



STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET

This contract authorizes the Design and Construction Consultant (D/CC) to provide professional services. (Authority: 1984 PA 431)

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT, authorized this ____ day of _____ in the year two-thousand and **twelve (2012)**, by the State Administrative Board/Director, Department of Technology, Management and Budget, BETWEEN the STATE OF MICHIGAN acting through the FACILITIES AND BUSINESS SERVICES ADMINISTRATION, DESIGN AND CONSTRUCTION DIVISION of the DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET, First Floor, Stevens T. Mason Building, Lansing, Michigan, hereinafter called the State, and

PSC NAME
ADDRESS
CITY, STATE ZIP

the Prime Professional Services Contractor, hereinafter called the Design and Construction Consultant (D/CC),

WHEREAS, the Department of Technology, Management and Budget Facilities and Business Services Administration (FBSA), Design and Construction Division (DCD) [The Department] proposes securing Design and Construction Consultant services for the following project:

Project Name & Description

Index No. **INDEX NO.**

Contract Order No. **Y NO.**

File No. **FILE NO.**

Total Contract Amount \$ _____ (not to exceed)

NOW THEREFORE, the State of Michigan and the D/CC in consideration of the covenants of this Contract agree as follows

The D/CC shall provide the professional services for the Project in the sequence outlined in this Contract in accordance with the Department's approved and attached Appendix - Project/Program Statement and the attached Appendix - Department's "Design and Construction Consultant Services Utilization Manual" and be solely responsible for such services. The D/CC services shall be performed in strict accordance with this Contract.

The State of Michigan shall compensate the D/CC for providing services according to the Project scope as outlined in the terms and conditions of this Contract.

IN WITNESS, WHEREOF, each of the parties has caused this Design and Construction Consultant Services Contract (Contract) to be executed by its duly authorized representatives on the dates shown beside their respective signatures, with the Contract to be effective upon the date on which the D/CC received a copy executed by the authorized State of Michigan representative(s) by regular, registered, or certified mail or by delivery in person.

FOR THE DESIGN AND CONSTRUCTION CONSULTANT:

Firm Name

Federal Identification (I.D.) Number

Signature

Date

Title

FOR THE STATE OF MICHIGAN:

Director, Department of Technology, Management and Budget

Date

NOW THEREFORE, the Department and the D/CC, in consideration of the covenants of this Contract, agree as follows:

WHEREAS, this Contract constitutes the entire agreement between the parties, any Contract Modification of this Contract and the Department's approved and attached Project/Program Statement must be in writing, signed by duly authorized representatives of the parties, and shall be in such format and detail as the State may require. No Contract Modification may be entered into to compensate the D/CC for correcting, or for responding to claims or litigation for, the D/CC's Contract Documents, design errors, omissions, or neglect on the part of the D/CC.

The definition of terms and conditions of this Contract are described and outlined in the following Articles and attached appendices.

This Contract provides two (2) distinct types of D/CC services. These professional services may be coordinated and combined, or used singularly, depending upon the flexibility required by the Project.

The two (2) distinct types of D/CC services for this Contract are defined as follows:

- I. **DESIGN SERVICES:** Provide complete architectural and engineering design/build, specialized study services, or other professional services. The design work activities will be performed either by the D/CC or through their Consultant(s).

The D/CC's design work may be provided by either the D/CC's office staff, or a third party consultant procured by either the State of Michigan or the D/CC. The Department may also elect to use a design/build approach combining the design and construction orders to provide an integrated, expedient, delivery approach.

Design and Construction Consultant (D/CC) Services: The following Phase description(s) outline the D/CC design services that may be necessary, but may not be limited to, accomplishing the scope of work.

Phase 100—Study

Provide complete and comprehensive Study Deliverables to meet the requirements of the Project.

Upon completion of all field investigation or research, prepare a complete Study Report with an executive summary, and in such detail, as the Project Director may prescribe.

Phase 200—Programming

Research the physical, functional, and programmatic relationships required by the State/Client Agency.

Prepare a Program Statement with a complete building or facility program, listing all spaces organized by department and staff classification, adjacencies, uses, and other needs. Include information on required environmental conditions, building systems, equipment, adjacencies, security, and special conditions needs for each space.

Acceptance and approval of the Program Statement by the Department does not limit subsequent inclusion of minor, but essential, programmatic or design details whose necessity and arrangement may best become apparent during subsequent Phases of the Project design.

Phase 300—Schematic Design

Upon written authorization from the Project Director, prepare Schematic Design Deliverables consistent with the Project requirements and the approved Program Statement. Schematic Design Deliverables shall consist of drawings, outline specifications, a Schematic Construction Cost Estimate, other related documentation, and shall diagrammatically depict the areas, scales, and relationships of the functions, as described in the approved Program Statement.

Acceptance of the Schematic Design by the Department does not limit subsequent inclusion of minor, but essential, schematic or design details whose necessity and arrangement may best become apparent during subsequent Phases of the Project design.

Phase 400—Design Development

Upon written authorization from the Project Director, prepare Design Development Deliverables based on the Owner-accepted Schematic Design.

Design Development Deliverables shall consist of drawings, specifications, Construction Cost Estimates, other related documentation, and shall further define the Project by fixing and describing the Project size, character, site relationships, and other appropriate elements including the civil, structural, architectural, mechanical, electrical, and fire suppression systems.

Phase 500—Construction Documents and Bidding Documents

Upon written authorization from the Project Director, and based on the Owner-approved Design Development, prepare Construction Documents that revise, refine, amplify, and depict, in detail, the Project.

Construction Documents shall set forth, in detail, quality levels of and requirements for the construction, and shall consist of drawings and specifications that comply with applicable regulatory and construction code requirements, enacted at the time of completion of the one-hundred-percent (100%) Construction Documents. The Construction Documents shall contain all information necessary to bid and construct the Project.

Prepare Bidding Documents in Phases/Bid packages appropriate to the Project requirements and funding.

Phase 600—Construction Administration, Office Services

Upon written authorization from the Project Director, provide all required construction administration and timely professional and administrative services, as the circumstances of the Construction may require, to allow the successful implementation of the Construction Documents into a completed Project, ready for occupancy, and/or for the use intended by the Owner.

Phase 700—Construction, Field Services

Upon written authorization from the Project Director, provide all required Construction Field Services, including timely inspection and professional services, as the circumstances of the Construction may require, to allow the successful implementation of the Construction Documents into a completed Project, ready for occupancy, and/or for the use intended by the Owner

- II. **CONSTRUCTION SERVICES:** Provide complete construction labor, equipment, materials, and all appropriate construction services such as supervision, scheduling, estimating, etc., to construct the Project.

This Contract will provide all construction trades work. The D/CC's construction labor force may be used for select self-performed trades and general conditions work. Any self-performed trades and general conditions work must be justified and preapproved by the Director- FA. The D/CC may also obtain construction trades subcontracts.

**ARTICLE 1
PROFESSIONAL SERVICES**

The D/CC, their sub-contractors, and their consultants shall provide all professional and construction services, technical staff, and support personnel necessary to achieve the Project, in the best interest of the State, and be within the D/CC's not-to-exceed fee(s) authorized by the State. The Department shall provide Project objectives of scope, program, schedule, constraints, criteria, funding, and budget as promptly as practicable.

Project services shall comprise, without exception, every professional design/build construction discipline and expertise necessary to meet all the requirements of the Department's approved and attached Appendix - Project/Program Statement and the Department's, "Design and Construction Consultant Services Utilization Manual, Sample Department Design/Build Forms and Work Flow Procedures Chart", be within the amount authorized by the State, and be in accordance with the industry-accepted standards for professional design/build construction practice and services. D/CC services shall be provided in accordance with this Contract and the their D/CC's Project Hourly Billing Rate Compensation.

Information: The Department will make available information known to the Department which may be needed to fulfill the professional responsibility of the D/CC. This information may include, but is not limited to: prints of existing construction or record drawings and Department or Client Agency standards, regulations, schedules, and guides. Such documents shall be the most recent and accurate available. The use of any such data by the D/CC shall be without contractual or legal significance, unless otherwise established elsewhere in this Contract. However, the Department's provision of information shall not relieve the D/CC from the responsibility of conducting a field survey to verify existing conditions.

Principal-In-Charge: The D/CC shall designate a principal-in-charge for this Project, to whom the Department will address questions and concerns regarding this Contract and the D/CC's performance.

Substitution: No substitution of any "Key Principal Personnel/Employee" identified in the D/CC attached Proposal or of any of the D/CC's contractors or consultants will be allowed without written consent from the Project Director and a completed and approved Professional Services Contract Modification form (DMB-410).

Project Director: The Department will designate an individual to serve as the Project Director who shall be the State of Michigan's primary representative in the Project Team and have the authority and responsibility to render Project decisions and furnish information.

The D/CC is responsible solely to the Project Director for the adequacy and timeliness of their services.

If the Department or Client Agency observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project, the Department will provide prompt notice thereof to the D/CC.

The Project Director, or the Owner's Field Representative, has the authority to require the D/CC to respond to and resolve design related problems, construction field problems, and to attend Project related meetings. Unless delegated by specific written notice from the Department, the Owner's Field Representative does not have any authority to order any changes in the scope of work or authorize any adjustments in Contract price or Contract time. The Project Director has that sole authority.

Department's Field Representative: The Department will designate an individual or individuals to serve as the Owner's Field Representative (OFR) under the direction of the Project Director. The OFR's primary duty is to monitor the coordination and progress of the D/CC's services and the Construction Contractor(s)' work. The OFR also acts as the liaison between, the D/CC, the Client Agency, any of the Department's consultants or contractors, and the Project Director. The OFR may be full or part-time, at the Department's discretion.

First Interpreter: The D/CC acknowledges the Project Director is the first interpreter of the D/CC's performance under this Contract.

Standard of Reasonable Care, Legal Responsibility: The D/CC shall perform all of its services in conformity with the standards of reasonable care and skill of the profession, notwithstanding any other provision herein. The D/CC shall be responsible for the performance of persons retained by them and states that its employees, agents, officers, consultants, and subcontractors possess the experience, knowledge, licensure, and character to properly perform their duties.

Professional Qualifications: Professional services shall be performed by members of the profession involved, who practice under the authority of and who are governed by the license(s) issued under PA 299 of 1980 (Michigan Occupational Code).

