

RESOLUTION NO. 20-06

A RESOLUTION FOR EMC FOR
PROJECT MANAGEMENT SERVICES

BE IT RESOLVED by the President and Board of Trustees of the Village of Chatham, Sangamon County, Illinois as follows:

Section 1: The Management Agreement attached hereto marked as Exhibit "A" is made and entered into this 27th day of June, 2006 between the Village of Chatham and Environmental Management Corporation, Inc and covers certain professional services with the project which includes but is not limited to water well fields and gathering lines, three million gallons per day (designed) two million gallons per day water plant (constructed), and transmission main distribution line.

Section 2: The officers of the village are hereby directed to execute the agreement on behalf of the village.

Section 3: This Resolution shall be in full force and effect from and after its passage and approval as provided by law.

Passed this 27th day of June, 2006; by a vote of 5 yea, 0 nay, 1 absent at a Regular meeting of the Board of Trustees

ATTEST: Karl E. Talt
Pat Schad, Clerk

Thomas S. Gray
Thomas S. Gray, President
Village of Chatham

Corporate Seal

AGREEMENT BETWEEN OWNER AND PROJECT MANAGER FOR PROJECT MANAGEMENT SERVICES

This is an agreement ("Agreement") effective as of _____ ("Effective Date") between The Village of Chatham, Illinois ("OWNER") and Environmental Management Corporation ("PROJECT MANAGER").

The "Project" includes and consists of (i) water well fields and gathering lines; (ii) two million gallons per day water plant; and (iii) transmission main distribution line.

The PROJECT MANAGER and OWNER agree to proceed with the Project on the basis of mutual trust, good faith and fair dealing and shall cooperate with each other and the Engineer in furthering the OWNER's interests. The PROJECT MANAGER shall be the OWNER's agent to the extent provided in this Agreement and shall exercise its skill and judgment in furnishing administrative and management services. The PROJECT MANAGER shall perform its services in an economical and timely manner. The OWNER shall retain Engineers consultants, testing and inspecting agencies, trade contractors, vendors and insurance and/or legal advisors to perform all work and other services needed for the Project.

The PROJECT MANAGER's responsibilities under this Agreement include and are limited to project management services that include assisting the Owner in the process of selecting one or more Engineer/s for the project, managing the Engineer/s in the preparation of a final design, managing the preparation of a project estimate, managing the advertisement and taking of bids for equipment purchase and construction, managing the analysis of and preparing recommendations for the award of equipment purchase and construction contracts; providing construction management services during construction, and providing start-up and post-construction services for the Project, all as set forth in detail and as limited by Exhibit A attached hereto (collectively, the "Services"). The Services may be performed by the PROJECT MANAGER or by third party subcontractors and consultants retained by PROJECT MANAGER.

OWNER and PROJECT MANAGER, in consideration of their mutual covenants as set forth herein, agree as set forth on the following pages.

ARTICLE I - PROJECT MANAGER'S SERVICES

1.1 Scope

1.1.1 PROJECT MANAGER shall provide the Services as set forth in Exhibit A.

1.1.2 Upon this Agreement becoming effective, PROJECT MANAGER is authorized to begin Services as set forth in Exhibit A.

1.1.3 If authorized in writing by OWNER, and agreed to by PROJECT MANAGER, services beyond the scope of this Agreement will be performed by PROJECT MANAGER for additional compensation. Such additional compensation shall be set forth in a written Amendment and signed by both Parties.

ARTICLE 2 -OWNER'S RESPONSIBILITIES

General

OWNER shall have the responsibilities set forth herein and in Exhibit A.

ARTICLE 3 -TIMES FOR RENDERING SERVICES

3.1 PROJECT MANAGER's Services will be performed or provided within the time period or by the date stated in Exhibit A.

3.2 If PROJECT MANAGER's Services are delayed or suspended in whole or in part by OWNER, PROJECT MANAGER shall be entitled to equitable adjustment of the time for performance and rates and amounts of compensation provided for elsewhere in this Agreement to reflect reasonable costs incurred by PROJECT MANAGER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4 -PAYMENTS TO PROJECT MANAGER

4.1 Methods of Payment for Services of PROJECT MANAGER

4.1.1 OWNER shall pay PROJECT MANAGER for Services rendered under this Agreement during the Planning, Final Design, Bidding, Construction and Post-Construction Phases as follows:

(a) A project management fee ("Fee") equal to five percent (5%) of the opinion of the probable Construction Cost submitted at the end of the Final Design Phase. The Fee accounts for all compensation payable to the PROJECT MANAGER for project management labor, overhead, profit, subcontractors and consultants under contract with the PROJECT MANAGER and reimbursable expenses of the PROJECT MANAGER.

(b) Progress Payments for Project Management Services:

i. The PROJECT MANAGER may periodic invoice not more than bi-weekly. The portion of the amounts billed for Services shall be based upon PROJECT MANAGER'S estimate of the proportion that the total Services actually completed during the billing period bear to the percentage of the Fee allocated for each phase of the Project as follows:

Planning Phase	10%
Final Design Phase:	25%
Bidding Phase:	25%
Construction Phase	25%
Post-Construction Phase	15%

ii. Until the probable Construction Cost is established at the completion of the Final Design Phase, the progress payments and Fee shall be provisionally based on a Construction Cost of thirteen million dollars.

4.2 Other Provisions Concerning Payment

4.2.1 *Adjustments.* PROJECT MANAGER's compensation is conditioned on time to complete the Project, not exceeding the time identified in Exhibit A. Should the time to complete the Project be extended beyond this period because of an occurrence of a Hazardous Environmental Condition, a scope change by OWNER or a delay of Services or suspension of Services by the OWNER, then, in that event, the total compensation to be paid to PROJECT MANAGER shall be equitably adjusted.

4.2.2 *Additional Services.* OWNER shall pay PROJECT MANAGER for all services not included in the scope of this Agreement on the basis agreed to in writing by the parties at the time such services are authorized by OWNER, including, if authorized in advance by the OWNER, the premium associated with overtime work requiring higher than regular rates.

