractor and the Sub-Contractors (and, where appropriate, between Sub-Contractors and Sub-Sub-Contractors) shall include, without limitation:

4.3.3.1 Preserve and protect the right of DUWA under the Contract with respect to the Work to be performed under the Subcontract so that the subcontracting thereof will not prejudice such rights;

4.3.3.2 Require that such Work be performed in accordance with the requirements of the Contract Documents;

4.3.3.3 Require submission to the Contractor of sworn statements and waivers of claim under each Subcontract and Sub-subcontract, in reasonable time to enable the Contractor to comply with the Agreement, all such documents to be in the form approved by DUWA and in compliance with all requirements of applicable law;

4.3.3.4 Require that all claims for additional costs or extensions of time with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Sub-Contractor or Sub-Sub-Contractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided, if any, in the Agreement for a like claim by the Contractor upon DUWA. To the extent the Contractor is liable to any Sub-Contractor, any such pass-through claim raised by the Contractor against DUWA shall first be liquidated between the Contractor and Sub-Contractor pursuant to the terms of a liquidation agreement under which (i) the Contractor acknowledges its liability to the Sub-Contractor and remains unchanged to pay the Sub-Contractor regardless of the outcome of the Contractor's claim against DUWA, (ii) the Contractor's liability is liquidated to the extent of its recovery, if any, against DUWA; and (iii) the Contractor agrees to pass its recovery, if any, to the Sub-Contractor. The Contractor shall deliver the executed liquidation agreement to DUWA as a pre-requisite to pursuing any claims on behalf of the Sub-Contractor or Sub-Sub-Contractor;

4.3.3.5 Waive all rights the contracting parties may have against one another and against DUWA for damages caused by fire or other perils covered by the property insurance required under the Agreement; and

4.3.3.6 Obligate each Sub-Contractor specifically to consent to the provisions of this Section 4.3.

4.3.4 The Contractor shall bear the risk of any inconsistencies between the terms and conditions of the Agreement and its Contract Documents and the terms and conditions of its Subcontract, purchase orders and similar documentation.

4.3.5 The Contractor shall coordinate and supervise the work performed by Sub-Contractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor and all Sub-Contractors shall at all times afford each trade, any separate Contractor, or DUWA, every reasonable opportunity for the installation of work and the storage of materials.

4.4 COMMUNICATIONS WITH SUB-CONTRACTORS.

4.4.1 The Contractor shall be responsible for the communication of information between the Sub-Contractors or Suppliers and DUWA and shall ensure that all communications from the Sub-Contractors and Suppliers are properly routed to the Contractor.

4.4.2 Where, for purposes of clarity, direct communications between DUWA and Sub-Contractors or Suppliers are necessary, the Contractor shall have a representative present.

ARTICLE 5

WORK BY DUWA OR BY SEPARATE ContractorS

5.1 DUWA'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS.

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

5.1.2 The Contractor will provide for the coordination of the work of DUWA's forces and of each separate Contractor with the Work of the Contractor, who shall cooperate therewith as provided in Section 5.2 hereof.

5.2 MUTUAL RESPONSIBILITY.

5.2.1 The Contractor shall afford DUWA and DUWA's separate Contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work related to the Project, and shall properly connect and coordinate its Work with theirs as required by the Contract Documents.

5.2.2 If any part of the Work depends on proper execution or results upon the work of DUWA or any separate Contractor, the Contractor shall, prior to proceeding with such portion of the Work, inspect and promptly report to DUWA any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to inspect and report shall constitute an acceptance of DUWA's or DUWA's separate Contractors' work as fit and proper to receive its work, except as to defects which may develop or become apparent in DUWA's or separate Contractor's work after the execution of the Work.

5.2.3 Should the Contractor cause damage to the work or property of DUWA, or to other work on the Project site, the Contractor shall promptly remedy such damage as provided in Article 9 hereof.

5.2.4 Should the Contractor cause damage to the work or property of any separate Contractor, the Contractor shall upon due notice promptly settle with such other Contractor by agreement, if it will so settle. If such separate Contractor sues or initiates an arbitration proceeding against DUWA on account of any damage alleged to have been caused by the Contractor, DUWA shall notify the Contractor who shall defend such proceedings at the Contractor's expense, and if any judgment or award against DUWA arises therefrom, the Contractor shall pay or satisfy it and shall reimburse DUWA for all reasonable attorneys' fees and court or arbitration costs which DUWA has incurred.

5.3 DUWA'S RIGHT TO CLEAN UP.

If a dispute arises between the Contractor and DUWA as to the Contractor's responsibility for cleaning up as required by Section 3.11 hereof, DUWA may clean up and charge the cost thereof to the Contractor upon 48 hours written notice if the Contractor does not commence reasonable action.

ARTICLE 6

MISCELLANEOUS PROVISIONS

6.1 TESTS.

6.1.1 The Contractor shall, at its sole cost and expense, provide and pay for testing and inspections required by the Contract Documents or laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Work. The Contractor shall give DUWA timely notice of its readiness and the date arranged so they may observe such inspection, testing or approval.

6.1.2 If DUWA determines that any Work requires special inspection, testing, or approval which Paragraph 6.1.1 hereof does not include, DUWA will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Paragraph 6.1.1 hereof. If such special inspection or testing reveals a failure of the Work to comply with (i) the requirements of the Contract Documents; or (ii) Applicable Laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof; otherwise DUWA shall bear such costs, and an appropriate Change Order shall be issued.

6.1.3 Certificates of inspection, testing or approval required to be obtained by the Contractor or Sub-Contractors in connection with construction permits, shall be secured by the Contractor, cataloged, indexed, bound (in removable form) and promptly delivered by it to DUWA.

6.2 OTHER PROJECTS.

Nothing set forth in the Contract Documents shall constitute an agreement between DUWA and the Contractor with respect to services other than those included in the Contract Documents.

6.3 NONDISCRIMINATION.

The Contractor shall comply with Titles VI and VII of the Civil Rights Act of 1964 (Public Law 88-352, 78 STAT.266), U.S. Department of Justice Regulations (28 CFR Part 42), the Michigan Civil Rights Act (Public Act No. 453 of 1976), the Michigan Handicappers Civil Rights Act (Public Act No. 220 of 1976) and all other fair employment practices and equal laws. The Contractor shall furnish and file compliance reports within the times and in form prescribed by DUWA. Compliance reports may also elicit information as to the practices, policies, programs, and employment statistics of the Contractor and Sub-Contractors. The Contractor will permit access to Contractor's records and accounts by DUWA and/or its agent for purposes of investigation to ascertain compliance with the Agreement and its Contract Documents. The Contractor agrees that it will not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment because of religion, race, color, national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular assignment or position. The Contractor hereby recognizes the right of the United States, the State of Michigan and DUWA to seek judicial enforcement of the foregoing covenants against discrimination, against itself or its Sub-Contractors connected directly or indirectly with the performance of the Agreement.

6.4 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES.

Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employee shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated. Penalties or fines assessed by permitting parties for violations of DUWA's NPDES Permit effluent maximum loads or concentrations for the Project as a result of defects in design or construction by Contractor are hereby expressly excluded from this provision 6.4 and shall not be considered a consequential, special, indirect, or incidental damage.

6.5 MISCELLANEOUS PROVISIONS.

Remedies Cumulative: All rights and remedies provided in this Agreement are cumulative and not exclusive of any other rights or remedies that may be available to the parties, whether provided by law, equity, statute, in any other agreement between the parties or otherwise. Notwithstanding the foregoing, DUWA's exclusive remedies for breach of the Project Schedule milestones specified in the Agreement shall be the remedies specified in Section 4.6 of the Agreement.

ARTICLE 7

TIME

7.1 DEFINITIONS.

7.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Final Completion of the Work as defined in Paragraph 7.1.4 hereof, including authorized adjustments thereto.

7.1.2 The date of commencement of the Work is the date established in a Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Agreement or such other date as may be established therein.

7.1.3 The date of Substantial Completion of the Work or designated portion thereof is the date upon which DUWA shall have certified that construction is sufficiently complete, in accordance with the Agreement and its Contract Documents, so DUWA can utilize the Work or designated portion thereof for the use for which it is intended and shall include (i) completion of all specified training, (ii) receipt by DUWA of acceptable, specified O & M manuals (i.e., 90% O & M manuals in the case of Substantial Completion of the entire Work), (iii) all systems have been successfully tested and demonstrated by the Contractor for their intended use, (iv) Equipment Supplier's Equipment having successfully passed the Initial Acceptance Test, and (iv) DUWA having received all required certifications and/or approvals from the State of Michigan and any other political bodies having jurisdiction over the Work.