Understanding of Project Scope: The D/CC acknowledges having a clear understanding of the requested Project scope of work and the professional architectural and/or engineering study, design, construction, and construction administration services required to provide them.

Completeness: The D/CC shall provide all services, technical staff, and support personnel necessary to achieve the Project, in accordance with: the Appendices to this Contract, any applicable sections of the Michigan Compiled Laws, any applicable state rules and regulations, any applicable federal and local statutes, ordinances, rules, and regulations, and in accordance with the D/CC's attached Project Study, Design and Proposed Construction Schedule.

Sufficiency: The D/CC agrees the terms and conditions of this Contract provide adequate compensation to provide the requested services; furthermore, any modification to the terms and conditions of this Contract will be requested in writing.

Subcontracts and Consultants: The D/CC may use Subcontractors and Consultants upon written approval by the Department or by their inclusion in the Proposal. Consultants or Contractors to the D/CC shall not be construed to have a contractual relationship between the Department and said consultant/subcontractor. The D/CC holds the professional and contractual responsibility for any work performed or delivered under this Contract, regardless of whether the D/CC or a consultant provided the work. Subcontracts for services under this Contract shall provide that work performed under such Subcontract shall be subject to provisions of this Contract and shall also provide that any duty or responsibility pertaining thereto, shall be accomplished to the benefit of the Department. Upon request, an electronic copy of each such Subcontract shall be furnished to the Department.

Understanding of Construction General Conditions: The D/CC shall review and become familiar with the current MICHSpec and DCSpec General Conditions of the Contract for Construction and shall provide services and work consistent with these General Conditions. It is preferred that the D/CC uses these General Conditions for its subcontracts for construction. The D/CC may submit an alternate form of General Conditions for review by the Department. If approved, the D/CC may use that alternate form of General Conditions.

Consultant: The D/CC shall not employ nor consult with any firm(s) in completing its obligations who it anticipates will be a construction Bidder for the Project or any part thereof, unless specifically authorized, in writing, by the Department.

Cooperation with Department's Consultants: The D/CC agrees to cooperate with any Consultant retained by the Department.

Cooperation and Coordination with State Employees: The Project Director, the OFR, or other State employee(s) may perform duties or activities analogous or parallel to the D/CC's services outlined under this Contract. Notwithstanding these activities, the D/CC shall provide all the services required under this Contract.

Construction Means and Methods: The D/CC, through its subcontracts or by self-performing construction activities, shall be responsible for construction means, methods, techniques, sequences, procedure, and supervision or for safety precautions and programs in conjunction with the Project. The D/CC is responsible for its internal safety policies, procedures, equipment, and precautions.

Increased Compensation for Additional Project Scope: The D/CC shall immediately inform the Department whenever it believes the scope of services included in this Contract would be exceeded. The D/CC's base services fee may be increased only upon an accepted and approved Contract Modification (DMB-410)

Increased Compensation for Bulletins and Change Orders: The D/CC's base services fee will be increased for the preparation of Bulletins and Contract Change Orders resulting from increases in the scope of work or previously unknown field conditions, as approved by the Project Director, on an hourly billing rate basis. This compensation shall not exceed seven and half percent (7.5%) of the Construction Contractor's quotation for the Bulletin or Contract Change Order, or an amount mutually agreed upon by the D/CC and the Project Director.

Addenda and Bulletins: Upon notice or discovery, and as directed by the Project Director through issue of a Bulletin Authorization, the D/CC shall perform the required services to issue Addenda to the Bidding Documents, or Bulletins to the Contract Documents, to correct or clarify errors, omissions, or ambiguities, without additional compensation.

Coordination and Communication: Coordinate the D/CC's staff, Consultants, and all other Project related resources. Preside at all Project related construction meetings. Prepare and distribute copies of minutes of all meetings, correspondence, memoranda, records of telephone or other conversations and communications, and reports of all on-site visitations. Where essential or significant information is established or evaluated, where critical problems are identified, and/or where critical decisions are made outside meetings, incorporate a record of such into the next meeting record or provide and distribute written record to the Department and participants within two (2) business days following the date of occurrence. Otherwise meeting minutes shall be distributed within five (5) business days, as the Department may direct.

The D/CC's study and design/build construction schedule shall be detailed, dated, and time sequence related for all services appropriate for the scope of work.

The D/CC shall field check and verify the accuracy of all drawings and any data furnished by the Department, the State/Client Agency, or any other Project related source.

Professional Services and Instruments of Service Review: The Department shall review and accept or reject the D/CC's submittal of the respective phases of study or design services, Instruments of Service, and/or construction services, for conformance with the provisions of this agreement. The Department may require a written response to all questions and concerns raised regarding such services. The Department's review and any acceptance of the D/CC's submittals does not relieve the D/CC of its responsibilities. The Department will perform reviews and respond with comments, direction, or decisions promptly. The Department will coordinate Client Agency and Department staff comments prior to issuance.

Construction Inspection and Construction Administration: Where the D/CC's Contract includes provision and administration of construction contracts, the D/CC shall use the Department's "DMB-460 Project Procedures" package of forms and documents as included in the attached appendices.

Final Design/Build Bidding Documents and Review: The D/CC shall provide their Bidding Documents for review to the Project Team at 50 and 90 percent (%) completion and incorporate all required modifications and comments. If the final design appears to exceed the Project Budget, review with the Department cost reduction options and incorporate them with the Department's concurrence. Determine and confirm, in writing, the final design/build can be achieved within the Project Budget. Obtain written approval of the final Bidding Documents from the Department.

Code Compliance: The D/CC's Contract Documents shall comply with the State of Michigan Construction Code, 1972 PA 230, as amended, the State of Michigan Energy Code, the Americans With Disabilities Act (ADA) Accessibility Guide requirements, the State of Michigan Barrier-Free Access Code requirements, and all Project related construction code requirements, in effect at the time of award of this Contract. The D/CC shall advise and assist the Department with decisions on the Americans with Disabilities Act accessibility compliance. Assist the Department in obtaining approval of the Project and its design by appropriate governmental regulating and/or code enforcement authorities. Soil Erosion and Sedimentation Control plans/drawings will be submitted to the Department, no later than at the final design, 90 percent completion submittal stage. Submit documents to the Department of Labor and Regulatory Affairs (LARA) for review in a timely manner allowing appropriate time for review/permitting processes by respective authorities, such that the Project schedule is not unnecessarily delayed. Assist the State/Client Agency to secure any appropriate construction code waivers. Incorporate all required modifications into the Contract Bidding Documents. Follow through to ensure issuance of the construction codes and permits approvals. Secure all required design approvals before proceeding to construction.

Any approval secured does not relieve the D/CC from complying with the construction field Inspections review/enforcement requirements. Design code compliance and plan review approval fees shall be paid by the D/CC and will be compensated by the Department to the D/CC as an authorized Contract reimbursable expense.

Hazardous Materials: Where the Project involves work in an existing building and/or utility system, assist the Department to determine the scope of potential hazardous materials contamination that may require testing, abatement, and/or removal, prior to the renovation and/or during the new construction work of the Project. Hazardous materials testing and removal will be performed by the Department, with other Professionals, by separate Contract, who are licensed and insured to perform this service. Coordinate the services of this Contract with any hazardous material removal services required to implement this Project.

Sustainable Design and Construction: Sustainable Design and Construction practices shall be used wherever possible by the D/CC.

Specifications: Performance specifications shall be used when feasible. If performance specifications are not feasible, the D/CC shall name at least three (3) acceptable materials, products, or systems, and the specifications shall contain an "or equal" clause. Whenever possible, recycled materials and/or products, produced in the State of Michigan, shall be named and given first preference. Proprietary specifications or allowances may be permitted, with the Department's acceptance and written approval, but only for special, unavoidable conditions. Provide specifications, when requested by the Department, for purchasing or construction bidding items necessary to be pre-purchased through existing State Contracts, direct Bid materials, or equipment. Copies of the latest "State of Michigan Building Products List" may be obtained through the "Contract Connect" internet web site at <http://www.michigan.gov/buymichiganfirst/0,1607,7-225-48676-209976--,00.html>.

Checking Contract Documents: Check and coordinate all Contract Documents for completeness and accuracy. Cross-check and coordinate the requirements of all Contract Documents, including specifications, between the design disciplines for completeness, accuracy, and consistency.

Construction Bidding and Contracting Procedures: The D/CC shall prepare and distribute Bidding Documents and instructions as required to accommodate predetermined construction Bid packages and/or Phases, conduct pre-bid meetings, and issue complete preconstruction Addenda to all qualified construction Bidders as required. Exert every practical means to obtain several, qualified, construction Bidders for every Construction Contract. The Department will make its online bidding advertisement system available. The D/CC will be compensated by the Department with a Contract Change Order for providing the services necessary to rebid the Project for reason of defaulted or disqualified construction Bidder(s) or unacceptable price range as required by the Budget. The D/CC's construction bidding and contracting services are not complete until: (1) The lowest responsive, responsible, qualified construction Bidder's Bid has been selected and accepted by the Department; and (2) The lowest responsive, responsible, qualified construction Bidder's Construction Contract has been fully executed by the construction Bidder and the D/CC.

Construction Bid Evaluation and Recommendation of Construction Contract Awards: Monitor, review, evaluate, and provide the Department with written recommendations for the apparent lowest responsive, responsible, qualified, construction Bidder within five (5) business days of the date of the Department's construction Bid opening. Exempt from recommendation any firm that the D/CC has business association with this Project, and any firm(s) having any Consultant the D/CC has used in preparing the final Contract Documents or for any estimating work related to the Project. The D/CC shall conduct pre-contract meetings with responsive, responsible, qualified, construction Bidder(s) to review, at minimum, the following items: (1) The design intent of the D/CC's final Contract Documents; and (2) To advise and assist the Construction Contractor(s) in understanding the requirements of the General Conditions, scope of work, and its Construction Contract award procedures. If applicable, the D/CC firm shall use the MICHSPEC (Long Form) during the Project Construction Bidding and the Construction Contract Award.

Safety: In observed cases, which may involve danger to human life, immediate safety hazards to personnel, existing or impending damage to the Project, to State/Client Agency property, or to other property; as may be impacted by the Project, the D/CC shall inform the Construction Contractor(s) of the situation and their observations. The D/CC shall immediately record and report such situations to the Department and certify any accrued Project costs in writing.