ARTICLE 5 – GENERAL CONSIDERATIONS

5.1 Project Manager Responsibilities

5.1.1 *Single-Source Accountability.* PROJECT MANAGER provides a single source to manage the OWNER's risk of design and construction defects throughout the Project. The PROJECT MANAGER, at no additional cost to the OWNER, will manage the correction of any construction defects detected (not including equipment defects) and mutually agreed to by the OWNER and PROJECT MANGER that are not corrected during the warranty period of the Contractor(s).

5.1.2 *Performance Guarantee.* PROJECT MANAGER provides a guarantee to OWNER that the facilities of the Project will operate in accordance with the design performance specifications through the term of the EMC O&M Contract between the OWNER and PROJECT MANAGER and any extension thereof. The PROJECT MANAGER shall be responsible for making any necessary modifications in the constructed facilities of the Project for performance deficiencies that cannot be corrected by the PROJECT MANAGER through its operational efforts. This guarantee does not apply to the normal wear and deterioration of the Project resulting from the intended use that result in a loss of performance.

5.1.3 *O&M Cost Guarantee.* PROJECT MANAGER shall submit a proposed O&M Contract and guaranteed annual O&M cost proposal prior to the completion of the Final Design Phase.

5.1.4 *Force Majeure.* Each Party's performance under this Agreement shall be excused to the extent the Party is unable to perform because of actions due to causes beyond its reasonable control including, but not limited to, Acts of God, the acts of civil or military authority, bioterrorism, floods, epidemics, quarantine restrictions, riots, strikes, and commercial impossibility and interruption of electrical power or other utility service ("excused delays"). Payment of amounts due shall not be subject to excused delays. In the event of any such excused delay, the Party unable to perform shall notify the other Party within twenty-four (24) hours of the existence of such excused delay and shall be required to resume performance of its obligations under this Agreement upon the termination of the aforementioned excused delay.

5.2 Designated Representatives

Contemporaneous with the execution of this Agreement, PROJECT MANAGER and OWNER shall each designate a specific individual(s) as PROJECT MANAGER's and OWNER's respective representatives with respect to the services to be performed or furnished by PROJECT MANAGER and the responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information and render decisions relative to the Project on behalf of their respective party.

ARTICLE 6 – DEFINITIONS

Defined Terms

Wherever used in this Agreement (including the Exhibits hereto) and printed with italicized or all capital letters, the terms listed below and not defined elsewhere in this Agreement will have the meanings indicated, which are applicable to both the singular and plural thereof:

6.1 *Addenda*--Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the Bidding Documents.

6.2 *Additional Services*--The services to be performed for or furnished to OWNER by PROJECT MANAGER in accordance with Exhibit A, Part 2 of this Agreement.

6.3 *Agreement*--This "Agreement between OWNER and PROJECT MANAGER for Project Management Services," including those Exhibits listed in Article 7 hereof.

6.4 *Amendment*--A written modification to this Agreement signed by OWNER and PROJECT MANAGER on or after the Effective Date hereof, modifying, adding to or deleting provisions or terms hereof.

6.5 *Application for Payment*--The form acceptable to PROJECT MANAGER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

6.6 *Asbestos*--Any material that contains more than one percent (1%) asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.

6.7 *Basic Services*--The services to be performed for or furnished to OWNER by PROJECT MANAGER in accordance with Exhibit A, Part 1, of this Agreement.

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

6.9 *Bidding Documents*--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

6.10 *Change Order*--A document recommended by PROJECT MANAGER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.

6.11 *Construction Agreement*--The written instrument, which is evidence of the agreement, contained in the Contract Documents, between OWNER and a Contractor covering the Work.

6.12 *Construction Contract*--The entire and integrated written agreement between the OWNER and Contractor concerning the Work.

6.13 *Construction Cost*--The cost to OWNER of those portions of the Project designed or specified by ENGINEER managed by the PROJECT MANAGER. Construction Cost does not include costs of services of PROJECT MANAGER, the ENGINEER or other design professionals and consultants, cost of land, rights-of-way, compensation for damages to properties, OWNER's costs for legal, accounting, insurance counseling, auditing services, interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Cost of the Project.

6.14 *Construction Manager*--An individual employed by or under contract to the PROJECT MANAGER that provides construction management services to manage and coordinate the construction activities. The Construction Manager for the Project is to be selected by the PROJECT MANAGER subject to the approval of the OWNER.

6.15 *Contract Administration*--Any field staff, office, trailer, MIS, telephone, fax and other costs incurred by the Construction Manager during the construction phase and agreed to by OWNER to perform the management and coordination of the daily activities of the Project.

6.16 *Contract Documents*--Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation accompanying the Bid and any

post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and PROJECT MANAGER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.

6.17 *Contract Price*--The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.

6.18 *Contract Times*--The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion and (ii) complete the Work so that it is ready for final payment as evidenced by PROJECT MANAGER's written recommendation of final payment.

6.19 *Contractor*--An individual or entity with whom OWNER enters into a Construction Agreement.

6.20 *Correction Period*--The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.

6.21 *Defective*--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to PROJECT MANAGER's recommendation of final payment.

6.22 *Documents*--Data, Reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished or approved in appropriate phases by PROJECT MANAGER to OWNER pursuant to this Agreement.

6.23 *Drawings*--That part of the Contract Documents prepared by the ENGINEER and approved by PROJECT MANAGER, which graphically shows the scope, extent and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

6.24 *Effective*
effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two Parties hereto to sign and deliver.

6.25 *Effective Date of the Construction Agreement*--The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.

6.26 *ENGINEER/S*--The engineer/s under contract with the OWNER to provide the engineering design for the PROJECT. The PROJECT MANAGER shall manage the ENGINEER as an agent for the OWNER.

6.27 *Field Order*--A written order issued by PROJECT MANAGER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.

6.28 *Final Design*--Services of the Engineer necessary to complete the required design of the Project.

6.29 *General Conditions*--That part of the Contract Documents which sets forth terms, conditions and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

6.30 *Hazardous Environmental Condition*--The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.

6.31 *Hazardous Waste*--The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

6.32 *Laws and Regulations; Laws or Regulations*--Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.