7.1.4 The date of Final Completion of the Work is the date on which the Work shall be fully, completely and finally completed in accordance with the Agreement and its Contract Documents and:

7.1.4.1 The Contractor has completed all Punch List items to the satisfaction of DUWA, including providing DUWA with the results of any and all tests that may be required;

7.1.4.2 The Contractor has delivered to DUWA:

7.1.4.2.1 All 100% complete maintenance and operating manuals; if any;

7.1.4.2.2 Marked sets of working Drawings reflecting "as built" conditions and upon which the Contractor shall have transferred all changes in the location of any concealed utilities, mechanical or electrical systems and components;

7.1.4.2.3 Any special guarantees or warranties required by the Contract Documents;

7.1.4.2.4 An assignment and/or transfer of all guarantees and warranties from Sub-Contractors, vendors, Suppliers and manufacturers;

7.1.4.2.5 A list of the names, addresses and phone numbers of all Sub-Contractors and other persons providing guarantees or warranties;

7.1.4.2.6 The Sub-Contractor close-out logs; and

7.1.4.2.7 All required sworn statements and waivers of claim and other documentation required by the Contract Documents.

7.1.4.3 The Contractor has otherwise complied with all close-out requirements of the Contract Documents.

7.2 PROGRESS AND COMPLETION.

7.2.1 All time limits stated in the Contract Documents are of the essence of the Agreement. The construction and completion of the Project shall be undertaken and completed in accordance with the Project Schedule described in the Contract Documents. The parties shall use the Project Schedule for planning and monitoring the progress of the Work.

7.2.2 The Contractor shall begin the Work on the date of commencement as defined in Paragraph 7.1.2 hereof. It shall carry the Work forward expeditiously with adequate forces, shall at all times adhere to the Project Schedule and shall achieve Substantial Completion and Final Completion within the time limits set forth in the Project Schedule.

7.2.3 The Contractor shall be responsible to maintain daily records that will enable the Contractor to accurately update the Project Schedule as required in Paragraph 7.2.4 hereof.

7.2.4 At the end of the first month following issuance of the approved Project Schedule and every month thereafter (or at such lesser intervals if deemed necessary by DUWA), the Contractor shall prepare an updated Project Schedule showing the actual status of the Project as of the date of the updated Project Schedule. The updated Project Schedule shall be related to the original Project Schedule to facilitate identification of variances therefrom (activity descriptions shall not be redefined on such updated Project Schedule).

7.2.5 Extensions of the Contract Time shall not be granted except as expressly provided for in this Article 7.

7.2.6 In the event (i) Construction Change Directives or Change Orders are issued by DUWA; (ii) the Contractor receives a notice of a change in the Agreement or extra work to be performed; or (iii) the Contractor becomes aware of any conditions which are likely to cause or are actually causing delays, the Contractor shall notify DUWA in writing of the effect, if any, within any specific time limits set forth in the Agreement (and if no specific time limits are set forth, within fifteen (15) days) and shall state in what respects, if any, the Project Schedule should be revised with the reasons therefor. If the Contractor shall fail to provide DUWA with written notice within the specified time period that an adjustment to the Project Schedule is necessary, then any claims by the Contractor for an extension of the Contract Time shall be waived.

7.2.7 If the Contractor shall fail to adhere to the Project Schedule, as revised pursuant to the Agreement, it must promptly work such additional time over regular hours, including Saturdays, Sundays and holidays and/or supply such additional workmen as may be required to bring the Work on schedule, without additional cost or expense to DUWA, including claims for inefficiency due to the use of overtime.

7.3 SUSPENSION BY DUWA.

7.3.1 DUWA may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of DUWA.

7.3.2 If the performance of all or any part of the Work on the Project is suspended, delayed or interrupted at the direction of DUWA, if such act causes delays in the critical path activity, then the Project Schedule shall be adjusted as mutually agreed.

7.3.3 Any claims for extension of time pursuant to paragraph 7.3.2 hereof shall be made in writing to DUWA no more than five (5) days after the commencement of the delay; otherwise they shall be waived. In the case of a continuing cause of delay, only one claim is necessary. Any delay of less than twenty-four (24) hours duration shall not be justification for adjusting the Project Schedule or Contract Price.

7.3.4 To the extent practical, the Contractor shall reduce the size of its Project staff upon notice from DUWA of any DUWA caused delay or interruption which is likely to exceed thirty (30) days to reduce costs and expenses to DUWA. Upon the termination of the delay or as otherwise directed by DUWA, the Contractor shall restore the Project staff to its former size.

7.3.5 No adjustments to the Contract Price or Contract Time shall be made under this Section 7.3 for any suspension, delay or interruption (i) to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or (ii) for which an equitable adjustment is provided or excluded under any other provision of the Agreement. DUWA's exercise of any of its rights under the Agreement, or DUWA's requirement of correction or re-execution of any defective Work shall not, under any circumstances, be construed as interference with the Contractor's performance of the Work.

7.3.6 NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY. CONTRACTOR ACKNOWLEDGES THAT NO EXTENSIONS OF THE CONTRACT TIME OR INCREASE TO THE CONTRACT PRICE SHALL BE PERMITTED EXCEPT AS APPROVED IN ADVANCE BY DUWA.

7.3.7 Each Sub-Contractor shall be bound by the foregoing provisions.

7.4 DELAYS AND EXTENSIONS OF TIME.

7.4.1 If the Contractor shall be delayed by: (1) the combined action of workmen (either those employed on the Work or in any industry essential to the conduct of the Work) in no way caused by or resulting from default or collusion on the part of the Contractor; (2) by strikes, lockouts, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, unusually severe and adverse weather conditions not reasonably anticipatable; or (3) by any other causes which the Contractor could not reasonably control or circumvent, and if such delay affects the critical path activity, then the Project Schedule shall be adjusted as necessary to compensate for such delay (but the total extension of all critical path activities may not exceed the length of the delay).

7.4.2 To the extent delays are caused by DUWA, Contractor shall be entitled to an equitable adjustment of the Contract Price and extension of the Contract Time. An extension of the Contract Time shall be the Contractor's sole remedy for any other delays under Paragraph 7.4.1. In no event shall the Contractor be entitled to any compensation or recovery of any damages in

connection with any delay under 7.4.1, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

7.4.3 All claims for extension of time pursuant to Paragraph 7.4.1 hereof shall be made in writing to DUWA no more than ten (10) days after the commencement of the delay, except in connection with weather delays which shall be made on a monthly basis within five (5) days from the end of each month; otherwise they shall be waived. In the case of a continuing cause of delay only one claim is necessary. Any delay of less than twenty-four (24) hours duration shall not be justification for adjusting the Project Schedule.

7.4.4 No adjustments shall be made under this Section 7.4 for any suspension, delay or interruption (i) to the extent that performance would have been so suspended, delayed or interrupted by any other cause including due to the fault or negligence of the Contractor; or (ii) for which an equitable adjustment is provided under any other provision of the Agreement. DUWA's exercise of any of its rights under the Agreement, or DUWA's requirement of correction or re-execution of any defective Work shall not, under any circumstances, be construed as interference with the Contractor's performance of the Work.

7.4.5 Each Sub-Contractor shall be bound by the foregoing provisions.

7.5 ACCELERATION OF PERFORMANCE.

7.5.1 If DUWA shall desire the Work of the Contractor hereunder to be performed with greater speed than is herein contracted for, the Contractor shall, without affecting or abridging the rights of DUWA under the Agreement, upon receipt of a written order from DUWA, specifically setting forth a request pursuant to this Section 7.5, employ overtime work as so ordered. Only the premium cost of such overtime work, as shown on the time slips checked and approved each day by DUWA shall be paid by DUWA to the Contractor as additional compensation, and no overhead, profits, costs, commissions, claims for inefficiencies or otherwise, or other costs or claims shall be charged or due with respect to use of overtime work or the acceleration of performance. This provision shall not apply to acceleration of performance caused by the Contractor's default, the cost of which shall be borne solely by the Contractor.

7.5.2 Each Sub-Contractor shall be bound by the foregoing provisions.

7.6 PREREQUISITES FOR START OF CONSTRUCTION.

7.6.1 The Contractor shall not commence construction (or recommence construction following any suspension) of any portion of the Work prior to occurrence of all the following events except with the prior written consent of DUWA in his/her sole discretion, and the Contractor shall promptly commence such construction promptly following the occurrence of such events:

7.6.1.1 DUWA shall have delivered to the Contractor a Notice to Proceed for the relevant phase of the Work; and

7.6.1.2 DUWA has reviewed and approved the Project Schedule; and

7.6.1.3 DUWA has convened and conducted a kick-off meeting.

7.7 USE OF FLOAT.

7.7.1 Total Float and Free Float, whether disclosed or implied by the use of float suppression techniques, are not for the exclusive benefit of the Contractor or DUWA, and shall be available to the Contractor and DUWA.

ARTICLE 8

PAYMENT AND COMPLETION

8.1 CONTRACT PRICE.

The Contract Price is the total amount payable by DUWA to the Contractor for the performance of the Work, including all risks, hazards and difficulties therewith assumed by the Contractor under the Agreement.

8.2 SCHEDULE OF VALUES: DETAILED COST BREAKDOWN.

The Contractor shall prepare, and submit to DUWA for approval, a Schedule of Values and Detailed Cost Breakdown showing the allocation of the Contract Price among the various components of the Work and in sufficient detail as DUWA may require. The Contractor shall revise the Schedule of Values as required by DUWA. The Schedule of Values, and Detailed Cost Breakdown when approved by DUWA, shall be used as a basis for Applications for Payment and Progress Payments to the Contractor. The Contractor represents and warrants to DUWA that the final Schedule of Values and Detailed Cost Breakdown is an accurate and correct allocation of the Contract Price.