The D/CC shall have access to the Construction Contractor(s) work at all times.

Establish and maintain effective construction Phase administration, office procedures, systems, and records to progressively, and exclusively, manage and control the D/CC's obligations, commitments, achievements, and expenditures under this construction Phase administration.

Monitor the quality and progress of the Project construction Phase work. Maintain all necessary Project records, provide on-site visitation reports, and provide all administrative office action as may be necessary to inform the Construction Contractor(s), in writing, with respect to their compliance with the design intent of the D/CC's Phase 500 - Final Design Contract Documents/architectural and engineering drawings and specifications requirements.

Final Design/Build Correction Procedures: Correct, at no additional cost to the Department, any final design/build errors or omissions and/or other Project related deficiencies identified during the Construction Phase. All reproduction costs for design interpretation clarifications and Bulletins related to the D/CC's final design/build errors or omissions and similar, or avoidable costs shall be accounted as part of the D/CC firm's calculated mark-up. Provide design clarifications and interpretations of the Contract Documents requirements necessary to: (1) Adequately describe the Project work; (2) Adapt final design/build documents to accommodate on-site field conditions identified during construction; (3) Refine design details that are not feasible and identified during construction; and (4) Comply with current construction/building codes, and all other Project related design and construction matters, as may be necessary to produce a complete Project.

Design Interpretations and Clarifications: For elements of construction having no respective change in cost to the State, the D/CC will provide instructions, and/or design interpretations and clarifications for design details within five (5) business days of the Construction Contractor's request, record same, in writing; and revise the D/CC firm's original final design/build drawings and specifications as appropriate to the Project scope. Marking and initialing of drawings is not an acceptable form of written instruction.

Shop Drawings/Submittals/Approvals: Monitor, evaluate, and provide administrative action, as necessary, to achieve timely processing of shop drawings and such other submittals and approvals that are the responsibility of the D/CC. Maintain a record of all required, received, rejected, and approved submittals of shop drawings, color/material samples, finishes, and other items requiring the D/CC's approval. Notify the Construction Contractor(s), in writing, (copy to the Department) of delinquent submittals, the consequences of such delays, and prescribe a time schedule for their submittal/resubmittal which will not jeopardize the Project completion date.

No design revisions will be made as part of the D/CC's review and approval of shop drawings, or other submittals. In addition to all other functions, the D/CC's approval of shop drawings shall verify the submittals furnished conforms to the design intent of the Contract Documents. Provide written approval or rejection of shop drawings within ten (10) business days of receipt. Provide and distribute approved submittals as directed by the Department.

Construction Schedule Progress: Monitor, evaluate, and provide timely action, as necessary, to achieve the Project on time and on schedule. Advise and assist the Department in taking all practical steps necessary to address and complete the Project in the event of performance delays or defaults by the Construction Contractor(s). Evaluate any documentable impact on the Project construction schedule claimed by the Construction Contractor(s) arising from Bulletin work. Provide appropriate and timely action, under terms allowable under the Construction Contract, to implement any Bulletin work which the D/CC and the Department consider critical to the Project construction schedule, but whose cost is disputed.

Within ten (10) business days of its receipt, evaluate and provide the Department with appropriate written recommendations, along with an analysis of any request by the Construction Contractor(s) for a time extension of their Construction Contract completion date.

No recommendation for a Construction Contract time extension may be submitted to the Department which is not substantiated by the D/CC's technical review and evaluation showing critical path work, noncritical path work, and float time for the complete Project and any work at issue and having such detail as to clearly document the Construction Contractor's claim. Any recommendation for a time extension of the Construction Contractor's Contract completion date must include a complete analysis of all direct and indirect costs of the Construction Contractor, the D/CC, and the Department regarding the time extension.

Where the Project is not substantially complete on the Construction Contract completion date, the D/CC may be liable for withholding of liquidated damages.

Construction Testing Program: Monitor, evaluate, and provide timely action in response to the results of the construction quality control and material testing program. In circumstances where the testing is not provided by the Department, evaluate and approve/disapprove the Construction Contractor(s) work plan for providing all construction test reports. Provide the Construction Contractor(s) and the Department with written evaluation of all construction test reports, copies of construction test reports, marked with the D/CC's approval or disapproval within five (5) business days of receipt of the report. Direct the Construction Contractor(s), in writing, to take appropriate, corrective, or replacement measures within a prescribed time period for any construction test reports not meeting the Construction Contract requirements. Follow up, as appropriate, to require the Construction Contractor(s) to achieve the design intent of the D/CC's final design Contract Documents, drawings, and specifications and avoid delays to any element of work which may, in the D/CC's opinion, result in a delay in the Construction Contract completion date. Notify the Construction Contractor, in writing, of any delinquent corrections/replacement and take administrative action in accordance with the Construction Contractor performance text.

Construction Management and Inspection: The D/CC shall provide and record sufficient field Inspections of the Project to administer the Project, as directly related to the degree of Project complexity and scope of work, up to and including full-time field Inspections. The construction field Inspections shall occur as the construction on-site field conditions and the Project may require and during the regularly scheduled progress and payment meetings. The D/CC shall use only personnel having such professional expertise,

experience, authority, and compatibility with departmental procedures as the Department may approve. The D/CC agrees that such characteristics are essential for the successful completion of the Project. Such individuals shall be replaced for cause where the Department determines and notifies the D/CC, in writing, of their unacceptable performance.

All construction progress Inspections shall be recorded in the form of a written report to the Department and the Construction Contractor within five (5) business days of the Project construction progress Inspection. The purpose of such Inspection/visitations includes, but is not limited to: (1) Achieve and maintain a working familiarity with the status, quantity, and quality of the Project construction work in place; (2) Determine if the actual Project construction schedule progress is in accordance with the approved schedule; (3) Review the installation and determine the acceptability of preparations for, and installation of, pending critical components and activities; and (4) The Inspection of Project construction work completed or in progress by the Contractor to determine and verify, in writing, to the Project Director and Owner's Field Representative that the quantity and quality of all Project construction work is in accordance with the Contract Documents.

The D/CC shall review the Project construction work in place and that which is sequentially planned. The D/CC shall determine whether the actual Project construction schedule progress appears to be in accordance with the approved construction schedule and whether the quality of the work appears to be in accordance with the design intent of the Contract Documents, and is without apparent defects or deficiencies. No on-site advertising by, or of, the D/CC or Project signs other than those appropriate to locate an approved field office will be permitted.

Problem Solving Meetings: Conduct and record problem solving meetings between the D/CC and its Consultants, the Construction Contractor(s), their subcontractors, the Department, Project Director, and their Owner's Field Representative, and any construction managers and other affected parties, on-site or elsewhere to assess the construction work progress. Provide design interpretation decisions to resolve problems affecting the construction work. These problem solving meetings shall be scheduled as the construction field conditions and the Project requirements may require, and/or shall be at such time as the Construction Contractor(s), the D/CC, the Department, Project Director, Owner's Field Representative, and any construction manager agree is appropriate to the Project work progress. Non-scheduled or emergency meetings shall be held at such time as necessary to maintain the schedule of various work items and to avoid delays in the Contract completion date.

Progress Meetings: Conduct and record monthly scheduled Project construction progress meetings with the Department, Project Director, Field Representative, the State/Client Agency, the Construction Contractor(s), and any construction manager. Assess work progress and provide timely action as necessary to maintain the work schedule and respond to and resolve all design related and construction items affecting the Project cost and be in compliance with the Contract Documents.

Final Project Inspection: Conduct final construction field Inspections of the Project, in concert with the Construction Contractor(s), the Department, Project Director, Field Representative, the State/Client Agency, and any construction manager. Final Project field Inspections shall be conducted to witness and record equipment start-up and all testing, verify, in writing, each Construction Contractor has achieved Substantial Completion, prepare Punch List(s) items, and determine the status of any part of the Project work where the Department intends to take beneficial use or occupancy. Verify to the Project Director and OFR, in writing, the completeness and accuracy of the Construction Contractor's as-built drawings and identify any corrections required.

Construction Contractor Performance: Monitor and evaluate the Construction Contractor(s) performance and provide timely action to cause the Construction Contractor(s) to correct their construction deficiencies. With the Department's concurrence, the D/CC may direct, in writing, the exposure and testing of any Project construction work, already in place or covered, which the D/CC, and/or the Department, believes may not meet the design intent of the D/CC's final design requirements.

Notify the Construction Contractor, and the Department, in writing, within five (5) business days its identification of any aspect of the Construction Contractor's performance which is inconsistent with the Contract Documents requirements or which, in the D/CC's opinion, is inconsistent with the design intent of the Contract Documents. Prescribe a reasonable time for correction which will not jeopardize the Project construction schedule completion date. Exert all practical means necessary to require the Construction Contractor to perform, as required by their Construction Contract, the design intent of the Contract Documents.

Deficient Performance: Upon identification of deficient performance, where the Construction Contractor fails to provide timely or acceptable performance, the D/CC shall proceed as follows: (1) Notify within three (3) business days the Department, the Construction Contractor, and any affected surety, in writing and by registered mail delivery, of the potential for the Construction Contractor's default action and the D/CC's recommendation; (2) Identify applicable Construction Contract references, with design interpretation of such references, and clearly explain where the Construction Contractor's performance fails to meet the design intent of the D/CC's final design drawings and specifications requirements; and (3) Specify a time and date for the Construction Contractor to begin active and continuous work towards Contract compliance with a specific time and date for completion.

Bulletin Authorization: Request authorization to issue each individual Bulletin. The D/CC's Bulletin Authorization request will: (1) Identify the problem requiring the change; (2) Describe clearly if such problem arises from the final design/build errors or

omissions; (3) Identify the anticipated design cost and the estimated construction cost to implement the change(s); and (4) Describe clearly in the D/CC's opinion which part, if any, of the design and/or construction costs are the obligation of the State, the D/CC or the Construction Contractor. Include a Contract Modification request for any work outside the scope of work. Identify any anticipated schedule implications.