6.33 *PCB's*--Polychlorinated biphenyls.

6.34 *Petroleum*--Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.

6.35 *Post-Construction*--The time after Substantial Completion for PROJECT MANAGER and OWNER to agree that the Services defined in Section 1.7 have been completed.

6.36 *PROJECT MANAGER's Consultants*--Individuals or entities having a contract with PROJECT MANAGER to furnish services with respect to this Project as PROJECT MANAGER's independent professional associates, consultants, subcontractors, or vendors. The term PROJECT MANAGER includes PROJECT MANAGER's Consultants.

6.37 *Progress Payments*--Payments to be made by OWNER to PROJECT MANAGER after the Project has begun and before the Project is completed as detailed in the Agreement.

6.38 *Radioactive Materials*--Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

6.39 *Record Drawings*--The Drawings as issued for construction on which the PROJECT MANAGER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which PROJECT MANAGER considers significant based on record documents furnished by Contractor to PROJECT MANAGER and which were annotated by Contractor to show changes made during construction.

6.40 *Reimbursable Expenses*--The expenses incurred directly by PROJECT MANAGER in connection with the performing or furnishing of Basic Services for the PROJECT.

6.41 *Resident Project Representative*-- A full time engineer, if any, assigned to assist PROJECT MANAGER at the Site during the Construction Phase. The Resident Project Representative will be PROJECT MANAGER's agent or employee and under PROJECT MANAGER's supervision. A Resident Project Representative is not included in the PROJECT MANAGER's Fee or Basic Services.

6.42 *Samples*--Physical examples of materials, equipment or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.

6.43 *Shop Drawings*--All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to PROJECT MANAGER to illustrate some portion of the Work.

6.44 *Site*--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER, which are designated for use of Contractor.

6.45 *Specifications*--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

6.46 *Substantial Completion*--The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of PROJECT MANAGER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed", as applied to all or part of the Work, refer to Substantial Completion thereof.

6.47 *Supplementary Conditions*--That part of the Contract Documents, which amends or supplements the General Conditions.

6.48 *Total Project Cost*--The sum of the Construction Cost, allowances for contingencies, the total costs of services of PROJECT MANAGER, ENGINEER/S or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER.

6.49 *Work*--The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

6.50 *Work Change Directive*--A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the PROJECT MANAGER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

6.51 *Written Amendment*--A written Amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 7 -CONTENT OF AGREEMENT _____

7.1 The following Exhibits are incorporated herein by reference:

7.1.1 Exhibit A, "Further Description of Services, Responsibilities, Time, and Related Matters," consisting of __ pages.

7.1.2 Exhibit B, "Standard Terms and Conditions," consisting of __ pages.

7.2 Total Agreement

This Agreement (consisting of pages 1 to __, inclusive, together with the Exhibits identified in Paragraph 7.1) constitutes the entire agreement between OWNER and PROJECT MANAGER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER:

By: _____

Title: _____

Signature: Thomas Gray

Date: 7/18/06

Address for giving notices to OWNER:

With a copy (which shall not constitute notice) to:

OWNER's Designated Representative (Paragraph 5.2):

Name: _____

Title: _____

Phone Number: _____

Facsimile Number: _____

E-Mail Address: _____

PROJECT MANAGER:

Environmental Management Corporation

By: _____

Title: _____

Signature: _____

Date: _____

Address for giving notices to PROJECT MANAGER:

Environmental Management Corporation
1001 Boardwalk Springs Place
O'Fallon, MO 63368

With a copy (which shall not constitute notice) to:

The BOC Group, Inc.
575 Mountain Avenue
Murray Hill, New Jersey 08836

PROJECT MANAGER's Designated Representative (Paragraph 5.2):

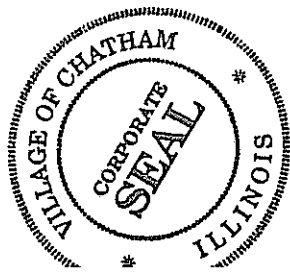
Name: _____

Title: _____

Phone Number: _____

Facsimile Number: _____

E-Mail Address: _____



This is EXHIBIT A, consisting of 10 pages, referred to in and part of the Agreement between OWNER and PROJECT MANAGER for Project Management Services

Further Description of Services, Responsibilities, Time, and Related Matters

Specific articles of the Agreement are amended and supplemented to include the following agreement of the parties:

PART 1 – PROJECT MANAGER BASIC SERVICES

1.1 General

- 1.1.1 Prepare a monthly progress report of work performed under this Agreement.
- 1.1.2 Prepare a schedule for the Project and update on a monthly basis.
- 1.1.3 Schedule and conduct coordination and progress meetings during all phases of the Project.

1.2 Planning Phase

- 1.2.1 Assist the OWNER in the preparation of a Scope/s of Work and additional required Qualification and Bid Documents for the selection of an Engineer/s for this project. Assist the OWNER with the receipt and analysis of proposals from responding Engineers. Make recommendation/s to the OWNER as to the selection of Engineer/s. Assist the OWNER with the preparation, negotiation and execution of the contract with the Engineer/s,
- 1.2.2 Manage the Engineer/s in the preparation of Preliminary Engineering including but not limited to Resistivity Studies, Water Quality/Supply Studies, Land, ROW and Easement Acquisition Planning, Site Planning and Design Phase Budgets and Schedules
- 1.2.3 Prepare a Final Design Phase Budget, Project Plan and Project Schedule for the OWNER's approval.

1.3 Final Design Phase

- 1.3.1 After acceptance by OWNER of the Planning Phase documents, but subject to any OWNER-directed modifications or changes in the scope, extent, character or design requirements of or for the Project, and upon written authorization from OWNER, PROJECT MANAGER shall provide the following final design phase services for the Project:
 - A. Negotiate fee, subject to OWNER's approval, with selected Engineer/s and consultant(s) for Final Design Phase, Bidding Phase, Construction Phase and Post Construction Phase Services and, manage the contract/s for such professional services as an agent of the OWNER.
 - B. On the basis of the above acceptance, direction and authorization provide oversight of the Engineer/s and consultant's services to prepare final Drawings indicating the scope, extent and character of the Work to be performed and furnished by Contractor(s). Also provide oversight of the Engineer/s and consultant's services to prepare specifications, where appropriate, in general conformance with the 16-division format of the Construction Specifications Institute.