8.3 APPLICATIONS FOR PAYMENT.

8.3.1 The issuance of an Application for Payment will constitute a representation by the Contractor to DUWA that the Work has progressed to the point indicated; that the quality of the Work is in accordance with the Contract Documents; that all as-built drawings are accurate and up-to-date; and that Contractor is entitled to payment in the amount certified.

8.3.2 Payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the Project or at some other location, only with the prior written approval of DUWA. Payment for materials stored off-site shall be conditioned upon submission by the Contractor of the following: (1) the notarized bill of sale to DUWA executed by an officer of the selling corporation; (2) a certificate of insurance covering the material for fire, theft and vandalism naming DUWA as the insured party; (3) an affidavit from an officer of the selling corporation stating that he is an officer and giving the complete address of the specific location where the material is stored; (4) a certification authorizing inspection by DUWA or its representative at the storage location; and (5) such other evidence as DUWA may reasonably require demonstrating that it is the owner of such material free and clear of all rights in others. Except to the extent covered by the insurance required under the Agreement, the Contractor shall have full responsibility for all stored materials and shall bear the risk of all loss, damage or theft thereof or thereto.

8.3.3 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to DUWA upon the receipt of payment by the Contractor, free and clear of all liens, claims, security interests, encumbrances or rights in others, hereinafter referred to in this Article 8 as "liens"; and that no portion of the Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials or equipment for the Project, subject to a choate or inchoate lien or an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

8.3.4 At a minimum, each Application for Payment shall (i) be accompanied by the Contractor's sworn statements and waivers of claim, which sworn statement and waiver shall cover all work, labor and materials, including equipment and fixtures of all kinds done, performed or furnished as of the date of the request for payment; (ii) be accompanied by properly completed sworn statements and waivers of claim from each Sub-Contractor, Sub-Sub-Contractor, laborer and materialmen, which sworn statements shall cover all work, labor and materials, including equipment and fixtures of all kinds done, performed or furnished as of the date of the previous request for payment, and which waivers shall cover all work, labor and materials, including equipment and fixtures of all kinds, done, performed or furnished as of the previous request for which payment has been received; and (iii) such other evidence necessary to satisfy DUWA that the Work for which payment is requested has been completed in conformance with the Agreement, and that all amounts which have previously been paid for Work have been properly distributed to the various Sub-Contractors, Sub-Sub-Contractors, laborers and materialmen. In the event of any discrepancy, the Contractor shall furnish a written explanation to DUWA.

8.3.5 DUWA will, with reasonable promptness, either approve payment in the amount DUWA determines is properly due, or notify the Contractor in writing of its reasons for withholding payment.

8.4 PROGRESS PAYMENTS.

8.4.1 DUWA shall make payment upon, and only upon DUWA's receipt and approval of an Application for Payment which complies with all requirements of the Agreement.

8.4.2 DUWA may, on request and at his/her discretion, furnish to any Sub-Contractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by DUWA on account of Work done by such Sub-Contractor.

8.4.3 DUWA shall have no obligation to pay or to see to the payment of any moneys to any Sub-Contractor.

8.4.4 No Application for Payment, or any Progress Payment, or any approval of either by DUWA, or any partial or entire use of the Project by DUWA, shall constitute an acceptance of any Work not in accordance with the Contract Documents. Nor shall any prior estimate of completed units made by DUWA in connection with a Progress Payment constitute a certification

or acceptance of the amount of actual quantities which shall be determined by DUWA upon Final Completion which determination shall be final and binding.

8.5 PAYMENTS WITHHELD.

8.5.1 In addition to and not in limitation of the rights granted to DUWA under Section 2.4 hereof, DUWA may withhold payment because of subsequently discovered evidence or subsequent observations, or it may nullify the whole or any part of any payment previously issued, to such extent as may be necessary in its opinion to protect DUWA from loss because of any of the causes listed in Subparagraphs 8.5.1.1 through 8.5.1.6 below.

8.5.1.1 An Application for Payment is incorrectly completed or is not accompanied by properly completed supporting documentation; or

8.5.1.2 The Contractor is in default of any of its material obligations under the Agreement or any of the Contract Documents; or

8.5.1.3 Any part of such payment is attributable to Work which is defective or not performed in accordance with the Construction Documents, as determined by DUWA; provided, however, such payment shall be made as to the part thereof attributable to Work which is performed in accordance with the Construction Documents and is not defective, reserving, however, such amount as DUWA shall determine reasonably necessary to protect DUWA with respect to defective Work; or

8.5.1.4 The Contractor has failed to make payments promptly to Sub-Contractors, Sub-Sub-Contractors, laborers or materialmen or for material or labor used in the Work in accordance with the Subcontract documents; or

8.5.1.5 Any part of such payment is attributable to Work with respect to which DUWA has been notified of a claim or dispute or has received reasonable evidence indicating the existence of such a claim or dispute, provided DUWA has paid the Contractor in accordance with the Agreement and its Contract Documents; or

8.5.1.6 If DUWA reasonably determines that the portion of the Contract Price then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents after meeting with the Contractor and giving an opportunity to prove otherwise, no additional payments will be due the Contractor hereunder unless and until the Contractor, at no cost to DUWA, performs, and pays in full for, a sufficient portion of the Work so that such portion of the Contract Price then remaining unpaid is determined by DUWA to be sufficient to so complete the Work.

8.5.2 Until the Work is fifty percent (50%) completed as determined by DUWA, DUWA shall hold ten percent (10%) of each Progress Payment as retainage. After the Work is fifty percent (50%) completed, further retainage shall not be withheld, unless the Contractor is not in compliance with the terms of the Contract Documents.

8.5.3 All retainage shall be held in an interest bearing account with a regulated financial institution in the State of Michigan. The interest shall belong to the Contractor. The retainage plus

interest shall be paid to the Contractor with the Final Payment and upon fulfillment of the conditions set forth in Section 8.8.2 below.

8.6 FAILURE OF PAYMENT.

8.6.1 Unless otherwise directed by DUWA, the Contractor shall continue with the Work and maintain its progress during the existence of any disputes and DUWA shall continue to make payments to the Contractor over which there is no good faith dispute.

8.6.2 Each Sub-Contractor shall be bound by the foregoing provision.

8.7 SUBSTANTIAL COMPLETION.

When the Contractor considers that the Work, or a designated portion thereof which is acceptable to DUWA, is substantially complete as defined in Paragraph 7.1.3 hereof, the Contractor shall prepare for submission to DUWA a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When DUWA, on the basis of an inspection, determines that the Work or designated portion thereof is substantially complete, it will then prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of DUWA and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein.

8.8 FINAL COMPLETION, FINAL PAYMENT AND RELEASE OF RETENTION.

8.8.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, DUWA will promptly make such inspection and, when DUWA finds the Work acceptable under the Contract Documents, all items on DUWA's Punch List completed to DUWA's satisfaction and the Agreement fully performed, DUWA will promptly issue a final Certificate for Payment, which shall set forth a final determination of the actual quantities and measurements of the completed work and that the entire balance found to be due the Contractor, and noted in said final Certificate of Payment, is due and payable.

8.8.2 Neither the Final Payment nor the retained percentage shall become due until the Contractor submits to DUWA (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which DUWA or its property might in any way be responsible, have been paid or otherwise satisfied; (2) consent of surety, if any, to final payment and release of retention; and (3) final, unconditional general releases and final sworn statements and waivers of claim from Contractor and all Sub-Contractors, Sub-Sub-Contractors, laborers and material suppliers in the forms required by DUWA. Notwithstanding the foregoing, the Contractor's final waiver and unconditional release is not required to be submitted in advance of Final Payment but may be exchanged for Final Payment.

ARTICLE 9

PROTECTION OF PERSONS AND PROPERTY

9.1 SAFETY PRECAUTIONS AND PROGRAMS.

The Contractor shall develop a comprehensive project safety program and require each separate Sub-Contractor to adhere to such program. The Contractor shall appoint a safety officer who shall be responsible for administering the comprehensive safety program. This person shall be the Contractor's Project Manager unless otherwise designated by the Contractor in writing to DUWA. The person designated shall not be changed unless notice is given to DUWA. The Contractor shall assume responsibility for full and violation free compliance with all applicable laws, rules and regulations pertaining to job and project safety.

9.2 SAFETY OF PERSONS AND PROPERTY.

9.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

9.2.1.1 All employees on the Work and all other persons who may be affected thereby;

9.2.1.2 All of the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Project site, under the care, custody or control of the Contractor or any of its Sub-Contractors or Sub-Sub-Contractors or others;

9.2.1.3 Other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

9.2.1.4 DUWA's equipment and employees, directors, officers, agents and separate Contractors; provided that DUWA's equipment and employees, directors, officers, agents and separate Contractors comply with applicable state and federal safety regulations and the Contractor's written safety program.

9.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss, including without limitation the Confined Space Entry policy promulgated by DUWA. The Williams-Steiger Occupational Safety Act of 1970, as amended, administered by the United States Department of Labor, is specifically applicable as are parallel state statutes.