Bulletins: All reproduction costs for design interpretations and clarifications and Bulletins related to the D/CC's final design/build errors or omissions and similar, or avoidable costs shall be accounted as part of the D/CC's calculated mark-up. Describe, by Bulletin, design revisions necessary to correct the final design/build errors or omissions, to address previously unidentified on-site field design conditions, to reduce costs, and for all other matters approved by the Department involving costs or credit to the State. Postponement of action on items in order to accumulate multi-item Bulletins is not permitted.

Prepare and issue Bulletins within ten (10) business days of receipt of the Department's authorization. Bulletins shall be in such form and detail as the Department may prescribe. All Bulletin revisions shall be incorporated, by the D/CC, into the appropriate originals of all applicable Contract Documents. Revised drawings and specifications shall be issued as part of any Bulletin. Each Bulletin shall prescribe a schedule for the Construction Contractor's response. Provide copies of each Bulletin to the Department and distribute as the Department may direct.

Evaluate the Construction Contractor's price quotation(s). Review and attempt to negotiate with the Construction Contractor to provide the Department with costs that are consistent with the value of the Project Bulletin(s). Recommend appropriate action to the Department regarding the Construction Contractor's quotations within five (5) business days of receipt thereof.

Payment Procedures: Monitor, evaluate, and provide timely administrative action, as necessary, to certify or reject, as appropriate, and process the D/CC's subcontractors and consultants schedule of costs and monthly submitted payment requests.

The D/CC will certify or reject all submitted payment requests from its subcontractors and consultants, in writing, within ten (10) business days of receipt in the D/CC's office. The D/CC shall determine and certify to the Department, in writing, the dollar amount to be due in the subcontractor/consultant's monthly payment request. or the D/CC shall return the payment request, with explanation, rejecting the payment request certification. If a payment request is rejected, the request shall be returned to the submitting party accompanied by a written explanation, and a copy shall be given to the Department's Project Director. If a payment request is returned to the subcontractor or consultant, that entity shall make the necessary corrections and resubmit that payment request to the D/CC.

The D/CC will issue a payment certification only pursuant to a correctly prepared and accurate payment request and only for acceptable work. Payment certification shall constitute a written representation by the D/CC, that based on their on-site field Inspections, evaluations of field reports, test results, and other appropriate and available factors, the quantity and quality of work for which the payment request is certified has been accomplished in accordance with the Contract and if applicable, materials are properly stored on or off-site.

No payment certificate shall be submitted that requests payment for disputed Project work or any Project work showing deficient test results. No payment request certificate may be submitted after the Contract completion date which does not provide for withholding of assessable and/or projected liquidated damages. Pursuant to the Department's notification, the D/CC's certification shall reduce from the amount earned, two (2) times the amount of any current prevailing wage rate payment deficiency, as certified by the Department of Licensing and Regulatory Affairs, Wage and Hour Division against the Construction Contractor or any Subcontractor or supplier thereof (See attached Appendix – Project Prevailing Wage Trade Labor Rates).

Punch List: Prepare and distribute, as required, Punch Lists for each Construction Contract. Prescribe a reasonable time schedule for completion of all items, and identify an amount to be withheld from payment consisting of a minimum of two (2) times the estimated value of the unacceptable construction work plus an amount sufficient to assure available funds to cover all costs, as may become necessary to complete the remaining delinquent work. Distribute Punch Lists within five (5) business days of the final Inspection. Notify the Construction Contractor of any delinquent Punch List construction corrections and take appropriate action.

Close-Out Procedures: Within thirty (30) calendar days after Substantial Completion of the Project, provide to the Project Director: (1) All Project code compliance approvals; (2) Final Inspections; (3) Final occupancy permits; (4) As-built drawings; (5) Copies of "Operation and Maintenance Manuals" of the Project systems; and (6) Equipment warranties and guarantees.

Operation and Maintenance Manuals: Provide three (3) hard copies and two (2) electronic copies of "Operation and Maintenance Manuals" of the Project systems and equipment. These manuals shall include copies of reduced size, as-built drawings, specifications, and all instructions published or furnished by respective manufacturers, construction code compliance certificates, and guarantees. The manuals shall also include a complete description of the D/CC firm's final design/build intent concepts, operation, and required maintenance of each system. Participate in the Construction Contractor's start-up and training instruction of the State/Client Agency personnel in the operation and use of the Project systems.

As-Built Documents: Provide as-built drawings incorporating and depicting all construction modifications, additions, and deletions made either by Addendum, Bulletin, supplemental written instructions, and the written notations into the Contract Documents within thirty (30) calendar days after Substantial Completion of each Project. The D/CC shall provide the following two (2) types of as-built documents for Project close-out: (1) One (1) set of legible/reproducible mylars and (2) two (2) sets of computer compact disks (CD's) of completely updated, as-built, original tracings of the Contract Documents. The CD's shall be in an Auto CAD format that is "Auto CAD readable" and conform to the American Institute of Architects (AIA) National CAD Standard format. The as-built documents shall be free of the D/CC's original final design errors and omissions.

Claims: Evaluate and respond to any claims (in whole or in part) against the Department within five (5) business days of the receipt of such claim. Where any element of claims or subsequent litigation, are based, in whole or in part, upon any deficiency or delinquency in the D/CC's services, the D/CC shall provide, in a timely manner, all services necessary to defend the claim issue(s). No payment will be due for claim defense services accumulated under this Task until settlement or judgment of litigation concludes the claim issue. The claim settlement or judgment decision will be used as the basis for determining the D/CC's obligation, if any, for the costs of such services and/or for any costs incurred by the Department for which performance by the D/CC may be responsible or contributory. Billing under this claims Task will be in accordance with an appropriate Contract Modification and/or Contract Change Order.

ARTICLE 2 COMPENSATION

Compensation to the D/CC for their services shall be on an hourly, billable rate basis for services rendered by salaried and non-salaried personnel, technical, and non-technical support employees, except for any authorized reimbursable expenses provided for in this Contract. Total compensation for any Phase shall not exceed the fee authorized for that Phase, unless so authorized in writing by the Department's approved Contract Change Order. Services shall not be performed and no Project expense shall be incurred by the D/CC prior to the issuance of a written and signed Contract and a DMB Form 402 - Contract Order. The D/CC may not incur costs, or bill the Department, for services in excess of the estimates established for this Project, without the prior written agreement of the Department. The attached proposal prepared by the D/CC in response to the Request for Proposal, by the Owner, may describe methodology, services, schedule, and other aspects of the work to be performed under the Contract but does not supersede the Contract.

Other compensation for the D/CC firm shall be determined using the D/CC's current hourly billable rate for employees performing a direct service for the Project. Billable rates shall not change during the life of this Contract without written approval by the Department.

- 2.1 **ARCHITECTURAL AND/OR ENGINEERING DESIGN/BUILD SERVICES:** These are the D/CC's staff members who work at or with the D/CC's Consultant's offices while supporting the Department's Project needs. These individuals will be invoiced on the basis of their hourly billable rates as shown on D/CC Hourly Billing Rate Compensation form.
- 2.2 **CONSTRUCTION SERVICES/TRADE LABOR/SUBCONTRACTORS:** Includes the labor, equipment, material, and supervision required to provide all construction and maintenance work for this Contract. The physical work activities may be performed by a combination of tradesmen or subcontractors selected, through a public advertisement or other competitive Bid selection process, that is preapproved by the Department. The final selection process shall be performed by the D/CC. In an emergency situation, this work may be performed on a time-and-materials basis, with the complete, prior knowledge and approval of the Department.

For the physical work activities themselves (includes construction and maintenance), the D/CC will invoice for actual costs incurred, based upon a Not-to-Exceed estimate provided and approved prior to initiation of the work itself for each Project. All trade labor work will be invoiced as specified in the attached Appendix – Project Prevailing Wage Trade Labor Rates.

- 2.3 **CONSTRUCTION/GENERAL CONDITIONS:** The General Condition items are estimated as part of the Project cost. This estimate shall be regarded as a Not-to-Exceed number, against which only actual Project costs will be charged.

The General Condition material items shall be invoiced to the Department on an actual cost incurred basis. All project labor for approved self-performed work will be invoiced at the actual attached payroll hourly billing compensation rates provided by the D/CC and their Consultant's and identified and listed in this article.

- 2.4 **CONSTRUCTION SERVICES/MANAGEMENT SERVICES:** The management effort required to support the design/build, procurement, implementation, and close-out process will also be invoiced to the Department. Project services will include estimating, scheduling, Bid and award, scope of work determination, cost tracking, reporting, etc.

The actual Project costs shall be allocated in the following manner:

1. Hourly billing rates for actual costs, charged either to the Projects, or to a central account, i.e., grounds and maintenance overhead.

The management effort required to deliver the Project will be included as part of the Project Delivery cost on a Not-to-Exceed basis. Only the actual cost of personnel utilized will be charged to the Project on the basis of their hourly billable rates as shown on the D/CC Hourly Billing Rate Compensation form.

- 2.5 CONSTRUCTION SERVICES/OVERHEAD AND PROFIT FLAT FEE: All of the cost factors presented above are actual out-of-pockets expenses to the D/CC to directly perform the work. In order to compensate the D/CC and their Consultant(s) for indirect overhead and profit, the D/CC requests that a flat fee percentage be applied to all actual costs identified in Articles 2.2 and 2.3 as noted on their proposal cost breakdown.
- 2.6 EMPLOYEE HOURLY BILLABLE RATES: The employee hourly billable rates and ranges shall be as shown on the D/CC Hourly Billing Rate Compensation form. Any employee associated with this Project who performs the professional services of a subordinate or of a position classification having a lower classification/pay range shall be accounted and paid for at the lower hourly billing pay rate.

The D/CC and their Consultant shall provide only one (1) Key Principal (Chief Executive Officer) Personnel from each design discipline to contribute direct services to this Project.

- 2.7 HOURLY BILLING RATES: Hourly billing rates will include all direct and indirect costs to the State for the D/CC's services under this Contract other than the authorized and approved reimbursements (See attached Appendix). Hourly billing rates shall be based on the D/CC's documented historical operating expenses and adjusted for Project specific costs. In no case shall this documentation period include more than eighteen (18) months prior to the date of award of this Contract. The D/CC's use of providing different hourly billing rates for different Phases is not allowed.