- C. Perform reviews of final design documents prepared by the Engineer/s and consultant(s). Advise OWNER, Engineer/s and consultant(s) of recommended revisions.
- D. Provide oversight of Engineer/s and consultant's services to prepare and submit applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER, Engineer/s and consultant(s) in consultations with appropriate authorities. The OWNER shall pay the cost of all permit fees.
- E. Prepare and submit Illinois Environmental Protection Agency ("IEPA") permit application/s to the Agency for proposed facilities if applicable.
- F. Advise OWNER of any adjustments to the opinion of probable Construction Cost known to PROJECT MANAGER based on the scope of the revisions and/or design revisions to reduce construction cost of the Project.
- G. Provide oversight of the Engineer/s and consultant's services to prepare and furnish Bidding Documents for review and approval by OWNER, its legal counsel, and other advisors, as appropriate, and assist OWNER in the preparation of other related documents.
- H. Submit to Owner up to ___ copies of the proposed Bidding Documents within ___ calendar days after authorization to proceed with this phase. Submit a report of the probable Construction Cost. Submit an updated project schedule.

1.3.2 In the event that the Work designed or specified by PROJECT MANAGER is to be performed or furnished under more than one prime contract, or if PROJECT MANAGER's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), OWNER and PROJECT MANAGER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of PROJECT MANAGER's services during the Final Design, Bidding, Construction and Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.

1.3.3 PROJECT MANAGER's services under the Final Design Phase will be considered complete after the submittals required by Paragraph 1.3.1H hereof have been delivered to OWNER and on the date the Agency has approved the construction permit application for the Project.

1.4 Bidding Phase

1.4.1 After acceptance by OWNER of the Bidding Documents and approval of the construction permit application by the Agency, PROJECT MANAGER shall provide the following bidding phase services for the Project:

- A. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend and conduct pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents.
- B. Provide oversight of the engineer consultant's services to issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
- C. Consult with OWNER as to the acceptability of subcontractors, suppliers and other individuals and entities proposed by Contractor for those portions of the Work as to which

such acceptability is required by the Bidding Documents. Assure that all Contractors, subcontractors, etc. provide a performance bond and payment bond for the entire amount of their contract with the OWNER naming the OWNER and PROJECT MANAGER as co-obligees. Said performance and payment bonds shall be with a Surety with a minimum rating of A- qualified to do business in the State of Illinois, and further be subject to the approval of both the OWNER and PROJECT MANAGER. In the event the OWNER requires the use of a Contractor, subcontractor, etc. that either cannot or will not obtain a performance and payment bond, then the OWNER accepts full responsibility for both the cost and quality of construction of said party, with said cost or quality issues being removed from all guarantees of PROJECT MANAGER.

D. Attend the Bid opening, prepare Bid tabulation sheets and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.

1.4.2 The Bidding Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

1.5 Construction Phase

1.5.1 Upon successful completion of the Bidding Phase, and upon authorization from OWNER, PROJECT MANAGER shall provide the following construction phase services for the Project:

- A. Consult with OWNER and act as OWNER's representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities and authority of PROJECT MANAGER as assigned in said General Conditions shall not be modified, except as PROJECT MANAGER may otherwise agree in writing. All of OWNER's instructions to Contractor(s) will be issued through PROJECT MANAGER, who shall have authority to act on behalf of OWNER in dealings with Contractor(s) to the extent provided in this Agreement and said General Conditions except as otherwise provided in writing.
- B. If agreed by the OWNER, provide the services of a Resident Project Representative (RPR) at the Site to assist the PROJECT MANAGER and to provide more extensive observation of Contractor's work. The furnishing of such RPR's services is an Additional Service and will not extend PROJECT MANAGER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement.
- C. Attend and conduct a Pre-Construction Conference prior to commencement of Work at the Site.
- D. As appropriate, establish baselines and benchmarks for locating the Work which in PROJECT MANAGER's judgment are necessary to enable Contractor(s) to proceed.
- E. In connection with observations of Contractor's work in progress while it is in progress:
 - i. Make visits to the Site at intervals appropriate to the various stages of construction, as PROJECT MANAGER deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by PROJECT MANAGER, and the RPR, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to PROJECT MANAGER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the Work based on PROJECT MANAGER's exercise

of professional judgment as assisted by the RPR, if any. Based on information obtained during such visits and such observations, PROJECT MANAGER will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and PROJECT MANAGER shall keep OWNER informed of the progress of the Work.

- ii. The purpose of PROJECT MANAGER's visits to, and representation by the RPR, if any, at the Site, shall be to enable PROJECT MANAGER to better carry out the duties and responsibilities assigned to and undertaken by PROJECT MANAGER during the Construction Phase, and, in addition, by the exercise of PROJECT MANAGER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. PROJECT MANAGER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work, nor shall PROJECT MANAGER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor(s), for safety precautions and projects incident to Contractor's work, or for any failure of Contractor(s) to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- F. Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations and consultation with the RPR, PROJECT MANAGER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
 - G. Provide oversight of the Engineer/s and consultant's services to issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. PROJECT MANAGER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
 - H. Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives, as required.
 - I. Provide oversight of the Engineer/s and consultant's services to review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor(s) is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and projects incident thereto. PROJECT MANAGER and engineer consultant(s) have an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to PROJECT MANAGER and engineer consultant(s).
 - J. Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor(s).
 - K. Require such special inspections or tests of Contractor's work as deemed reasonably necessary and receive and review all certificates of inspections, tests and approvals required by Laws and Regulations or the Contract Documents. PROJECT MANAGER's review of

such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. PROJECT MANAGER shall be entitled to rely on the results of such tests.