9.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including barriers and of danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

9.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

9.2.5 All damage or loss to any property referred to in Subparagraphs 9.2.1.2, 9.2.1.3, and 9.2.1.4 hereof caused in whole or in part by the Contractor, any Sub-Contractor, any Sub-Sub-Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss to the extent attributable to the acts or omissions of DUWA or anyone employed by DUWA or for whose acts DUWA may be liable; provided that such loss is not otherwise covered by insurance as required of any party (other than Contractor) pursuant to the terms of the Agreement.

9.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

9.2.7 The Contractor shall at all times protect excavations, trenches, buildings and materials, from rain water, ground water, back-up or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end.

9.2.8 The Contractor shall remove snow and ice which might result in damage or delay.

9.2.9 The Contractor shall take all precautions necessary to prevent loss or damage caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of property of DUWA, whether or not forming part of the Work, located within those areas of the Project to which the Contractor has access. The Contractor shall have full responsibility for the security of such property of DUWA located in such areas and shall reimburse DUWA for any such loss, damage or injury, except such as may be directly caused by directors, officers, agents or employees of DUWA.

9.3 EMERGENCIES.

In any emergency affecting the safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work, not occasioned in whole or in part by Contractor's acts or omissions or by other causes which are Contractor's responsibility or indemnity obligation hereunder, shall be determined as provided in Article 11 hereof.

9.4 ENVIRONMENTAL.

9.4.1 The Contractor shall not, at any time, cause or permit any Hazardous Materials to be brought upon, stored, manufactured, blended, handled, or used in, on, or about the Work or the Project site for any purpose, except any Hazardous Materials as may be specifically called for in the Contract Documents and except as specifically identified in writing by the Contractor. Any material change and/or addition to the Hazardous Materials or uses so identified must be approved in writing in advance by DUWA, which approval shall not be unreasonably withheld.

9.4.2 The Contractor shall at all times be in material compliance with all applicable state, federal, and local environmental and health and safety laws and regulations; shall, at its sole cost and expense, obtain and maintain all permits, licenses, and authorizations required for the Contractor's business, equipment, and operations on and in connection with the Work; shall

comply with all material terms and conditions of such permits, licenses, and authorizations, and shall comply with all material and applicable requirements, orders, and directives of Government Authorities, including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.), the Occupational Health and Safety Act, all applicable fire and municipal building codes, and any amendments thereto and any applicable guidelines or regulations promulgated thereunder.

9.4.3 The Contractor shall certify with each Application for Payment, that (i) the Contractor, its agents, employees, Sub-Contractors, Sub-Sub-Contractors and their agents and employees, are in material compliance with the requirements of all Applicable Laws; (ii) to the Contractor's best knowledge, no disposal of Hazardous Materials has occurred on, in, under, or about the Work or the Project site; (iii) to the Contractor's best knowledge, no release of Hazardous Materials (except as otherwise reported to DUWA pursuant to Paragraph 9.4.6) has occurred on, in, under, or about the Work or the Project site; (iv) to the Contractor's best knowledge, no soil or surface or ground water contamination of the Work or the Project site has occurred; and (v) no Hazardous Materials have been used on the Work or the Project site except as provided under Paragraph 9.4.1 hereof.

9.4.4 The Contractor shall indemnify, defend, and hold DUWA, and its partners, officers, agents and employees harmless from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses, and costs and expenses (including reasonable attorney's fees and court costs) which arise at any time during or after the completion of the Work as a result of or in connection with (i) the Contractor's breach of any prohibition or requirement set forth in this Section 9.4; and (ii) any Hazardous Materials present or occurring in the soil or surface or ground water in, on, under, or about the Work, the property or other properties proximately caused by the Contractor's, its agents', employees', Sub-Contractors', Sub-Sub-Contractors' and their agents and employees', activities on or in connection with the Work. This obligation by the Contractor to indemnify, defend, and hold harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by DUWA or any federal, state, or local governmental agency or political subdivision because of any Hazardous Materials occurring or present in the soil or surface or ground water in, on, under, or about the Work or the Project site, diminution in value of the Work or the Project site, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Work or the Project site, and sums paid in settlement of claims, penalties, attorney's fees, court costs, consultant and laboratory fees, and expert's fees as a result of the Contractor's, its agents', employees', Sub-Contractors', and their agents and employees' activities on or in connection with the Work or the Project site. Without limiting the foregoing, if any Hazardous Materials attributable to the Contractor, its agents, employees, Sub-Contractors, or their agents or employees, or the activities of any of them, are found in the soil or surface or ground water in, on, under, or about the Work or the Project site, Contractor shall promptly take all actions, at its sole expense, necessary to return the Work or the Project site (as the case may be) to the condition existing prior to the introduction of Hazardous Materials to the Work or the Project site in accordance with Applicable Laws: provided (i) that, except in emergency situations (in which case notice shall be

given to DUWA as soon as practicable), DUWA's written approval of such actions shall first be obtained, which approval shall not be unreasonably withheld; and (ii) if it is impossible to return the Work or the Project site to such condition, as determined by DUWA, then the Contractor may substitute an alternative action which will achieve and maintain the safe condition of the Work or the Project site, if such alternative is acceptable to DUWA in DUWA's sole discretion. Notwithstanding anything to the contrary set forth in the Contract Documents, the Contractor shall not be liable for any damages or costs suffered or incurred by DUWA as a result of encountering Hazardous Materials which were present at the Project site prior to commencement of the Work (except Hazardous Materials encountered in the removal and disposal of the Hazardous Materials included in the scope of the Work under the Agreement) even if the Contractor's activities contributed or caused the Hazardous Materials to be disturbed or discharged unless the Contractor had actual knowledge of the presence of the Hazardous Materials and nevertheless proceeded to cause such Hazardous Materials to be disturbed or discharged. The Contractor shall not under any circumstances be liable to DUWA for any consequential damages as a result of discovery of or disturbing any Hazardous Materials which were present at the Project site prior to the Contractor's commencement of the Work. For the avoidance of doubt, DUWA acknowledges and agrees that the Contractor shall not be considered the generator of preexisting Hazardous Materials.

9.4.5 DUWA may conduct any testing, sampling, borings, and analyses it deems necessary. The Contractor, upon request, shall be given split samples of such test samples or borings; such testing shall be at the Contractor's expense if the Contractor, its agents, employees, Sub-Contractors or their agents and employees have caused Hazardous Materials to be on the Work or the Project site. In addition to any other right granted by law or the Agreement, if the Contractor is in material noncompliance with any Applicable Law, DUWA may make a reasonable demand for action upon the Contractor. If the Contractor does not respond within seven (7) days (unless an emergency is involved, in which case Contractor shall respond as soon as is practicable), DUWA may, at its option, take whatever action it deems necessary and appropriate at the Contractor's sole expense, which sums shall be immediately due and payable to DUWA. Upon termination of the Agreement, or abandonment of the Work by the Contractor for any reason, the Contractor shall remove all of its equipment, materials, and other items which may cause, contribute to, or result in contamination and investigate, remedy, and clean up any contamination caused by the Contractor, its agents, employees, Sub-Contractors, Sub-Sub-Contractors or their agents or employees, in compliance with all Applicable Laws. At all times during the performance of the Work, the Contractor shall if required by DUWA, or any governmental agency, promptly take whatever steps are necessary to stop any and all equipment, materials, and other items which may cause, contribute to, or result in contamination from causing, contributing to, or resulting in such contamination, and shall investigate, remedy, and clean up any contamination caused by the Contractor, its agents, employees, Sub-Contractors, or their agents or employees.

9.4.6 The Contractor shall promptly notify DUWA in writing of any release of Hazardous Materials on the Project site, specifying the nature and quantity of the release, the location of the release, and the measures taken to contain and clean up the release and ensure that future releases do not occur.

9.4.7 As used herein, the term "Hazardous Materials" means any hazardous, toxic, flammable, or explosive substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Michigan, or the United States Government. The Contractor shall be given a reasonable period of time within which to come into compliance with future-enacted laws or regulations. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317); (ii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, (42 U.S.C. §§ 6901 et seq.); (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. §§ 9601 et seq.); (iv) defined as a "hazardous" or "toxic" substance in any law similar to or in any amendment of any of the foregoing laws; or (v) petroleum or petroleum by-products. Any vehicles/waste shipment containers leaving an exclusion zone shall be decontaminated prior to leaving the Project site. The Contractor shall inspect all waste shipment containers prior to leaving the Project site to ensure that the least possible amount of soil adheres to wheels and undercarriages.

9.4.8 The Contractor shall not deliver site materials to any facility other than the approved disposal facility listed on the shipping manifest.

9.4.9 The Contractor shall prepare and submit for approval by DUWA through Veolia, a route selection report containing results of any inspections of the proposed access routes to determine road conditions, overhead clearance, weight restrictions, and required traffic control measures.

9.4.10 The Contractor shall ensure that waste shipment containers are protected against contamination by properly covering and lining them with compatible materials or by decontaminating them prior to any use other than hauling contaminated materials.

9.4.11 Prior to leaving the Project site, a load inspection of all shipments shall be conducted by a designated responsible party approved by DUWA's Representative. The load inspection report shall be submitted to DUWA through Veolia, which shall verify and provide written documentation of the following:

- a. A complete and accurate manifest.
- b. Utilization of the proper United States Department of Transportation ("DOT") approved shipping container in accordance with Chapter 49 of the Code of Federal Regulations .
- c. Labeling in accordance with Department of Transportation regulations specified in 49 CFR.
- d. A bill of lading traceable to the manifest.
- e. Validations that all waste shipment containers are in good condition and are not leaking.
- f. A statement that the driver is physically fit to perform his duties.