Hourly billing rates include, but are not limited to: Overhead items such as employee fringe benefits, vacations, sick leave, insurance, taxes, pension funds, retirement plans, meals, lodging, and all Project related travel expenses for Projects less than one-hundred (100) miles in each direction from the D/CC's Michigan office. The cost of all telephone-related services computer costs/operating costs and time, and all reproduction services (except final design Contract Bidding Documents/final design drawings and specifications) and where specifically authorized elsewhere in this Contract, the reproduction of final design Contract Documents for legislative presentation. The hourly billing rate also includes, all reproduction costs for study/design interpretations, study/design clarifications and Bulletins related to the D/CC's Phase 500 - Final Design Contract Documents study/design errors or omissions, construction code compliance (precipitating either from design code compliance and plan review, study/design interpretations, or construction on-site/field Inspections), and similar, or avoidable costs shall be accounted as part of the D/CC's calculated hourly billing rates. All postage, mail or other shipping or delivery services, acquisition, bad debts, previous business losses, employment fees, depreciation and operating costs for equipment, including computer design and/or computer drafting systems, and any specialized testing equipment are to be included. The hourly billing rate shall include, without exception, secretarial, typing/word processing, editing, and clerical services utilized in any way for the Project as well as other nontechnical and/or overhead employees. All other direct or indirect monetary costs, including that of processing the costs of the D/CC's Consultant's, and reimbursable expense items shall be included. The hourly billing rate also includes all profit without regard to its form or distribution. Project related travel for Projects more than one-hundred (100) miles in each direction from the D/CC's Michigan office shall be treated as an authorized reimbursable expense at the State of Michigan's current travel rates (See Article 2.9 text of this Contract).

The D/CC's calculated hourly billing rates, include, but are not limited to: Any costs associated with litigation and settlements for the professional, or other liability suits, out-of-state offices and associated travel, bonuses, profit sharing, premium/overtime costs, public relations, entertainment, business promotion, contributions, and various speculative allowances.

Upon request, all hourly billing rates must be substantiated in writing and accompanied with records justifying each D/CC's calculated hourly billing rates.

The hourly billing rates for the D/CC may not be applied to the work of the D/CC's Consultant's. Each Consultant must submit a separate hourly billing rate with proper documentation for the Consultant services they will provide. The hourly billing rates of the respective D/CC's Consultant shall be used for that Consultant firm's personnel only. No mark-up may be applied by the D/CC to their Consultant's firm's hourly billing rate(s) charges. The D/CC's Consultant services shall be billed as an authorized reimbursable.

All Project reproduction costs for study/design clarifications and Bulletins dealing with the D/CC's Phase 500 - Final Design Contract Documents study/design errors or omissions, construction code compliance (precipitating either from design code

compliance and plan review, study/design interpretations, or construction on-site/field Inspections, or avoidable costs shall be accounted as part of the D/CC's calculated hourly billing rates.

- 2.8 **RANGE OF EMPLOYEE HOURLY BILLING RATES:** The D/CC shall identify the discipline service being provided and include the D/CC's Consultant's technical employee(s) full payroll signature names and position classifications for the Project and their current hourly billing rates at the beginning of the Project. Also, provide the technical employee(s) anticipated hourly billing rates at the end of the Project based on the D/CC's estimated schedule duration. This range of current and anticipated hourly billing rates shall reflect the actual costs currently being paid to all of the D/CC's Consultant's technical employees for the services within their specified position classification, and shall include any anticipated pay increases over the life of the D/CC's Consultant's estimated Contract schedule. The range of hourly billing rates for any employee position or classification may not be changed without a Contract Modification approved by the Department in writing. No mark-up of the D/CC's Consultant's hourly billing rates will be allowed.
- 2.9 **DESIGN BUILD/DIRECT COST REIMBURSEMENT ITEMS:** The D/CC's Consultant services shall be treated as an authorized reimbursable expense item at a direct cost. Reimbursement of authorized expense items is intended only as a means to compensate the D/CC for their direct costs. The D/CC shall be responsible for: (1) The selection of the supplier of their professional services or materials; (2) The coordination, adequacy and application of their professional services, whether provided by the D/CC's staff or provided by their Consultant; and (3) Any Project costs that exceed the Contract per Phase reimbursement Budget.

ARTICLE 3: PAYMENTS

Payment of the professional fee to the D/CC shall be based on the D/CC's performance of authorized Contract professional service(s) and expenses performed prior to the date of each monthly submitted payment request. Payment requests shall be submitted monthly to the Project Director on a Department payment request form (DMB-440). Payment shall be made to the D/CC within thirty (30) consecutive calendar days following the Department's receipt and approval of an approved payment request invoice from the D/CC. Payment requests to the Department's Project Director shall include signed certification by the D/CC for the actual percentage of Project work completed as of the date of invoicing for each Phase/Task. The D/CC's payment request applications shall summarize the amounts authorized, earned, previously paid and currently due for each Project Phase. Payment request applications to the Department's Project Director shall be supported by itemized Project work records or documentation for each assigned Project Phase in such form and detail as the Department may require. The services of the D/CC and their Consultant's submitted payment request applications shall include similar information. This includes, but is not limited to:

- a) Phase/Task Numbers for the professional services provided for the Project scope of work.
- b) Name of individual providing professional service and position/classification title as defined in the Article 2 - Compensation text.
- c) Hours worked: Authorized reimbursable expense items provided.
- d) Current hourly billing rate charges for each individual position classification.
- e) Copy of certified on-site visitation log or site visit report showing time on-site.
- f) Receipts for authorized reimbursable expense items.
- g) Itemized invoices from each of the D/CC's and their Consultant(s) documenting that firm's professional services charge and the Project work related services provided.

ARTICLE 4: ACCOUNTING

The D/CC shall keep current and accurate records of Project costs, expenses of hourly billing rates, authorized reimbursable expense items, and all other Project related accounting document costs to support the monthly application for payment. Project records shall be kept on a generally recognized accounting basis. Such records shall be available to the Department for a period of three (3) years after the Department's final payment to the D/CC and their Consultant. The State of Michigan reserves the right to conduct, or have conducted, an audit and Inspection of these Project records at any time during the Project or following its completion.

ARTICLE 5: INSURANCE

The D/CC shall purchase, maintain, and require such insurance that will provide protection from claims set forth below which may arise out of or result from the D/CC's services under this Contract, whether such service is performed by the D/CC or performed by any of the D/CC's Consultant's or by anyone directly or indirectly employed by them, or by anyone for whose acts they may be liable. The following insurance policy limits described below are intended to be the minimum coverage acceptable by the State:

For the purpose of this Section, "State" includes its departments, divisions, agencies, offices, commissions, officers, employees, and agents.

- (a) The D/CC must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect the State from claims that may arise out of or result from or are alleged to arise out of or result from the D/CC's, Consultants, Contractor, or a Subcontractor's performance, including any person directly or indirectly employed by the D/CC, Consultant, Contractor, or a Subcontractor, or any person for whose acts the aforementioned may be liable.
- (b) The D/CC waives all rights against the State for the recovery of damages that are covered by the insurance policies the D/CC is required to maintain under this Section. The D/CC's failure to obtain and maintain the required insurance will not limit this waiver.
- (c) All insurance coverage provided relative to this Contract is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State.
- (d) The State, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Section.
- (e) Unless the State approves, any insurer must have an A.M. Best rating of "A-" or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by the State. All policies of insurance must be issued by companies authorized by the Department of Licensing and Regulatory Affairs, Office of Financial and Insurance Regulation to do business, as an insurer, in the State of Michigan. To view the latest A.M. Best's Key Ratings Guide and the A.M. Best's Company Reports (which include the A.M. Best's Ratings) visit the A.M. Best Company internet web site at <http://www.ambest.com>.
- (f) Where specific coverage limits are listed in this Section, they represent the minimum acceptable limits. If the D/CC's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.
- (g) The D/CC must maintain all required insurance coverage throughout the term of this Contract and any extensions. However, in the case of claims-made Commercial General Liability policies, the D/CC must secure tail coverage for at least three (3) years following the termination of this Contract.
- (h) The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the D/CC to any indemnified party or other persons.
- (i) The D/CC is responsible for the payment of all deductibles.
- (j) If the D/CC fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without the State's approval, the State may, after giving the D/CC at least 30 days notice, pay the premium or procure similar insurance coverage from another company or companies. The State may deduct any part of the cost from any payment due the D/CC, or require the D/CC to pay that cost upon demand.
- (k) In the event the State approves the representation of the State by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.
- (l) If single policy limits are used to fill more than one of these requirements evidence of separate aggregate limits must be noted on the certificate.

5.1 Workers' Compensation and Employer's Liability Insurance

The D/CC must provide Workers' Compensation and Employer's Liability coverage according to applicable laws governing work activities in the state of the D/CC's domicile. If the applicable coverage is provided by a self-insurer, the D/CC must provide proof of an approved self-insured authority by the jurisdiction of domicile.

For employees working outside of the state of the D/CC's domicile, the D/CC must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

5.2 Owner's Liability Insurance

The D/CC shall purchase, maintain and submit to the Owner an Owners and Contractors Protective (OCP) Liability Insurance policy, issued on an occurrence basis, naming the Owner as named insured. The OCP insurance shall be primary insurance for the Owner and serve in place of adding the Owner as an insured in the Contractor's policy. The OCP insurance shall be obtained from the insurer providing the Contractor's liability insurance to avoid duplication of coverage.

The OCP policy limit shall be \$1,000,000.00 combined single limits, bodily injury, and property damage and shall not contain any exclusion relative to any supervisory functions by the Owner which may arise out of or result from operations under the Contract.

5.3 Motor Vehicle Insurance

If a motor vehicle is used in relation to the D/CC's performance, the D/CC must have vehicle liability insurance on the motor vehicle for bodily injury and property damage as required by law.

5.4 Commercial General Liability Insurance

For claims for damages because of bodily injury or death of any person, other than the D/CC's employees, or damage to tangible property of others, including loss of use resulting therefrom, to the extent that such kinds of liability are not insured by other specific liability insurance and are ordinarily insurable under general liability insurance. The D/CC must list the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the Commercial General Liability certificate. The D/CC also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

Minimal Limits:

\$1,000,000 Personal & Advertising Injury Limit;

\$1,000,000 Each Occurrence Limit;

\$2,000,000 General Aggregate Limit other than Products/Completed Operations; and

\$2,000,000 Products/Completed Operations Aggregate Limit.