- L. Render formal written decisions on all claims of OWNER and Contractor(s) relating to the acceptability of a Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of a Contractor's work. In rendering such decisions, PROJECT MANAGER shall be fair and not show partiality to OWNER or a Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- M. Provide oversight of the Engineer/s and consultant's services to prepare operation and maintenance manuals for the Project.
- N. Based on PROJECT MANAGER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - i. Recommend the amount of payment to a Contractor. Such recommendation of payment shall be in writing and shall constitute PROJECT MANAGER's representation to OWNER of the amount to be so paid, based on such observations and review, that, to the best of PROJECT MANAGER's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is PROJECT MANAGER's responsibility to observe Contractor's work. In the case of unit price work, PROJECT MANAGER's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustments allowed by the Contract Documents).
 - ii. By recommending any payment, PROJECT MANAGER shall not thereby be deemed to have represented that observations made by PROJECT MANAGER to check the quality or quantity of a Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of a Contractor's work in progress or involved detailed inspections of the Work beyond the responsibilities specifically assigned to PROJECT MANAGER in this Agreement and the Contract Documents. Neither PROJECT MANAGER's review of a Contractor's work for the purposes of recommending payments, nor PROJECT MANAGER's recommendation of any payment, including final payment, will impose on PROJECT MANAGER responsibility to supervise, direct or control a Contractor's work in progress or for the means, methods, techniques, sequences, procedures of construction or safety precautions or projects incident thereto, or a Contractor's compliance with Laws and Regulations applicable to a Contractor's furnishing and performing the Work. Prior to recommending payment request(s) from the Contractor(s) to the OWNER for payment, the PROJECT MANAGER shall require lien waivers from prior payment applications from all contractors that have an Agreement with the OWNER for construction services on the Project.
- O. Perform the following:

- i. Receive and review maintenance and operating instructions, schedules and guarantees.
- ii. Receive bonds, certificates or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment.
- iii. Assure transmittal of these documents to OWNER.

P. Promptly, after notice from each prime Contractor, that Contractor considers the entire Work ready for its intended use, in company with OWNER, Engineer/s consultant(s) and Contractor, so that PROJECT MANAGER can conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of OWNER, PROJECT MANAGER considers the Work Substantially Complete, PROJECT MANAGER shall deliver a certificate of Substantial Completion to OWNER and Contractor.

Q. Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that PROJECT MANAGER may recommend, in writing, final payment to Contractor(s). Accompanying the recommendation for final payment, PROJECT MANAGER shall also provide a notice that the Work is acceptable to the best of PROJECT MANAGER's knowledge, information and belief and based on the extent of the services provided by PROJECT MANAGER under this Agreement.

1.5.2 The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by PROJECT MANAGER for final payment to Contractor(s). If the Project involves more than one prime contract, Construction Phase services may be rendered at different times in respect to the separate contracts. The duration of construction is estimated to be approximately ___ calendar days from notice to proceed to substantial completion. The additional time anticipated between substantial and final completion is anticipated to be approximately ___ calendar days.

1.6 Post-Construction Phase

1.6.1 Upon substantial completion of construction, the PROJECT MANAGER shall commence providing the following post-construction phase services for the Project:

- A. Provide assistance in connection with the testing and adjusting of the Project equipment and/or systems.
- B. Provide training for facility operation staff to operate and maintain the equipment and/or systems of the Project.
- C. Develop procedures for control of the operation and maintenance of, and record keeping for the equipment and/or systems of the Project.
- D. Together with OWNER, visit the Project to observe any apparent defects in the Work, conduct consultations and discussions with Contractor(s) concerning correction of any such defects and make recommendations as to replacement or correction of Defective Work, if present.

E. Perform or provide the following additional Post-Construction Phase tasks or deliverables:

- i. Assume operation and maintenance of constructed facilities upon issuance of a certificate of Substantial Completion.
- ii. Provide oversight of engineer consultant's services to prepare Record Drawings showing appropriate record information based on the Project annotated record documents received from Contractor(s) and furnish prepared Record Drawings to the OWNER.
- iii. If a loan is utilized for the Project, provide oversight of engineer consultant's services to prepare and submit certifications required by the Agency one year after completion of construction.

F. In company with OWNER or OWNER's representative, provide an inspection of the Project within one (1) month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.

1.6.2 The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Correction Period which is to be __ months after substantial completion of construction unless another time period is agreed to by the OWNER.

PART 2 – ADDITIONAL SERVICES

2.1 Additional Services Requiring OWNER's Authorization in Advance

2.1.1 If authorized in writing by OWNER, PROJECT MANAGER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4.2.2 of this Agreement.

- A. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
- B. Services resulting from significant changes in the scope, extent or character of the portions of the Project designed or specified by PROJECT MANAGER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule (including, but not limited to, unforeseen delays of and suspensions in the Work), character of construction, method of financing and revising previously accepted studies, reports, Drawings, Specifications or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond PROJECT MANAGER's control.
- C. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

- D. Furnishing services of PROJECT MANAGER'S Consultants for other than Basic Services.
- E. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project review, value engineering, and constructibility review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
- F. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.
- G. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph 1.5.1E, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
- H. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
- I. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other dispute resolution process related to the Project.
- J. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.
- K. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) Work damaged by fire or other cause during construction, (4) acceleration of the progress schedule by the OWNER involving services beyond normal working hours, or (5) default by a Contractor.
- L. Other services performed or furnished by PROJECT MANAGER not otherwise provided for in this Agreement.
- M. Geotechnical and Environmental consulting.

PART 3 – OWNER'S RESPONSIBILITIES

3.1 OWNER'S Responsibilities

- 3.1.1 OWNER shall do the following in a timely manner so as not to delay the services of PROJECT MANAGER:
 - A. Provide PROJECT MANAGER with all criteria and full information as to OWNER'S requirements for the Project, including, but not limited to, design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER'S standard forms, conditions and related documents for PROJECT MANAGER to include in the Bidding Documents, when applicable. Furnish to PROJECT MANAGER any other available information pertinent to the Project including reports and data relative to previous designs or investigation at or adjacent to the Site.