- g. Validation that the driver has written documentation in his possession of completion of the required DOT safety training and health monitoring.
- h. A statement that the driver's logbook is current.
- i. Validation that a certificate of insurance is in force.

ARTICLE 10

WAIVER OF SUBROGATION

10.1 SUBROGATION.

DUWA and the Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance required under the Agreement or any other insurance actually carried by DUWA or the Contractor, respectively. The Contractor shall require similar waivers by Sub-Contractors and Sub-Sub-Contractors in accordance with Article 4 hereof. All insurance policies required hereunder shall permit and recognize such waivers of subrogation.

ARTICLE 11

CHANGES IN THE WORK

11.1 GENERAL.

11.1.1 The Contractor acknowledges that (i) that DUWA may, without invalidating the Agreement, order changes in the Work (including extra Work, less Work or alterations) at any time and (ii) that changes in the Work, regardless of their scope or number, are within the contemplation of the parties. Changes in the Work may be ordered only by Change Order or Construction Change Directive. Changes in the Work may be made without notice to any Sureties, and absence of such notice shall not relieve such Sureties of any of their obligations to DUWA.

11.1.2 A Change Order shall be based upon agreement among DUWA and the Contractor. A Change Order may result from a Construction Change Directive. Agreement on any Change Order shall constitute a final settlement of and waiver of and permanent bar to all claims relating to the change in the Work which is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and Contract Time. The Contractor shall include the Work covered by such Change Orders in its Applications for Payment as if such Work were originally part of the Contract Documents.

11.1.3 A Construction Change Directive may be issued by DUWA and may or may not be agreed to by the Contractor.

11.1.3.1 The Contract Time and Contract Price shall be adjusted appropriately when changes in the Work are ordered via a Construction Change Directive. However, the Contract Time shall be adjusted only if the Contractor demonstrates to DUWA that the changes in the Work required by the Construction Change Directive adversely affect the critical path of the Work.

11.1.3.2 A Construction Change Directive may be used in absence of total agreement on the terms of a Change Order.

11.1.3.3 If the Construction Change Directive provides for an adjustment to the Contract Price, it shall state the method that shall be used for the adjustment. The decision of DUWA with respect to the determination of the method for adjustment to the Contract Price shall final and binding on the Contractor.

11.1.3.4 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement with all of its terms, including adjustment in the Contract Price and the Contract Time or the method for determining them. Such agreement shall be effective immediately and shall have the same legal effect of and be recorded as a Change Order.

11.1.4 Changes in the Work shall be performed under the applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive. Any change in the Contract Price or Contract Time must result from the provisions of this Section 11.1. Accordingly, no oral instructions, course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that DUWA has been unjustly enriched by an alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall in the absence of a written Change Order or Construction Change Directive be the basis for any claim to an increase in any amounts due under the Contract Documents or a change in the time period provided for in the Contract Documents. All such claims are hereby waived by the Contractor and are forever barred. Notwithstanding the foregoing, when time does not permit the processing of a Change Order in advance of commencing the change in the Work, upon receipt of a Construction Change Directive from DUWA, the Contractor shall proceed with a change in the Work, and the parties shall concurrently proceed with the preparation and submission of a proposed Change Order.

11.1.5 Without invalidating this Agreement and without notice to any surety, DUWA may, by Change Order approved by DUWA and, if necessary, the Board of Directors, or Construction Change Directive signed by DUWA (a) order changes in the Work consisting of additions, deletions or other revisions (within the general scope of the Work) in the requirements of the Contract Documents and (b) unilaterally make or provide the basis for making an adjustment in Contract Price or Contract Time. Upon receipt of any such unilateral order, the Contractor shall promptly proceed or continue with the Work involved unless Contractor submits a written objection within four (4) working days. Any such adjustment made by Change Order or authorized by Construction Change Directive to which the Contractor has submitted no objection shall be final and binding on the Contractor.

11.2 PROCESSING DUWA-INITIATED CHANGES IN THE WORK.

11.2.1 Notwithstanding anything contained herein to the contrary, DUWA may negotiate changes in the Work with the Contractor by submitting a Request for Proposal to the Contractor describing the change being considered and requesting that the Contractor submit its proposal for the corresponding adjustment in Contract Price or Contract Time, if any.

11.2.2 If a change in the Work is required, DUWA may issue a Construction Change Directive. Even though the Contractor shall cause the changes in the Work therein described to be performed immediately, it shall, while the changed Work is being performed, also develop pricing for the change as required in Section 11.2.3 below.

11.2.3 Within fifteen (15) days of its receipt of a Request for Proposal or Construction Change Directive, the Contractor shall provide DUWA with the amount of any change to the Contract Price or Contract Time and including an itemization of all costs of material and labor with extensions listing quantities and total costs, and a substantiation of any claim for an extension to the Contract Time by preparing a detailed schedule depicting the change's impact upon the Work's critical path. If DUWA wishes to proceed with the changes in the Work based upon the pricing quotation, DUWA shall submit a proposed Change Order to the Contractor, together with the revised Construction Documents that will become part of the Contract Documents setting forth the exact amount of any adjustment in the Contract Price or the Contract Time.

11.2.4 Upon the Contractor's acceptance of a proposed Change Order, it shall be executed by DUWA and the Contractor, and the Contract Price or the Contract Time or both shall be adjusted to the extent provided in the Change Order.

11.2.5 Nothing contained herein shall limit the right of DUWA to order changes in the Work. No payments will be made in respect of changed Work unless and until a Change Order has been signed by DUWA and the Contractor. In the case of disagreement as to the amount to be adjusted, credited, or paid for changed Work, the Contractor shall nevertheless promptly comply with the Construction Change Directive or Change Order, as the case may be, and payment or credit shall be made in accordance with the Agreement payment provisions up to the reasonable estimated value of the change as determined by DUWA.

11.2.6 Where any changed Work is ordered by DUWA on a time and materials or cost plus fee basis, the Contractor shall, for such purposes, permit DUWA to audit its books as they relate to the Project and shall require all Sub-Contractors to permit DUWA and the Contractor to audit their books as they relate to the Project. The Contractor shall produce, and shall cause any Sub-Contractors to produce, any and all data which DUWA may reasonably request for the purpose of determining the correctness of the charges. The Contractor shall keep, and shall cause all Sub-Contractors to keep, such full and detailed accounts as may be necessary to reflect its operations with respect to such charges and extras, and the system adopted shall be such as is satisfactory to DUWA. DUWA, its directors, officers, agents and employees, shall be afforded access at all reasonable times to the Contractor's books, correspondence, instructions, receipts, vouchers, memoranda and records of all kinds, relating to all changed Work under the Agreement as well as to such charges and extras. In regard to the foregoing and generally, the Contractor hereby authorizes DUWA, and shall require all Sub-Contractors to authorize the Contractor and DUWA, to check directly with its suppliers of labor and materials the charges for such labor, material and other items appearing in the Contractor's bills rendered to DUWA, to confirm balances due and obtain sworn statements and waivers of claim.

11.3 PRICING FOR CHANGED WORK.

11.3.1 DUWA shall, at all times, have the right to order changes in the Work to be performed on the basis of (i) a lump sum proposal as provided in Section 11.3.3; (ii) a Unit Price Basis as provided in Section 11.3.4 below; or (iii) Actual Cost of the Changes, plus a fee to the Contractor for overhead and profit, as provided in Section 11.3.5 below. The Contractor warrants that all costs in proposals and claims for adjustments in Contract Price shall not exceed those allowed under the Contract Documents, and that proposals and claims for adjustments to Contract Price shall grant prices, terms and warranties comparable to or better than prices, terms and warranties offered to others for similar work.

11.3.2 Credits for deductions from the Work shall be determined on the same basis as charges for additions to the Work except that a reasonable amount shall be deducted for overhead and profit in the case of deletions from the Work and the affected Sub-Contractor shall be allowed any restocking or material and equipment cancellation charges payable to suppliers and vendors for the purpose of computing the credit resulting from deductions from the Work.