5.5 Construction Manager's Professional Liability Insurance

For claims for damages arising out of an error, omission or negligent act in the performance of Construction Management/General Contractor services, subject to limits of liability of not less than \$1,000,000 each claim and an annual policy period aggregate of not less than \$2,000,000.

5.6 Professional Liability Insurance (Errors and Omissions)

For claims for damages arising out of an error, omission or negligent act in the performance of professional services.

Minimal Limits:

\$1,000,000 Each Occurrence

\$2,000,000 Annual Aggregate

The Professional's Errors and Omissions coverage shall include coverage for claims resulting from acts of forbearance that cause or exacerbate pollution and claims of bodily injury and property damage in the amount of \$1,000,000 minimum coverage per occurrence, \$2,000,000 annual aggregate. This insurance is required of all Professionals who conduct professional environmental services including, but not limited to, any of the following services:

- (i) Remedial System Design.
- (ii) Remediation Management.
- (iii) Feasibility Development and Implementation.
- (iv) Hydrogeological Evaluation.
- (v) Media Testing and Analysis.
- (vi) Subsurface and Geophysical Investigation.
- (vii) Other related activities as determined by the Department.

5.7 Umbrella Insurance

Minimal Limits:

\$2,000,000 Each Occurrence

\$2,000,000 Annual Aggregate

5.8 Property Insurance (Builder's All Risk Insurance)

The Owner or its designee shall purchase and maintain property insurance for one hundred percent (100%) of the actual cash replacement value of the insurable Work while in the course of construction, including foundations, unless foundations are specifically excluded, additions, attachments, and all fixtures, machinery and equipment belonging to and constituting a permanent part of the building structure. The property insurance also shall cover temporary structures, materials and supplies of all kinds, to be used in completing the Work, only while on the building site premises or within five hundred (500) feet of the site. The property insurance shall insure the interests of the Owner, D/CC, Construction Contractor and all Subcontractors and Suppliers at any tier as their interests may appear. The property insurance shall insure against "all risk" of physical loss or damage to the extent usually provided in policy forms of insurers authorized to transact this insurance in Michigan, and shall be subject to a deductible of \$10,000.00 dollars for each loss occurrence. A copy of the master insurance policy will be kept at the Department for review by the D/CC.

The Contractor shall cooperate with the Owner in determining the actual cash replacement value of any insured loss. Any deductible amount shall be assumed or shared by the Contractor and Subcontractors, at any tier, in accordance with any agreement the parties in interest may reach.

The Owner shall purchase and maintain for its benefit boiler and machinery insurance for boiler and machinery required to be registered and inspected by Law.

Contractual Liability Insurance for claims for damages that may arise from the D/CC's assumption of liability on behalf of the State under Article 6 concerning indemnification for errors, omissions, or negligent acts in the course of the professional service or other provision within this Contract to the extent that such kinds of contractual liability are insurable in connection with and subject to limits of liability not less than for the general liability insurance and the professional liability insurance and set forth in subsections (c) and (d) above.

Except where the State has approved a subcontract with other insurance provisions, the D/CC must require any Consultant/Subcontractor to purchase and maintain the insurance coverage required in this Article. Alternatively, the D/CC may include a Consultant/Subcontractor under the D/CC's insurance on the coverage required in that Section. The failure of a Consultant/Subcontractor to comply with insurance requirements does not limit the D/CC's liability or responsibility.

Certificate of Insurance documents, acceptable to the State, shall be provided and filed with the Department prior to commencement of the D/CC's Project services, unless otherwise approved in writing, and not less than 20 days before the insurance expiration date every year thereafter. Facsimile copies of the Certificate of Insurance will not be accepted. Certificate of Insurance documents must be either submitted hard copy or portable document file (.pdf). The Certificate of Insurance documents must specify on the certificate in the oblong rectangle space labeled "Description of Operations/Locations/Vehicles/Exclusions Added By Endorsement/Special Provisions/Special Items" the following items: **(1) The Project File No.; (2) The Project Title; (3) Description of the Project; and (4) The State of Michigan must be named as an "Additional Insured on the General Liability Insurance Policy."** The Certificate of Insurance documents shall contain a provision that the Project insurance coverage afforded under the insurance policies for this Contract will not be modified or canceled without at least thirty (30) consecutive calendar days prior written notice, except for 10 days for non-payment of premium, to the State of Michigan, Department.

The D/CC shall purchase, maintain and require such insurance that will provide protection from claims set forth below which may arise out of or result from the D/CC's services under this Contract, whether such service be by the D/CC or by any of the D/CC's Consultant(s) or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. The following insurance policy limits described below are intended to be the minimum coverage acceptable by the State:

The D/CC and the Construction Contractor shall provide and maintain performance/labor, material and payment bonds as designated in the Department's, "MICHSPEC 2001 Edition of The Owner and Contractor Standard Construction Contract and General Conditions for Construction" or the current Department's, "DMB Short Form 401 - Proposal and Contract/Front-End Package for Small Projects for Professional Services Contractors (PSC) with General Conditions for Construction and Instructions to Bidders" general conditions.

The attached Appendix, Original Performance, Labor and Material Bonds and Certificates of Insurance documents required for this Project shall be in force for this Project until the final payment by the State to the D/CC is made and shall be written for not less than any limits of liability specified above. The D/CC has the responsibility for having their Consultant(s) comply with these insurance requirements.

Also, be advised that the Original Surety Bonds required for a Construction Contract will not be accepted by the State of Michigan unless, the surety bonding company is listed in the current United States Government Department of Treasury's, Listing of Approved Sureties (bonding/insurance companies), Department Circular 570. This Circular 570 Listing is published annually every July 1, in the Federal Register solely for the information of providing a listing of companies holding certificates of authority as acceptable sureties on Federal bonds and as acceptable reinsuring companies required to provide surety bonds to the United States Government. Copies of the current Circular 570 Listing of approved surety bonding/insurance companies and interim changes may be obtained through the internet web site at <http://www.fms.treas.gov/c570/c570.html>.

ARTICLE 6: INDEMNIFICATION

(a) To the extent permitted by law, the D/CC shall indemnify, defend and hold harmless the State from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the D/CC in the performance of this Contract and that are attributable to the negligence or tortious acts of the D/CC or any of its Subcontractors/Consultants, or by anyone else for whose acts any of them may be liable.

(b) Employee Indemnification

In any and all claims against the State of Michigan, its departments, divisions, agencies, boards, sections, commissions, officers, employees and agents, by any employee of the D/CC or any of its Subcontractors/Consultants, the indemnification obligation under this Contract shall not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the D/CC or any of its Subcontractors/Consultants under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

(c) Patent/Copyright Infringement Indemnification

To the extent permitted by law, the D/CC shall indemnify, defend and hold harmless the State from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against the State to the extent that such action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the D/CC or its Subcontractors/Consultants, or the operation of such equipment, software, commodity or service, or the use of reproduction of any documentation provided with such equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or services, or its operation, become or in the State's or D/CC's opinion be likely to become the subject of a claim of infringement, the D/CC shall at the D/CC's sole expense (i) procure for the State the right to continue using the equipment, software, commodity or service or, if such option is not reasonably available to the D/CC, (ii) replace or modify to the State's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if such option is not reasonably available to D/CC, (iii) accept its return by the State with appropriate credits to the State against the D/CC's charges and reimburse the State for any losses or costs incurred as a consequence of the State ceasing its use and returning it.

Notwithstanding the foregoing, the D/CC shall have no obligation to indemnify or defend the State for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of the State; or (ii) use of the equipment in a configuration other than implemented or approved in writing by the D/CC, including, but not limited to, any modification of the equipment by the State; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the D/CC under this Contract.

ARTICLE 7: OWNERSHIP OF DOCUMENTS

All Contract Documents, Instruments of Service, drawings, specifications, reports, photographs, or other Project related documents prepared and furnished by the D/CC and their Consultant shall become the property of the State upon their request, in writing, by the State or upon the prior termination of the D/CC's services hereunder, and the D/CC shall have no claim for further employment or additional compensation as a result of this action taken by the State to request full rights of ownership of these documents and materials.

ARTICLE 8: TERMINATION

The State may, by written notice to the D/CC, terminate this Contract in whole or in part at any time, either for the State's convenience or because of the failure of the D/CC to fulfill their Contract obligations. Upon receipt of such notice, the D/CC shall:

- a) Immediately discontinue all professional services affected (unless the notice directs otherwise), and
- b) Deliver to the State all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the D/CC in performing this Contract, whether completed or in process.

8.1 If the termination is for the convenience of the State, an equitable adjustment in the Contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed professional services.

8.2 If the termination is due to the failure of the D/CC to fulfill their Contract obligations, the State may take over the work and prosecute the same to completion by Contract or otherwise. In such case, the D/CC shall be liable to the State for any additional cost occasioned to the State thereby.

8.3 If, after notice of termination for failure to fulfill Contract obligations, it is determined that the D/CC had not so failed, the termination shall be deemed to have been effected for the convenience of the State. In such event, adjustment in the Contract price shall be made as provided in Section 8.1 of this article.

8.4 The rights and remedies of the State provided in this article are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 9: SUCCESSORSHIP AND ASSIGNS

This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that neither of the parties hereto shall assign this Contract without the prior written consent of the other.

ARTICLE 10: GOVERNING LAW

This Contract shall be construed in accordance with the laws of the State of Michigan.