- B. Provide the services of the Engineer/s pursuant to contracts which are consistent with the provisions of this Agreement.
- C. Following PROJECT MANAGER's assessment of initially-available information and data of the Project and upon PROJECT MANAGER's request, furnish or otherwise make available such additional information and data relating to the Project as is reasonably required to enable Engineer/s to complete the engineering design for the Project. Such additional information or data would generally include the following:
 - i. Legal, Property descriptions, boundary, and easements.
 - ii. Zoning, deed, and other land use restrictions.
 - iii. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof including a geotechnical report advising of the engineering properties of the existing soils at the site, foundation recommendations and recommendations for the suitability, use, compaction and treatment of the soils that are expected to be encountered. Geotechnical engineer shall also provide recommendations and estimates for deep foundations if required.
 - iv. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - v. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to PROJECT MANAGER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of PROJECT MANAGER's services, or any defect or nonconformance in PROJECT MANAGER's services or in the work of any Contractor.
- E. Authorize PROJECT MANAGER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for PROJECT MANAGER to enter upon public and private property as required for PROJECT MANAGER to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by PROJECT MANAGER (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as OWNER deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by PROJECT MANAGER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:

- i. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - ii. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or PROJECT MANAGER reasonably requests.
 - iii. Such auditing services as OWNER requires ascertaining how or for what purpose Contractor has used the moneys paid.
 - iv. Payment of all fees for permit applications necessary to construct the Project.
 - v. Placement and payment for advertisement for Bids in appropriate publications.
 - vi. Property/Builders risk insurance.
- J. Advise PROJECT MANAGER of the identity and scope of services of any independent consultants employed by OWNER to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, peer review, value engineering, and constructibility review relating to the Project.
- K. Furnish to PROJECT MANAGER data as to OWNER's anticipated costs for services to be provided by others for OWNER.
- L. If OWNER designates a construction manager or an individual or entity other than, or in addition to, PROJECT MANAGER and Consultants of PROJECT MANAGER to represent OWNER at the Site, define and set forth as an attachment to this Exhibit A the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of PROJECT MANAGER.
- M. Designated Representative of OWNER shall attend a workshop at the commencement of the preliminary design phase, coordination meetings during preliminary and final design, the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and substantial completion and final payment inspections.
- 3.1.2 PROJECT MANAGER shall be entitled to use and rely upon all such information and services provided by OWNER or others in performing PROJECT MANAGER's services under this Agreement. OWNER will advertise for and accept construction bids upon PROJECT MANAGER's concurrence of the bids in a timely manner so as not to delay the schedule of the Project. PROJECT MANAGER may reject bids that are determined by the PROJECT MANAGER to not be responsive to Project requirements.
- 3.1.3 OWNER shall bear all costs incident to compliance with its responsibilities pursuant to this Paragraph 3.1.

This is **EXHIBIT B**, consisting of 8 pages, referred to in and part of the Agreement between **OWNER** and **PROJECT MANAGER** for Project Management Services.

Standard Terms and Conditions

Article 7 of the Agreement is amended and supplemented to include the following agreement of the parties:

Standard Terms and Conditions

1. Standard of Care

The standard of care for all professional services performed or furnished by PROJECT MANAGER under this Agreement will be the care and skill ordinarily used by members of PROJECT MANAGER's profession practicing under similar circumstances at the same time and in the same locality. PROJECT MANAGER makes no warranties, express or implied, under this Agreement or otherwise, in connection with PROJECT MANAGER's services except as specifically noted in this Agreement.

2. Independent Contractor

All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and PROJECT MANAGER and not for the benefit of any other party. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either OWNER or PROJECT MANAGER. PROJECT MANAGER's services under this Agreement are being performed solely for OWNER's benefit, and no other entity shall have any claim against PROJECT MANAGER because of this Agreement or the performance or nonperformance of services hereunder. OWNER agrees to include a provision in all contracts with contractors and other entities involved in the Project to carry out the intent of this paragraph.

3. Payments to PROJECT MANAGER

Invoices will be prepared in accordance with PROJECT MANAGER's standard invoicing practices and will be submitted to OWNER's designated representative by PROJECT MANAGER. The amount of each invoice shall be based on the PROJECT MANAGER's estimate of the percent completion of services identified in Exhibit A of this Agreement for the period covered by each invoice. Invoices are due and payable within 10 days of receipt. If OWNER fails to make any payment due PROJECT MANAGER for services and expenses within 10 days after receipt of PROJECT MANAGER's invoice therefore, the amounts due PROJECT MANAGER will be increased at the rate of 0.5% per month from such due date. In addition, PROJECT MANAGER may, after giving seven days written notice to OWNER, suspend services under this Agreement until PROJECT MANAGER has been paid in full all amounts due for services, expenses, and other related charges.

4. Insurance

4.1 The PROJECT MANAGER shall maintain the following insurance during the term of this Agreement:

Commercial General Liability:

Bodily Injury, Personal Injury, and Property Damage \$1 million occurrence

\$3 million aggregate

Commercial Automobile Liability (any auto):

Hired and Non-Owned Liability \$1 million Per Accident

Workers' Compensation: Statutory

Employers Liability:

Bodily Injury By Accident \$500,000 Each Accident
Bodily Injury By Disease \$500,000 Policy Limit
Bodily Injury By Disease \$500,000 Each Employee

Professional Liability:

Damages from performance of or failure to perform professional services \$1 million Occurrence
\$1 million Aggregate

PROJECT MANAGER shall furnish OWNER with satisfactory proof of such insurance, and each policy shall require a 30-day notice of cancellation or material change to be given to OWNER during the term of this Agreement. All of the above policies, except Worker's Compensation and Professional Liability, shall name OWNER as an additional insured, but only to the extent of PROJECT MANAGER's performance and indemnification obligations pursuant to this Agreement. The PROJECT MANAGER shall maintain such coverage for a period of one (1) year following the completion of the Project.