11.3.3 Lump Sum Proposal: Should DUWA elect to have changed Work performed on a lump sum proposal, it will so indicate in the Construction Change Directive or request for proposal and the Contractor will, with reasonable promptness but in any event within the time periods set forth in Paragraph 11.2.3 hereof, transmit its lump sum proposal detailing the proposed adjustment to the Contract Price (and the various components thereof). The lump sum proposal shall be based solely upon the affected Sub-Contractors' estimated net cost for labor (including union fringe benefits, insurance, employment insurance, Social Security and taxes paid on labor) and materials and excluding increased bond premiums, plus the percentages for overhead and profit as hereinafter set forth. The lump sum proposal shall be itemized and segregated by labor and material for the various components of the changed Work and no aggregate figures for labor and material will be acceptable. The Contractor shall furnish, with its lump sum proposal, supporting data consisting of Contractor (self-performing), Sub-Contractor, Sub-Sub-Contractor and vendor executed proposals. The Contractor (self-performing), Sub-Contractor or Sub-Sub-Contractor actually performing the changed Work shall be permitted to include in the estimate not more than fifteen (15%) percent for overhead and profit; The Contractor and Sub-Contractors of a higher tier shall be permitted to include in the estimate a handling charge of five (5%) percent on changes to the contract for the value of up to a ten (10%) total aggregate change in initial contract value. After the ten (10%) of contract value is exceeded, Contractor will be allowed a seven (7%) percent handling charge. The Sub-Contractors may include in their labor proposal only those workmen directly involved in the changed Work. All other supervision is included in the percentages for overhead and profit allowed the Sub-Contractors, unless (i) additional foremen are required in connection with the changed Work who were not otherwise on the Project site; or (ii) the total Contract Time is extended as a result of the changed Work, in which event an equitable amount shall be allowed for supervision during the extended period. Sub-Contractor's material costs will include invoiced costs, transportation and applicable sales or use taxes. Use of small tools is included in the overhead and profit. Equipment rental may be included only if the equipment will be required on the Project site for a longer duration solely because of the changed Work. Overhead and profit, as outlined above, includes all other costs whatsoever beyond those enumerated. If any of the changed Work included in the lump sum proposal is covered by unit prices, DUWA may

elect to use these unit prices within the lump sum proposal. Unit prices shall include overhead and profit. Also, the overhead and profit of the Contractor, Sub-Contractor, Sub-Sub-Contractor shall always be calculated on the cost of performing the work.

11.3.4 Unit Prices: Should DUWA elect to have changed Work performed on a unit price basis, the Contractor will submit, with reasonable promptness but in any event within the time periods set forth in Paragraph 11.2.3 hereof, a written proposal itemizing the quantities of each item of changed Work for which there is an applicable unit price contained in the Agreement, Contract Documents or applicable Subcontracts. The quantities must be itemized in relation to each specific item in the Contract Documents. The unit prices will also be applied to net increases in quantities of the same item. The unit prices will also be applied to net decreases in quantities of the same item. There shall be no adjustment (equitable or otherwise) to unit prices established in Subcontracts. Unit prices, if any, shall be established through the bidding process and strictly adhered to thereafter, even if a change in quantity is made.

11.3.5 Time and Material: Should DUWA elect to have any changed Work performed on an Actual Cost of the Changes basis, the affected Sub-Contractors shall perform such changed Work at "actual cost of the changes" as defined in Paragraph 11.3.6 hereof, plus the percentages for overhead and profit set forth in Paragraph 11.3.3 hereof. The Contractor will submit to DUWA daily time and material tickets for all changed Work, including changed Work performed by Sub-Contractors. These tickets will include the identification number assigned to this Work, the location and description of the changed Work, the classification of labor employed including the applicable Sub-Contractor, workers' names and social security numbers, the materials used, the equipment rented (not tools) and any other information ordered by DUWA.

11.3.6 The term "Actual Cost of the Changes" means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the changed Work. All such costs shall be in amounts no higher than those prevailing in the locality of the Work. The following costs shall constitute recoverable Actual Cost of the Changes to which the Contractor is entitled when performing extra or change Work, or making any other claim for an adjustment to the Contract Price. These costs will also form the basis for the Contractor's recoverable costs which are associated with extensions of the Contract Time caused by extra or changed Work, or other cause solely within the control of DUWA, and which are further substantiated by the Contractor in accordance with the requirements of Subparagraph 11.3.6.7 below:

11.3.6.1 Payroll costs for employees of the Contractor directly employed in the physical performance of the Work. Payroll costs for employees not directly employed in the physical performance of the Work, such as superintendents and foremen, are recoverable only to the extent that additional supervision or staffing is specifically required to be added for the proper execution of the Work. Percentage add-ons, or other costs, for employees not directly employed in the physical performance of the Work shall not be allowed unless the Contractor establishes to DUWA's satisfaction that such employees are or were required for the proper execution of the Work and further that such employees were actually added to the Contractor's staff, or their time on the Work was extended as a result of the extra or changed Work. Payroll costs shall include salaries or wages paid plus

the cost of itemized fringe benefits, including social security contributions, unemployment and workers' compensation insurance, and vehicle parking costs. The payroll costs associated with premiums paid for performing the Work after regular hours, on weekends or holidays shall be allowed only to the extent that these costs have been approved in writing by DUWA.

11.3.6.2 Overtime, when specifically authorized in writing by DUWA for reasons other than the failure of the Contractor to perform the Work in accordance with the Project Schedule or otherwise in conformity with the Contract Documents shall be paid for by DUWA solely on the basis of the overtime rates established in the Contract Documents.

11.3.6.3 Costs of all materials and equipment furnished and incorporated into the Work by the Contractor, including costs of transportation, and storage where applicable. All trade discounts, rebates, refunds and all returns from sales of surplus materials and equipment shall accrue to the benefit of DUWA. Use of small tools is included in the overhead and profit. Equipment rental may be included only if the equipment will be required on the Project site for a longer duration solely because of the changed Work.

11.3.6.4 Payments made by the Contractor to Sub-Contractors for Work performed. All Sub-Contractor recoverable costs shall be determined in the same manner as the Contractor's recoverable costs. If requested by DUWA, the Contractor shall obtain competitive bids from the Sub-Contractors who are acceptable to DUWA, and the Contractor will contract with those accepted by DUWA.

11.3.6.5 Sales, consumer, use or similar taxes related to the Work, and for which the Contractor is liable, or are otherwise imposed by laws and regulations.

11.3.6.6 Construction equipment costs of the Contractor's equipment or rental costs from others; hourly, daily, weekly or monthly rates will be applied where appropriate.

11.3.6.7 Other supplemental costs which are substantiated by the Contractor as specifically being required for the proper execution of the extra or changed Work, unless specifically prohibited by Section 11.3.7 below.

11.3.6.8 The Contractor's recoverable Actual Cost of the Changes shall not include any of the following costs when performing extra or changed Work, or in making any other claim for an increase to the Contract Price or extension of the Contract Time:

11.3.6.8.1 Payroll costs and other compensation of the Contractor's officers, executives, principals, general managers, project managers, construction managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing or contracting agents, expeditors, clerks, or any other employees or agents who are not specifically employed full-time on the Work. Those or agents not employed on the Work are to be considered administrative costs which are covered by the Contract Price. Exceptions to this requirement will only be made on a case-by-case basis, each of which shall require prior written authorization and approval by DUWA.

11.3.6.8.2 Expenses of the Contractor's principal and branch offices other than the Contractor's office located at the Project site.

11.3.6.8.3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments.

11.3.6.8.4 Costs associated with the Work arising from one year correction of the Work period, warranties, or guarantees which are required by the Contract Documents.

11.3.6.8.5 Additional vehicle parking costs which exceed the parking reimbursement allowable within the payroll cost as provided in Paragraph 11.3.6 above.

11.3.6.8.6 Any other supplemental costs which are not substantiated by the Contractor as specifically being required for the proper execution of the extra or changed Work.

11.3.7 Unless and until DUWA shall elect either the Lump Sum Proposal, the Unit Price Basis or the Time and Material Basis, the Contractor shall maintain and submit daily records of labor, material and equipment used in the changed Work which have been acknowledged thereon daily by DUWA. In any event, DUWA shall have the right to order such changes in the Work to proceed promptly prior to the submission of a Lump Sum Proposal and/or DUWA's election of the method by which the cost of the changed Work shall be determined. The Contractor shall certify all time and records and invoices and keep and present in such form as DUWA may direct, an itemized accounting, together with supporting date and vouchers, of all actual costs associated with the extra or changed Work.

11.3.8 Any Cash Allowances and Provisionary Allowances shall not be subject to change in connection with Change Orders.

11.4 CONCEALED CONDITIONS.

11.4.1 The Contractor shall promptly notify DUWA in writing, if it discovers that (a) actual subsurface conditions or latent physical conditions encountered at the Project site differ materially from those shown or indicated in the Contract Documents, (b) unknown physical conditions are encountered at the Project site, of an unusual nature, differ materially from those ordinarily encountered and recognized as inherent in work similar in character to the Work, or (c) any reference points need correction to enable the Contractor to proceed with the Work.

11.4.2 If the Contractor wishes to make a claim for an increase in the Contract Price or extension of the Contract Time pursuant to this Section 11.4, it shall give DUWA written notice thereof prior to the end of the fifth (5th) Business Day after discovery of the conditions. This notice shall be given by the Contractor before proceeding to execute further Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Section 10.3. No such claim shall be valid for any work performed prior to delivery of written

notice to DUWA. In the case of a tunnel or subsurface boring collapse, Contractor shall endeavor to protect its equipment and the completed Work without endangering the safety of any person.

11.4.3 No proposal or claim by Contractor due to differing site conditions shall be allowed (a) if the Contractor knew of the existence of those conditions before proceeding with the Work, or (b) if those conditions could have been discovered by the types of reasonable explorations and examinations for which the Contractor was made responsible under the Contract Documents.

11.5 MINOR CHANGES IN THE WORK.

DUWA shall have the authority to order minor changes in the Work provided that such changes will not (i) involve an adjustment to the Contract Price or extension of the Contract Time, or (ii) render the Construction Documents, as so revised, not in material conformance with the Work as set forth in the Construction Documents prior to such change. Such changes shall be effected by written order by DUWA and shall be binding on the Contractor. The Contractor shall carry out such orders promptly.