ARTICLE 11: NONDISCRIMINATION

In connection with the performance of the Project scope of work under this Contract and in accordance with the attached Appendix – Certificate of Awardability, the D/CC and their Consultant agrees as follows:

- a) The D/CC will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, age, sex, height, weight, marital status, or a physical or mental disability that is unrelated to the individual's ability to perform the duties of the particular job or position. The D/CC will provide equal employment opportunities to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, religion, national origin, age, sex, height, weight, marital status, or a physical or mental disability that is unrelated to the individual's ability to perform the duties of the particular job or position. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- b) The D/CC will, in all solicitations or advertisements for employees placed by or on behalf of the D/CC, state that all qualified applicants will receive equal employment opportunity consideration for employment without regard to race, color, religion, national origin, age, sex, height, weight, marital status, or a physical or mental disability that is unrelated to the individual's ability to perform the duties of the particular job or position.
- c) The D/CC or their collective bargaining representative will send to each labor union or representative of workers with which is held a collective bargaining agreement or other Contract or understanding, a notice advising the said labor union or workers' representative of the D/CC's nondiscrimination commitments under this article.
- d) The D/CC will comply with all published rules, regulations, directives, and orders of the Michigan Civil Rights Commission relevant to the Article 6, 1976 PA 453, as amended.
- e) The D/CC will furnish and file nondiscrimination compliance reports within such time and upon such forms as provided by the Michigan Civil Rights Commission; said forms may also elicit information as to the practices, policies, program, and employment statistics of the D/CC and of each of their Consultant(s). The D/CC will permit access to all books, records, and accounts by the Michigan Civil Rights Commission, and/or its agent, for purposes of investigation to ascertain compliance with this Contract and with rules, regulations, and orders of the Michigan Civil Rights Commission relevant to the Article 6, 1976 PA 453, as amended.
- f) In the event that the Michigan Civil Rights Commission finds, after a hearing held pursuant to its rules, that the D/CC has not complied with the contractual nondiscrimination obligations under this Contract, the Michigan Civil Rights Commission may, as part of its order based upon such findings, certify said findings to the State Administrative Board of the State of Michigan, which the State Administrative Board may order the cancellation of the Contract found to have been violated, and/or declare the D/CC ineligible for future Contracts with the State and its political and civil subdivisions, Departments, and officers, and including the governing boards of institutions of higher education, until the D/CC complies with said order of the Michigan Civil Rights Commission. Notice of said declaration of future ineligibility may be given to any or all of the persons with whom the D/CC is declared ineligible to Contract as a contracting party in future Contracts. In any case before the Michigan Civil Rights Commission in which cancellation of an existing Contract is a possibility, the State shall be notified of such possible remedy and shall be given the option by the Michigan Civil Rights Commission to participate in such proceedings.
- g) The D/CC shall also comply with the provisions of the 1976 PA 220, as amended, concerning the civil rights of persons with physical or mental disabilities.

- h) The D/CC will include, or incorporate by reference, the nondiscrimination provisions of the foregoing paragraphs a) through g) in every subcontract or purchase order unless exempted by the rules, regulations or orders of the Michigan Civil Rights Commission, and will provide in every subcontract or Contract Order that said nondiscrimination provisions will be binding upon the D/CC and each of their Consultant's or seller.

ARTICLE 12: CONTRACT CLAIMS AND DISPUTES

In any claim or dispute by the D/CC and their Consultant(s) which cannot be resolved by negotiation, the D/CC shall submit the dispute for an administrative decision by the Director-FA within thirty (30) consecutive calendar days of the end of the disputed negotiations, and any decision of the Director-FA may be appealed to the Michigan Court of Claims within one (1) year of the issuance of the Director's decision. The D/CC agrees that the Department's appeal procedure to the Director-FA is a prerequisite to filing a suit in the Michigan Court of Claims.

ARTICLE 13: COMPLETE AGREEMENT - MODIFICATION

This Contract constitutes the entire agreement as to the Project between the parties. Any Contract modification of this Contract must be in writing, signed by duly authorized representatives of the parties, and shall be in such format and detail as the State may require. No Contract Modification may be entered into to compensate the D/CC and their Consultant(s) for correcting, or for responding to claims or litigation for the D/CC and their Consultant(s) final design/build Contract Documents/architectural and/or engineering design/build errors, omissions or neglect on the part of the D/CC and their Consultant(s).

APPENDIX 1

PROJECT/PROGRAM STATEMENT

SAMPLE

SAMPLE

APPENDIX 2

DEFINITION OF TERMS

APPENDIX 2

DEFINITION OF TERMS:

The capitalized defined terms used in this Professional Services Contract shall have the following definitions:

ADDENDA: Written or graphic numbered documents issued by the Department and/or the Design and Construction Consultant prior to the execution of the Construction Contract which modify or interpret the Bidding Documents by additions, deletions, clarifications or corrections. The Addenda shall: (1) Be identified specifically with a standardized format; (2) Be sequentially numbered; (3) Include the name of the Project; (4) Specify the Project Index No., Project File No., the Contract Order No. Y, and a description of the proposed Addendum; and (5) Specify the date of Addenda issuance. The Addenda are intended to become part of the Project Bidding and Contract Documents when the Construction Contract is executed.

AS-BUILT RECORD DOCUMENTS: Original tracings on mylar plus two sets of computer compact disk (CD's) depicting all construction modifications, additions, and deletions made either by Addendum, Bulletin, supplemental written instructions, and the written notations shown on the Construction Contractor's as-built drawings.

BID: A written offer by a Bidder for the Department's Project construction work, as specified, which designates the Bidder's Base Bid and Bid price for all alternates.

BIDDER: The person acting directly, or through an authorized representative, who submits a construction Bid directly to the Department.

BIDDING DOCUMENTS: The D/CC's final Bidding Documents shall consist of: the final design architectural and/or engineering drawings and specifications, any issued Addenda, special, general and supplemental conditions of the Construction Contract, and modifications, if any, to standard forms provided by the Department. Such forms consist of: the Project advertisement, the instructions to construction Bidders, the proposal forms, general, supplemental, and any special conditions of the Construction Contract, and the form of agreement between the Department and the Construction Contractor for the Project work requirements.

BID SECURITY: The monetary security serving as guarantee that the Bidder will execute the offered Construction Contract or as liquidated damages in the event of failure or refusal to execute the Construction Contract.

BUDGET: The maximum legislatively authorized amount to be provided by the State of Michigan and available for a specific purpose or combination of purposes to accomplish the Project requirements for this Contract. The Budget does not equal the Construction Budget.

BULLETIN: A standard document form (DMB-485, Bulletin Authorization No. and the DMB-489, Instructions to Construction Contractors for Preparation of Bulletin Cost Quotations for Contract Change Orders) used by the Department to describe a change in the Project scope of work under consideration by the Department and the Professional.

CONSTRUCTION BUDGET: The sum of monies available to the State for construction of the Project.

CONSTRUCTION CONTRACT: A separate agreement between the Construction Contractor and the Department for the construction, alteration, demolition, repair, or rebuilding of a State/Client Agency building or other State property.

CONSTRUCTION CONTRACTOR: Any construction entity under a separate Contract to the Department for construction services.

CONSTRUCTION/GENERAL CONDITIONS: All of the labor, equipment, and materials required to directly support the construction Phase service process, but does not include the actual construction itself. Typical items include clean-up, field supervision, temporary protection, trucking, signage, etc.

CONSTRUCTION INSPECTION SERVICES: The D/CC's field Inspections of the Project during the construction Phase of this Contract.

CONSULTANT: Any individual, firm, or employee thereof, not a part of the D/CC's staff, but employed by the Design and Construction Consultant's firm and whose professional service cost is ultimately paid by the Department, either as a direct cost or reimbursement. Also included are individuals and firms whose management and/or direction of services are assigned to the Design and Construction Consultant as provided elsewhere in this Contract.

CONTRACT CHANGE ORDER: A form (DMB-403) that amends the Contract Documents for changes in the Department's approved and attached Appendix – Project/Program Statement scope of work or an adjustment in Contract price and/or Contract time, or both.

CONTRACT DOCUMENTS: The D/CC's architectural and/or engineering plans/drawings, specifications, Construction Contract, Instructions to Bidders, proposal, Bidding Documents, agreement, conditions of the Contract, payment bond, performance/labor and material bond, prevailing wages, all Addenda, and attachments necessary to comprise a Construction Contract for the Project.

CONTRACT MODIFICATION: A form (DMB-410) amending the Contract. Any Contract Modification of this Contract must be in writing, signed by duly authorized representatives of the parties, and shall be in such format and detail as the Department may require. No Contract Modification will be approved to compensate the Design and Construction Consultant for correcting, or for responding to claims or litigation for, the Contract Documents study/design errors, omissions or neglect on the part of the Design and Construction Consultant

CONTRACT ORDER: A form (DMB-402) issued and signed by the Department authorizing a D/CC to: (1) Begin to incur Project expenses and proceed with the Project; and (2) Provide the professional services stipulated in the fully executed Contract for the not-to-exceed dollar (\$) fee amount designated in the Phases of the Contract Order.

DEPARTMENT: the Department of Technology, Management and Budget. The Department will represent the State of Michigan in all matters pertaining to this Project. This Contract will be administered through the Department of Technology, Management and Budget, Facilities and Business Services Administration, Design and Construction Division on behalf of the Department.

DESIGN AND CONSTRUCTION CONSULTANT (D/CC): An individual, firm, partnership, corporation, association, or other legal entity who, with their Professional Design Consultants, are permitted by law to provide professional architecture, engineering, environmental engineering, land surveying, or landscape architecture design services along with construction management and general contracting services in the State of Michigan.

DESIGN AND CONSTRUCTION CONSULTANT (D/CC) UTILIZATION MANUAL: Provides the Design and Construction Consultant and their Professional Design Consultant firm with instructions, standards and procedural information. This utilization manual for design/build Projects provides the Department of Technology, Management and Budget, Facilities and Business Services Administration, Design and Construction Division users with a definition of the Project implementation procedures and the responsibilities to initiate and implement the D/CC's professional design/build services. The State of Michigan titles defined and used in this utilization manual are intended to be generic and may be modified to apply to each respective State/Client Agency facility location as required (See attached Appendix).

DIRECTOR-FA: The Director of the Department of Technology, Management and Budget, Facilities and Business Services Administration or their authorized representative.

INSPECTION: The Design and Construction Consultant and its Consultants' examination of the Project construction work completed or in progress by the Construction Contractor to determine and verify that based on the information, knowledge and belief of the Design and Construction Consultant, the quantity and quality of all Project construction work conforms to the design intent of the D/CC's Contract Documents.

INSTRUMENTS OF SERVICE: The drawings, specifications, reports, renderings, models, approved copies of shop drawings, written and electronic data, electronic media and all such other documents and deliverables created by the Design and Construction Consultant in the fulfillment of this Contract.

KEY PRINCIPAL PERSONNEL/EMPLOYEE: A chief executive officer of the Design and Construction Consultant firm essential for the successful completion of the Project scope of work.

MAJOR PROJECT DESIGN MANUAL,(MPDM): A form (DMB-494) providing the Design and Construction Consultant with information regarding the Department's process and requirements for uniformity in the capital outlay process, design, and materials.