- 4.2 Unless otherwise provided, the OWNER shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property/builder's all-risk insurance in the amount of the initial Contract Sum, as well as subsequent modifications thereto for the entire Work at the site on a replacement cost basis with a deductible or self-insured retention limit reasonable for the financial health and liquidity of the OWNER. Such property insurance shall be maintained, unless otherwise provided in the Agreement or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the OWNER has an insurable interest in the property to be covered, whichever is earlier. This insurance shall include interests of the OWNER, the PROJECT MANAGER, Engineer, and Contractors in the Work.
- 4.3 Property insurance shall be on an all-risk policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for services and expenses required as a result of such insured loss. Coverage for other perils shall not be required unless otherwise provided in the Agreement.
- 4.4 If the OWNER does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the OWNER shall so inform the PROJECT MANAGER in writing at least 90 days prior to commencement of the Work. The PROJECT MANAGER may then affect insurance which will protect the interests of the PROJECT MANAGER, Engineer, Contractors in the Work, and by appropriate Agreement Amendment the cost thereof shall be charged to the OWNER. If the PROJECT MANAGER or Engineer is damaged by the failure or neglect of the OWNER to purchase or maintain insurance as described above, without so notifying the PROJECT MANAGER, then the OWNER shall bear all reasonable costs properly attributable thereto.

- 4.5 If the property insurance contains deductibles, the OWNER shall pay costs not covered because of such deductibles. If the OWNER or insurer increases the deductibles above the amounts so identified or if the OWNER elects to purchase this insurance with additional deductible amounts, the OWNER shall be responsible for payment of the additional costs not covered because of such increased deductibles.
- 4.6 Property insurance shall cover portions of the Work stored off the site after written approval of the OWNER at the value established in the approval, and also portions of the Work in transit.
- 4.7 The OWNER, at the OWNER's option, may purchase and maintain such insurance as will insure the OWNER against loss of use of the OWNER's property due to fire or other hazards, however caused. The OWNER waives all rights of action against the PROJECT MANAGER, Engineer, and Subcontractors and Sub-subcontractors in the work for loss of use of the OWNER's property, including the consequential losses due to fire or other hazards however caused.
- 4.8 If the PROJECT MANAGER requests in writing that insurance for risks other than those described herein or for other special hazards be included in the property insurance policy, the OWNER shall, if possible, include such insurance, and the Engineer or Contractors cost thereof shall be charged to the requesting party by appropriate Agreement Amendment.
- 4.9 If during the Project construction period the OWNER insures properties, real or personal or both, adjoining or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the OWNER shall waive all rights in accordance with the terms of Paragraph 4.11 of this Exhibit for damages caused by fire or other perils covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.
- 4.10 Before an exposure to loss may occur, the OWNER shall file with the PROJECT MANAGER a copy of each policy that includes insurance coverages required by this Section 4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that thirty (30) days' prior written notice will be provided to the PROJECT MANAGER in the event of cancellation or other material change in coverage.
- 4.11 The OWNER and PROJECT MANAGER waive all rights against each other and any of their contractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Subparagraph b. or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the OWNER as fiduciary. The OWNER, PROJECT MANAGER or Engineer, as appropriate, shall require of the consultants, separate contractors and the subcontractors, sub-subcontractors, agents and employees or any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
- 4.12 A loss insured under OWNER's property insurance shall be adjusted by the OWNER as fiduciary and made payable to the OWNER as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgage clause.

- 4.13 If required in writing by a party in interest, the OWNER as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the OWNER's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The OWNER shall deposit in a separate account proceeds so received, which the OWNER shall distribute in accordance with such agreement as the parties in interest may reach. If after such loss no other special agreement is made, replacement of damaged property shall be covered by appropriate Agreement Amendment.
- 4.14 The OWNER as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the OWNER's exercise of this power; if such objection be made, arbitrators shall be chosen. The OWNER as fiduciary shall, in that case, make settlement with insurers in accordance with directions of such arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.
- 4.15 Partial occupancy or use shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The OWNER and PROJECT MANAGER shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

5. Indemnification and Allocation of Risk

- 5.1 To the fullest extent permitted by law, PROJECT MANAGER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of project managers, construction managers, engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) to the extent caused solely by the negligent acts or omissions of PROJECT MANAGER or PROJECT MANAGER's officers, directors, partners, employees, and consultants in the performance of PROJECT MANAGER's services under this Agreement.
- 5.2 To the fullest extent permitted by law, OWNER shall indemnify and hold harmless PROJECT MANAGER, PROJECT MANAGER's officers, directors, partners, employees, and consultants from and against costs, losses, and damages (including but not limited to reasonable fees and charges of project managers, construction managers, engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) to the extent caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and consultants with respect to this Agreement.
- 5.3 To the fullest extent permitted by law, PROJECT MANAGER's total liability to OWNER and anyone claiming by, through, or under OWNER for any injuries, losses, damages and expenses caused in part by the negligence of PROJECT MANAGER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that PROJECT MANAGER's negligence bears to the total negligence of OWNER, PROJECT MANAGER, and all other negligent entities and individuals.
- 5.4 In addition to the indemnity provided under paragraph 5.2 of this Exhibit, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless PROJECT MANAGER and PROJECT MANAGER's officers, directors, partners, employees, and consultants from and against injuries, losses, damages and expenses (including but not limited to all fees and charges of PROJECT MANAGER, construction managers, engineers, architects, attorneys, and other professionals, and all court or arbitration or other disputes resolution costs) caused by, arising out of, or resulting from Hazardous Environmental Condition, provided that (i) any such injuries, losses, damages and expenses are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of

tangible property, including clean-up costs and including the loss of use resulting there from, and (ii) nothing in this paragraph 5.4 shall obligate OWNER to indemnify any individual or entity to the extent of the individual or entity's own negligence or willful misconduct. Costs incurred by PROJECT MANAGER due to delays in or suspension of Work on the Project due to a Hazardous Environmental Condition shall be compensated by OWNER as an "Additional Service" pursuant to Exhibit A.

5.5 The indemnification provision of paragraph 5.1 and 5.3 is subject to and limited by the provisions agreed to by OWNER and PROJECT MANAGER in Paragraph 6, "Limit of Liability," of this Exhibit.