11.6 REQUESTS FOR CHANGE ORDERS.

11.6.1 Subject to the other terms of the Agreement, if the Contractor believes that any act, error, or omission of DUWA constitutes a change in the Work entitling it to additional compensation, it shall within twenty (20) days after the date on which the Contractor discovers, or should with the exercise of appropriate diligence have discovered, the pertinent act, error or omission of DUWA (provided that the necessity of extra cost and/or time is already determinable, even if such extra cost and/or time has not yet been incurred), submit a Request for Change Order to DUWA stating the amount of the additional compensation or additional time to which it is entitled and justifying the request. DUWA shall evaluate the Request for Change Order within a reasonable period of time and advise the Contractor whether DUWA will grant, grant in part, or deny the Request for Change Order. Any additional compensation granted shall be recorded in the form of a Change Order. Failure of the Contractor to timely submit a Request for Change Order in accordance with the requirements of this Section 11.6.1 shall constitute a waiver of recovery arising out of the pertinent act, error or omission of DUWA, if DUWA was materially prejudiced thereby.

11.6.2 No proposal or claim by the Contractor on account of changes to the Work shall be allowed for any costs or delay incurred more than twenty (20) days before the Contractor gives written notice as required.

11.7 CHANGE ORDER PROCEDURE.

11.7.1 NO CHANGE IN THE WORK, WHETHER BY WAY OF ALTERATION OR ADDITION TO THE WORK, SHALL BE THE BASIS OF AN ADDITION TO THE CONTRACT SUM OR A CHANGE IN THE CONTRACT TIME UNLESS AND UNTIL SUCH ALTERATION OR ADDITION HAS BEEN AUTHORIZED BY A CHANGE ORDER EXECUTED AND ISSUED IN ACCORDANCE WITH AND IN STRICT COMPLIANCE WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS.

11.7.2 ANY CLAIM FOR INCREASED COST FOR DELAY SHALL BE ASSERTED IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT UNLESS THE TIME IS EXTENDED IN WRITING BY DUWA. THIS REQUIREMENT IS OF THE ESSENCE OF THE CONTRACT DOCUMENTS. ACCORDINGLY, NO COURSE OF CONDUCT OR DEALINGS BETWEEN THE PARTIES, NOR EXPRESS OR IMPLIED ACCEPTANCE OF ALTERATIONS OR ADDITIONS TO THE WORK SHALL BE THE BASIS FOR ANY CLAIM TO AN INCREASE IN THE CONTRACT PRICE OR CHANGE IN THE CONTRACT TIME.

11.7.3 CONTRACT PRICE AND CONTRACT TIME SHALL BE CHANGED ONLY BY CHANGE ORDER APPROVED IN ADVANCE BY DUWA'S BOARD OF DIRECTORS.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK.

12.1.1 If any portion of the Work should be covered contrary to the request of DUWA or to requirements specifically expressed in the Contract Documents, it must, if required by either, promptly be uncovered for observation and shall be replaced at the Contractor's sole cost and expense. In such event, the Contractor shall not be entitled to any increase to the Contract Price or extension of the Contract Time.

12.1.2 If any other portion of the Work has been covered which DUWA specifically requested to observe prior to being covered, DUWA may request to see such Work and it shall be promptly uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Construction Change Directive or Change Order, be charged to DUWA. If such Work be found not in accordance with the Contract Documents, the Contractor shall correct the Work at its sole cost and expense and maintain the Project Schedule.

12.2 CORRECTION OF WORK.

12.2.1 The Contractor shall correct all Work rejected by DUWA as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion or Final Completion and whether or not fabricated, installed or completed. Such correction shall be accomplished within seven (7) days after notice from DUWA unless such work cannot be accomplished within such period, in which case the Contractor shall commence the correction and submit its Drawings therefor within seven (7) days. The Contractor shall bear all costs of correcting such rejected Work and maintaining the Project Schedule. Correction shall be accomplished without affecting the Final Completion date or the Project Schedule. Nothing set forth in this Paragraph shall be construed as extending any statute of limitations or statute of repose for any defects in materials and workmanship whether patent or latent.

12.2.2 If, within one (1) year after Substantial Completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor agrees to make any and all repairs or replacements and further agrees to commence such repair or replacement and the replacement of any and all damage caused thereby at any time or times during the guarantee period, within seven (7) days from receipt of written notice from DUWA and to faithfully and diligently prosecute the same to conclusion, without cost to, and to the satisfaction of, DUWA. This obligation shall survive termination of the Agreement. DUWA shall give such notice promptly after discovery of the condition.

12.2.3 The Contractor shall remove from the Project site all portions of the Work which are defective or non-conforming and which have not been corrected under Paragraph 12.2.1 hereof, unless removal is waived in writing by DUWA and the Work shall be corrected to comply with the Contract Documents without cost to DUWA.

12.2.4 If the Contractor fails to correct defective or nonconforming Work, DUWA may correct it in accordance with Section 2.3 hereof.

12.2.5 If the Contractor does not remove defective or nonconforming Work within a reasonable time fixed by written notice from DUWA, DUWA may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days (10) thereafter, DUWA may sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to DUWA.

12.2.6 The Contractor shall bear the cost of making good all of the Work, the work of DUWA or separate Contractors and any other facilities destroyed or damaged by such deficiencies and their removal or correction.

12.2.7 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents. The establishment of the time period of one year after Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any special warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK.

If DUWA prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a

reduction in the Contract Price, or, if the amount is determined after Final Payment, it shall be paid by the Contractor.

ARTICLE 13

TERMINATION OF THE AGREEMENT

13.1 TERMINATION FOR CAUSE.

13.1.1 DUWA shall have the right, without prejudice to any other right or remedy it may have to terminate the Agreement and take possession of the Project site and of all materials, tools and appliances thereon and finish the Project by whatever method DUWA may deem expedient upon five (5) Business Days prior written notice to the Contractor upon the occurrence of any of the following events of default:

13.1.1.1 The Contractor breaches a material term of the Agreement; or

13.1.1.2 The Contractor shall make an assignment for the benefit of creditors; or make an admission in writing of its inability to pay its debts generally as they become due; or

13.1.1.3 The Contractor shall voluntarily make any unauthorized changes in the personnel previously approved by DUWA; or

13.1.1.4 The filing of claims with DUWA by third parties alleging failure to pay any amount due (except disputed claims).

13.1.2 In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished. If the unpaid balance of the Contract Price shall exceed the expense of finishing the Project, including compensation for DUWA's additional services, such excess shall be paid to the Contractor but only to the extent of the costs incurred by the Contractor prior to the termination of the Agreement. If the expense of finishing the Project shall exceed the unpaid balance of the Contract Price, the Contractor shall pay such excess to DUWA.

13.2 TERMINATION FOR CONVENIENCE.

DUWA may also terminate the Agreement for its convenience at any time upon five (5) calendar days' written notice of termination to the Contractor. In such case, the Contractor shall be entitled to receive, as total compensation for all services performed hereunder, (i) payment for all Work properly performed prior to the effective date of termination, including payment of the appropriate retainage, plus (ii) any restocking or material and equipment cancellation charges payable to Suppliers and vendors (unless the Contractor shall have assigned to DUWA, at the request of DUWA, the agreements pursuant to which such material and equipment was ordered and DUWA shall have indemnified the Contractor in connection therewith); plus (iii) the Contractor's reasonable demobilization costs. Payment of such compensation is the sole and exclusive remedy of the Contractor for a termination of the Agreement by DUWA without cause and the Contractor shall not be entitled to, and hereby waives, claims for lost profits and all other damages and expenses. The Contractor shall execute a waiver and general release of claim as a

condition of payment. At DUWA's option, the Contractor shall assign to DUWA all approved Subcontracts and DUWA shall indemnify and defend the Contractor against all claims for payment thereunder in respect of work performed after the date of termination. On the date that the Contractor receives the written notice of termination, the Contractor shall not order any additional products, materials or equipment and shall immediately cancel any previously submitted orders for products, materials and equipment.

ARTICLE 14

AUDIT

14.1 DUWA'S ACCESS TO Contractor's RECORDS.

14.1.1 The Contractor agrees that DUWA or any of its duly authorized representatives shall, until the expiration of three (3) years after Final Payment under the Agreement, have access to and the right to examine and audit any directly pertinent books, documents, papers and records of the Contractor involving transactions related to the Agreement.

14.1.2 The Contractor shall include in the Subcontracts a provision to the effect that the Sub-Contractor agrees that DUWA or any of his duly authorized representatives shall, until the expiration of three (3) years after final payment under the Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of such Sub-Contractor, involving transactions related to the Agreement. The term "Subcontracts," as used in this paragraph 14.1.2 only, excludes (1) purchase orders not exceeding Two Thousand Five Hundred (\$2,500.00) Dollars and (2) subcontracts or purchase orders, for public utility services at rates established for uniform applicability to the general public.