NOTICE OF AWARD: A written notice to the Construction Contractor, by the Department accepting the D/CC's written recommendation to award the Construction Contract. The Notice of Award letter will also designate the Contract price and itemize the alternates that the Department, at its sole discretion, has accepted.

DEPARTMENT'S FIELD REPRESENTATIVE: An employee of the State under the direction of the Project Director who represents the Department and the State of Michigan in the field during construction.

PHASE: A discretely distinguishable design step necessary to produce the Project's scope of work requirements.

POST-BID ADDENDUM: An Addendum issued after the construction Bid opening to those construction Bidders who actually submitted a Bid, for the purpose of revising the scope of Project work and rebidding the Project work without readvertising.

PROFESSIONAL, PROFESSIONAL DESIGN CONSULTANT: An individual, firm, partnership, corporation, association, or other legal entity permitted by law to sign and seal Contract Documents and licensed under the State of Michigan's professional licensing and regulation provisions of the Occupational Code (State Licensing Law), Act 299 of the Public Acts of 1980, Article 20, as amended, to practice architecture, engineering, environmental engineering, land surveying, or landscape architecture services in the State of Michigan.

The Professional must also be legally permitted by the State's regulation provisions of the State Construction Code, Act 230 of the Public Acts of 1972, as amended, and designated in a Construction Contract by the Department to recommend construction progress payments to the Construction Contractor.

PROGRAM STATEMENT: A statement comprising the Project Statement and a compilation of the sizes, numbers, adjacencies, properties, and types of spaces and qualities required to fulfill the needs of the Project.

PROJECT: Any new construction, new utilities, existing building renovation, roof repairs and/or removal and replacement, additions, alteration, repair, installation, painting, decorating, demolition, conditioning, reconditioning or improvement of public buildings, works, bridges, highways or roads authorized by the Department that requires professional design services as part of this Contract.

PROJECT COST, TOTAL PROJECT COST: The total cost of a Project including site purchase, site survey and investigation, hazardous material abatement, construction, site development, new utilities, telecommunications (voice and data), professional fees, testing and balancing services, furnishings, equipment, architectural and/or engineering plan(s)/drawing(s) design code compliance and plan review approval fees and all other costs associated with the Project.

PROJECT DIRECTOR: The professionally licensed Department employee responsible for directing and supervising the D/CC's services during the life of this Contract.

PROJECT STATEMENT: The attached document defining the scope of work, describing the problem, justifying the Project, and providing a preferred resolution of the problem.

PROJECT TEAM: Group of individuals or entities consisting of the Design and Construction Consultant, the Project Director, the Department's Field Representative, a representative of the State/Client Agency, and others as considered appropriate by the Department.

PROPOSAL: The written document prepared by the Design and Construction Consultant in response to a request by the Owner. May describe methodology, services, schedule, and other aspects of the work to be performed under the Contract but does not supersede the Contract.

PSC: Professional Service Consultant. See PROFESSIONAL.

PUNCH LIST: A list of minor construction Project items to be completed or corrected by the Construction Contractor, which do not materially impair the use of the Project work, or the portion of the Project work inspected, for its intended purpose.

SOIL EROSION AND SEDIMENTATION CONTROL: The planning, design and installation of appropriate Best Management Practices (as defined by the most current version of the Department's Soil Erosion and Sedimentation Control Guidebook) designed and engineered specifically to comply with 1994 Public Act 451, as amended – The Natural Resources Environmental Protection Act, Part 91 – Soil Erosion and Sedimentation Control.

STATE: The State of Michigan in its governmental capacity, including its departments, agencies, boards, commissions, officers, employees and agents. Non-capitalized references to a state refer to a state other than the State of Michigan.

STATE/CLIENT AGENCY: A Department of the State of Michigan, the end-user of the Project, which requires professional architectural and/or engineering design services. The term State/Client Agency does not include an institution of higher education or a community college under this contract unless specified by the Owner.

SUBSTANTIAL COMPLETION: The Project work, or a portion of the Project work designated in the D/CC's Contract Documents as eligible for separate Substantial Completion, has been completed in accordance with the D/CC's Contract Documents to the extent that the State/Client Agency can use or occupy the entire Project, or the designated portion of the Project, for the intended use without any outstanding, concurrent work,, except as required to complete or correct the Punch List. Prerequisites for Substantial Completion, over and above the extent of Project work required, shall include the following items; (a) Receipt by the Department of all required Contract operating and maintenance documentation; (b) All systems have been successfully tested and demonstrated by the Construction Contractor for their intended use; and (c) Receipt by the Department of all required Contract certifications and/or occupancy approvals from the State and those political subdivisions having jurisdiction over the Project. Receipt of all required Contract certifications and/or occupancy approvals from those political subdivisions with jurisdiction in and of itself does not necessarily comprise Substantial Completion.

SUSTAINABLE DESIGN: The D/CC's use of a balance of appropriate materials, products and design methods that reduce energy consumption, impact to natural ecosystems, and reduce consumption of non-renewable products, within the Budget constraints of the Project.

TASK: (1) A quantifiable component of design related professional architectural and/or engineering services required to achieve a Phase of the Project; (2) The most manageable sub-element within a design Phase; (3) A unique item of work within a design Phase for which primary responsibility can be assigned; and (4) Has a time related duration and a cost that can be estimated within a study/design Phase.

APPENDIX 3

**D/CC'S PROPOSAL
(See back cover)**

SAMPLE

APPENDIX 4

**D/CC'S SERVICES UTILIZATION MANUAL, SAMPLE DEPARTMENT DESIGN/BUILD
FORMS AND WORK FLOW PROCEDURES CHART**

APPENDIX 5

PROJECT PREVAILING WAGE TRADE LABOR RATES

SAMPLE

APPENDIX 6

CERTIFICATE OF AWARDABILITY

SAMPLE

APPENDIX 7

PROFESSIONAL/CONTRACTOR DEMOGRAPHICS, STATISTICS AND CERTIFICATION

AND

CERTIFICATION OF A MICHIGAN BASED BUSINESS

AND

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER
RESPONSIBILITY MATTERS**

APPENDIX 8

**OVERHEAD ITEMS ALLOWED FOR THE
DESIGN AND CONSTRUCTION CONSULTANT FIRM
AND THEIR PROFESSIONAL DESIGN CONSULTANT FIRM'S
HOURLY BILLING RATE CALCULATION**

The following instructions are to be used by the D/CC's to determine the hourly billing rate to use on State of Michigan Projects.

The D/CC's Consultant must submit a separate hourly billing rate for the professional Consultant services they will provide for State of Michigan Projects. No mark-up of the D/CC's Consultant **services** hourly billing rates will be allowed.

The Department of Technology, Management and Budget, Facilities and Business Services Administration, Design and Construction Division will reimburse the Design and Construction Consultant firm for the actual cost of printing and reproduction of the final design Contract Bidding Documents, soil borings, surveys and any required laboratory testing services. No mark-up of these Project costs will be allowed.

2012 HOURLY BILLING RATE

Based on 2011 Expenses

OVERHEAD ITEMS ALLOWED FOR THE D/CC'S HOURLY BILLING RATE CALCULATION

SALARIES:

Principals (Not Project Related)
Clerical/Secretarial
Technical (Not Project Related)
Temporary Help
Technical Training
Recruiting Expenses

OFFICE FACILITIES:

Rents and Related Expenses
Utilities
Cleaning and Repair

SUPPLIES:

Postage
Drafting Room Supplies
General Office Supplies
Library
Maps and Charts
Magazine Subscriptions

SERVICES (PROFESSIONAL):

Accounting
Legal
Employment Fees
Computer Services
Research

FINANCIAL:

Depreciation

EQUIPMENT RENTALS:

Computers
Typewriter
Bookkeeping
Dictating
Printing
Furniture and Fixtures
Instruments

TRAVEL:

All Project-Related Travel*

MISCELLANEOUS:

Professional Organization Dues
for Principals and Employees
Licensing Fees

SERVICES (NONPROFESSIONAL):

Telephone and Telegram
Messenger Services

TAXES:

Franchise Taxes
Occupancy Tax
Unincorporated Business Tax
Property Tax
Single Business Tax
Income Tax

INSURANCE:

Professional Liability Insurance
Flight and Commercial Vehicle
Valuable Papers
Office Liability
Office Theft
Premises Insurance
Key-Personnel Insurance

EMPLOYEE BENEFITS:

Hospitalization
Employer's F.I.C.A. Tax
Unemployment Insurance
Federal Unemployment Tax
Disability
Worker's Compensation
Vacation
Holidays
Sick Pay
Medical Payments
Pension Funds
Insurance - Life
Retirement Plans

PRINTING AND DUPLICATION:

Specifications (other than Contract Bidding Documents)
Drawings (other than Contract Bidding Documents)
Xerox/Reproduction
Photographs

LOSSES:

Bad Debts (net)
Uncollectible Fee
Thefts (not covered by Project/Contract bond)
Forgeries (not covered by Project/Contract bond)

HOURLY BILLING RATE DOES NOT INCLUDE AND THE DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET, FACILITIES AND BUSINESS SERVICES ADMINISTRATION, DESIGN AND CONSTRUCTION DIVISION WILL PAY THE DESIGN AND CONSTRUCTION CONSULTANT FIRM FOR (UNDER REIMBURSABLE COSTS):

1. Printing and reproduction of Phase 100 Survey and/or Study Final Reports.
2. Printing and reproduction of Phase 500 Final Design Contract Bidding Documents/Drawings, and Specifications.
3. Design Code Compliance and Plan Review Approval Fees of the Phase 500 - Final Design Documents by the Department of State Police, Fire Marshal Division and the Department of Licensing and Regulatory Affairs, Bureau of Construction Codes, Plan Review Division.
- 4.* Travel mileage costs for State of Michigan Projects **more than** one-hundred (100) miles in each direction from the Professional's Michigan office if the Design and Construction Consultant firm can demonstrate a cost savings to the State, if reimbursed for travel mileage in accordance with the current travel rates provided in the State of Michigan's, "Schedule of Travel and Meal Reimbursement Rates" versus an adjustment to the Professional's hourly billing rates.

APPENDIX 9

PERFORMANCE, LABOR, AND MATERIAL BONDS

AND

CERTIFICATES OF INSURANCE