6. Limit of Liability

Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of the PROJECT MANAGER and PROJECT MANAGER's officers, directors, partners, employees, agents, and PROJECT MANAGER's Consultants, and any of them, to OWNER and anyone claiming by, through, or under OWNER for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied, of PROJECT MANAGER or PROJECT MANAGER's officers, directors, partners, employees, agents, or PROJECT MANAGER's Consultants, or any of them (hereafter "OWNER's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to PROJECT MANAGER by PROJECT MANAGER's insurers in settlement or satisfaction of OWNER's Claims under the terms and conditions of PROJECT MANAGER's insurance policies applicable thereto. If no such insurance coverage is provided with respect to OWNER's Claims, then the total liability, in the aggregate, of PROJECT MANAGER and PROJECT MANAGER's officers, directors, partners, employees, agents, and PROJECT MANAGER's Consultants, and any of them to OWNER and anyone claiming by, through, or under OWNER for any and all such uninsured OWNER's claims shall not exceed the compensation for services of PROJECT MANAGER under the Agreement.

7. Dispute Resolution

7.1 OWNER and PROJECT MANAGER agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("disputes") to mediation.

7.2 If a party alleges a dispute or controversy with the other party arising out of or relating to the performance of services under this Agreement, then either party shall have the right to request mediation within 20 days after the claiming party has provided the other party with written notice describing the dispute and the claiming party's position with reference to the resolution of the dispute.

7.3 Except as otherwise agreed, mediation will proceed pursuant to the Construction Industry Mediation Rules of the American Arbitration Association in effect on the Effective Date of the Agreement. A mediator will be appointed within 30 days of receipt of a written request. The mediator will endeavor to complete the mediation within 30 days thereafter.

7.4 No performance obligation under or related to this Agreement shall be interrupted or delayed during any mediation proceeding except upon written agreement of both parties.

7.5 The mediator shall not be a witness in any legal proceedings related to this Agreement.

7.6 If the mediation does not result in a resolution of the dispute, then, in that event, either Party may pursue remedies available under applicable law.

8. Termination of Contract

Either party may at any time, upon thirty (30) days' prior written notice to the other party, terminate this Agreement. Upon such termination, OWNER shall pay to PROJECT MANAGER all amounts owing to PROJECT MANAGER under this Agreement, for all work performed up to the effective date of termination, plus reasonable termination costs for additional termination services requested by the OWNER.

If the OWNER terminates the contract without cause, the OWNER shall pay Project Manager the full fee associated with the phase during which such termination occurred (e.g., Final Design, Bidding, Construction or Post-Construction Phase).

9. Access

OWNER shall arrange for safe access to and make all provisions for PROJECT MANAGER and PROJECT MANAGER's Consultants to enter upon public and private property as required for PROJECT MANAGER to perform services under this Agreement.

10. Hazardous Environmental Conditions

It is acknowledged by both parties that PROJECT MANAGER's scope of services does not include any services related to a "Hazardous Environmental Condition" (HEC), i.e. the presence at the site of asbestos, PCBs, petroleum, hazardous waste, or radioactive materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Project. In the event PROJECT MANAGER or any other party encounters a HEC, PROJECT MANAGER shall immediately notify the OWNER of the PROJECT MANAGER's belief that a HEC has been encountered during the performance of the work and it may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the site is in full compliance with applicable laws and regulations. OWNER acknowledges that PROJECT MANAGER is performing professional services for OWNER and that PROJECT MANAGER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the site in connection with PROJECT MANAGER's activities under this Agreement.

11. Patents

PROJECT MANAGER shall not conduct patent searches in connection with its services under this Agreement and assumes no responsibility for any patent or copyright infringement arising there from. Nothing in this Agreement shall be construed as a warranty or representation that anything made, used, or sold arising out of the services performed under this Agreement will be free from infringement of patents or copyrights.

12. Ownership and Reuse of Documents

All documents prepared or furnished by PROJECT MANAGER pursuant to this Agreement are instruments of service, and PROJECT MANAGER shall retain an ownership and property interest therein. Reuse of any such documents by OWNER shall be at OWNER's sole risk; and OWNER agrees to indemnify, and hold PROJECT MANAGER harmless from all claims, damages, and expenses including attorney's fees arising out of such reuse of documents by OWNER or by others acting through OWNER.

13. Use of Electronic Media

- 13.1 Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the PROJECT MANAGER or his consultants. Files in electronic media format of text, data, graphics, or of other types that are furnished by PROJECT MANAGER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- 13.2 When transferring documents in electronic media format, PROJECT MANAGER makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by PROJECT MANAGER or his consultants at the beginning of this Project.
- 13.3 If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- 13.4 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. PROJECT MANAGER shall not be responsible to maintain documents stored in electronic media format after acceptance by OWNER.

14. Opinions of Probable Construction Cost

- 14.1 Construction Cost is the cost to OWNER to construct proposed facilities. Construction Cost does not include costs of services of PROJECT MANAGER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with OWNER's contemplated Project, or the cost of other services to be provided by others to OWNER pursuant to of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
- 14.2 PROJECT MANAGER's opinions of probable Construction Cost provided for herein are to be made on the basis of PROJECT MANAGER's and/or his consultants' experience and qualifications and represent PROJECT MANAGER's and/or his consultants' best judgment as an experienced and qualified professional generally familiar with the industry.

15. Opinions of Total Project Cost

Total Project Cost is the sum of the probable Construction Cost, allowances for contingencies, the estimated total costs of services of PROJECT MANAGER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, and OWNER's costs for legal, accounting, insurance counseling or auditing services, and interest and financing charges incurred in connection with a proposed project, and the cost of other services to be provided by others to OWNER pursuant to this Agreement.

16. Force Majeure

PROJECT MANAGER shall not be liable for any loss or damage due to failure or delay in rendering any service called for under this Agreement resulting from any cause beyond PROJECT MANAGER's reasonable control.

17. Assignment

Neither party shall assign its rights, interests or obligations under this Agreement without the express written consent of the other party.

18. Binding Effect

This Agreement shall bind, and the benefits thereof shall inure to the respective parties hereto, their legal representatives, executors, administrators, successors, and assigns.

19. Severability and Waiver of Provisions

Any provision or part of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and PROJECT MANAGER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

20. Survival

All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

21. Headings

The headings used in this Agreement are for general reference only and do not have special significance.

22. Controlling Law

This Agreement is to be governed by the law of the state in which the Project is located.

23. Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.