14.1.3 The periods of access and examination described in this Section 14.1 for records which relate to (1) under the "Claims" clause of the Agreement, (2) litigation or the settlement of claims arising out of the performance of the Agreement, or (3) costs and expenses of the Agreement as to which exception has been taken by DUWA or any of its duly authorized representatives, shall continue until such appeal, litigation, claim or exception has been disposed of.

ARTICLE 15

CONFLICT OF INTEREST

15.1 The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Work. The Contractor further covenants that, in the performance of the Agreement, no person having any such interest shall be employed. The Contractor further covenants that no officer, member or employee of DUWA and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Agreement has any personal or financial interest, direct or indirect, in the Agreement or in the proceeds thereof.

15.2 The Contractor also hereby warrants that it has not and will not employ any person to solicit or secure the Agreement upon any agreement or arrangement for payment of a

commission, percentage, brokerage, or contingent fee, either directly or indirectly. The Contractor further agrees that if this warranty is breached, DUWA may, at its option, terminate the Agreement without penalty, liability or obligation, or may at its election, deduct from any amounts owed to the Contractor hereunder any amounts of such commission, percentage, brokerage, or contingent fee.

15.3 The Contractor agrees that neither it nor its employees will endeavor to influence DUWA's employees to seek employment with the Contractor within the duration of the Agreement and shall not for a period of one (1) year thereafter employ any of DUWA's employees without prior written approval from DUWA. Proof of such activity as determined by DUWA may cause immediate termination of the Agreement.

15.4 The Contractor shall include the provisions of this Article 15 in any Subcontract it enters into pursuant to the Agreement.

ARTICLE 16

CONFIDENTIAL INFORMATION

16.1 In order that the Contractor may effectively fulfill its covenants and obligations under the Agreement, it may be necessary or desirable for DUWA to disclose confidential and proprietary information to the employees pertaining to DUWA's past, present and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the Contractor shall instruct its employees and all Sub-Contractors to regard all information gained by each such person as a result of the Work to be performed hereunder as information which is proprietary to DUWA and not to be disclosed to any organization or individual without the prior consent of DUWA.

16.2 The Contractor agrees to take appropriate action with respect to its employees, Sub-Contractors and agents to insure that the obligations of non-use and non-disclosure of confidential information of the Agreement can be fully satisfied.

ARTICLE 17

CLAIMS

17.1 CLAIMS.

17.1.1 A "Claim" is a demand or assertion by the Contractor seeking adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the Agreement or any of the Contract Documents that the procedure for resolution of which is not specifically provided for in the Agreement. The term "Claim" also includes all other disputes, controversies and matters in question between or among DUWA and the Contractor arising out of or in any way relating to the Agreement, the Project or the Work. Claims must be made by written notice to DUWA containing as much detail as reasonably possible. The burden for substantiating any Claim shall rest with the Contractor.

17.1.2 Except as otherwise specifically provided in this Agreement, Claims by the Contractor must be made promptly and within not more than twenty (20) days, unless a longer period is granted by writing, after the Contractor first recognizes the condition giving rise to the Claim, whether or not any impact in money or time has been determined. **In no event shall this provision be deemed to extend the period of time for the Contractor to make claims for an extension of the Contract Time or adjustment to the Contract Price as provided in the other provisions of the Agreement, which provisions and time periods are to be strictly adhered to by the Contractor.**

17.1.3 Pending final resolution of a Claim, the Work shall continue unabated, the Contractor shall proceed diligently with performance of the Work, and DUWA shall continue to make payment in accordance with the Contract Documents, except as to amounts in good faith dispute.

17.2 CLAIMS FOR ADDITIONAL COST.

Subject to the limitations and other time limits contained herein, if the Contractor wishes to make a Claim for an increase in the Contract Price, to the extent the Claim is reasonably discoverable, written notice of it shall be given to DUWA before the Contractor proceeds to execute the Work for which the Claim is made. Prior notice is not required for Claims relating to bona fide emergencies endangering life or property. All Claims for adjustment to the Contract Price shall be supported by such documentation as DUWA shall require.

17.3 INJURY OR DAMAGE TO PERSON OR PROPERTY.

If the Contractor suffers injury or damage to person or property because of an act or omission of DUWA, or its employees or agents, or others for whose acts DUWA is legally liable, prompt notice of such injury or damage shall thereafter be given within a reasonable time and not exceeding twenty-four (24) hours in the case of serious personal injury or damage or seventy-two (72) hours in all other cases after first observance. The notice shall provide sufficient detail to enable DUWA to investigate the matter.

17.4 SUBMITTAL OF CLAIMS: DISPUTE RESOLUTION.

17.4.1 All Claims shall be submitted to DUWA. Any mutual agreement reached shall be final and binding upon the parties.

17.4.2 In the event of any dispute between the parties arising out of or in connection with the Agreement or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally. Negotiations shall take place between the designated principals of each party. If the parties are unable to resolve the dispute through negotiation within forty-five (45) days, then either party may give written notice within ten (10) days thereafter that it elects to proceed with mediation pursuant to the commercial mediation rules of the American Arbitration Association. In the event that mediation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a statute of limitations may expire.

17.4.3 Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

17.4.4 All Claims which are not asserted and pursued in accordance with the provisions of this Article 17 shall be deemed to have been waived.

17.4.5 The resolution of all Claims under this Article 17 resulting in a change in the Contract Price or Contract Time shall be memorialized by a Change Order. The provisions of this Article 17 shall survive the completion of the Work and termination of the Agreement.

ARTICLE 18

MISCELLANEOUS REQUIREMENTS

18.1 GOVERNING LAW.

This Agreement will be governed and construed in accordance with the laws of the State of Michigan without regard to the principles of the conflict of laws. Both Parties agree that any enforcement of a judgment or alternative dispute award will be filed with the appropriate court of law in Wayne County, Michigan.

18.2 LICENSING.

Contractor represents that it is authorized to do business in the State of Michigan and is properly licensed by all necessary Governmental Authority having jurisdiction over the Project for performance of the Work. Contractor will cause all professional services to be performed by appropriately licensed professionals qualified for its Project duties.

18.3 ANTI-CORRUPTION COMPLIANCE.

18.3.1 In carrying out the terms of this Agreement, Contractor hereby undertakes to strictly comply with applicable laws prohibiting the bribery of public officials and private persons, influence peddling, money laundering that may in particular entail a public contract debarment, including:

- (a) the 1977 Foreign Corrupt Practices Act of the United States,
- (b) the 1999 Canadian Corruption of Foreign Public Officials Act,
- (c) the 2010 UK Bribery Act,
- (d) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of December 17, 1997.

18.3.2 Contractor undertakes to put in place and implement all necessary and reasonable policies and measures to prevent corruption.

18.3.3 Contractor declares that to its knowledge, its legal representatives, directors,

employees, agents, and anyone performing services for or on behalf of DUWA pursuant to this Agreement do not and will not directly or indirectly offer, give, agree to give, authorize, solicit, or accept the giving of money or anything else of value or grant any advantage or gift to any person, company or undertaking whatsoever including any government official or employee, political party official, candidate for political office, person holding a legislative, administrative or judicial position of any kind for or on behalf of any country, public agency or state owned company, official of a public international organization, for the purpose of corruptly influencing such person in their official capacity, or for the purpose of rewarding or inducing the improper performance of a relevant function or activity by any person in order to obtain or retain any business for DUWA or to gain any advantage in the conduct of business for DUWA.

18.3.4 Contractor further undertakes to ensure that neither the Contractor nor any of its legal representatives, directors, employees, agents, sub-contractors and anyone performing services for or on behalf of DUWA under this Agreement, has been, or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programs and/or bidding following invitations to bid advertised by the World Bank or any other international development bank.

18.3.5 Contractor agrees to notify DUWA of any breach of any term of this Article 18 within a reasonable time.

18.3.6 If DUWA notifies Contractor that it has reasonable grounds to believe that Contractor has breached any term of this Article:

- a. DUWA is entitled to suspend performance of this Agreement without notice for as long as DUWA considers necessary to investigate the relevant conduct without incurring any liability or obligation to the Contractor for such suspension;
- b. Contractor is obliged to take all reasonable steps to prevent the loss or destruction of any documentary evidence in relation to the relevant conduct.

18.3.7 If Contractor breaches any term of this clause:

- a. DUWA may immediately terminate this Agreement without notice and without incurring any liability.
- b. Contractor must undertake to indemnify DUWA, to the maximum extent permitted by law, for any loss, damages, or expenses incurred or suffered by DUWA arising out of such breach.

18.4 **DUWA POLICIES.**

Contractor shall not discriminate against any employee or applicant for employment or applicant for employment because of race, color, national origin, religion, sex, age or for any reason prohibited by law. To the extent applicable to the Work on this Project, Contractor shall comply with Executive Order 11246 or any amendment, replacement or counterpart thereof.

18.5 **PATENTS AND COPYRIGHTS.**

If Contractor or its personnel make any inventions or prepare copyrightable material as a result of the performance of this Agreement, Contractor promptly shall disclose such inventions or materials to DUWA. Contractor agrees to grant, and hereby grants, to DUWA the entire right, title, and interest in and to such inventions and copyrightable materials, and Contractor shall cooperate with DUWA and execute all documents necessary to perfect DUWA's rights in the inventions or materials and to allow DUWA to prosecute and obtain patents and copyrights thereon.