PSC-AE ISID Billing Rate
Rev 6/12

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET

This contract authorizes the professional services contractor to provide professional services. (Authority: 1984 PA 431)

CONTRACT FOR BUILDING COMMISSIONING SERVICES:
Indefinite Scope – Indefinite Delivery
Billing Rate – Not To Exceed

THIS CONTRACT, authorized this thirteenth (13th) day of February in the year two-thousand and thirteen (2015), by the 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, Third Floor B Wing, General Office Building, Dimondale, Michigan, hereinafter called the Department, and

Tower Pinkster Titus Associates, Inc.
242 East Kalamazoo Avenue
Suite 200
Kalamazoo, MI 49007

the Professional Building Commissioning Services Contractor, hereinafter called the Commissioning Agent,

WHEREAS, the Department proposes securing professional services FOR THE FOLLOWING PROJECT:

Indefinite-Scope, Indefinite-Delivery Contract No. 00514
Department of Technology, Management and Budget
Facilities and Business Services Administration, Design and Construction Division
Professional Building Commissioning Indefinite-Scope, Indefinite Delivery Contract (ISID) for Minor Projects -
Various State Departments and Facilities
Various Site Locations, Michigan

Provide professional building commissioning services, technical staff, and support personnel for ISID minor projects on an as-needed basis at various State/Client Agencies within various locations as defined by the State of Michigan. These various ISID minor projects may include projects where the construction costs are between fifteen-thousand dollars ($15,000) and five-hundred-thousand dollars ($500,000) for this Contract.

This Contract is for professional building commissioning services for an unspecified number of ISID projects. The scope of work for each assigned project will be defined at the time the project is awarded by the State to the Professional firm. The professional services required for each of these assigned projects requested by the Department may include any or all of the Tasks included in the Phase 500 – Design through Phase 700 – Construction text of the Department's Building Commissioning Professional Services Contract.

The Commissioning Agent's services shall be performed in strict accordance with this Professional Services Contract and be in compliance with the Department's approved and attached Project/Program Statement.

The total compensation to be paid to the Commissioning Agent by the Department for all assigned ISID minor Projects under this Contract will not exceed two-hundred fifty-thousand dollars ($250,000) unless otherwise approved in writing by the Department.

This Contract does not warrant or imply to the Commissioning Agent entitlement to perform any specific percentage (%) amount of compensation, work, or projects during the life of this four (4) year Contract.

This Contract will remain in effect for four (4) years from the date of this Contract award, but may be unilaterally terminated by the State of Michigan at any time, for cause or its convenience, by written notification of the State, to the Commissioning Agent.

Furthermore, this Contract may be extended for one (1) additional year, at the sole option and discretion of the State upon the Department providing written notice to the Commissioning Agent prior to the expiration of the original four (4) year Contract time period. Any such time extension shall be subject to the terms and conditions of this Contract, including, but not limited to, the existing hourly billing rates included in this Contract for the Commissioning Agent, their Consultants, and their employees or agents. **Please note that for this Professional Building Commissioning Contract your permanent assigned ISID Contract No., as noted on page 1 of this contract, must be provided on all Project correspondence and documents.** The Commissioning Agent is not to provide any professional services or incur expenses until individual ISID Projects are assigned to this Contract. (See Article 2 – Compensation and the Project/Program Statement attached to this Contract.)

NOW THEREFORE, the Department and the Commissioning Agent in consideration of the covenants of this Contract agree as follows:

I. The Commissioning Agent shall provide building commissioning services for the assigned Project in the design and construction administration Phase and Task sequence provided in this Professional Building Commissioning Contract and to the extent authorized by the Department of Technology, Management and Budget Facilities and Business Services Administration (FBSA), Design and Construction Division (DCD) [Department], and be solely responsible for such building commissioning services. The Commissioning Agent's services shall be performed in strict accordance with this Professional Services Contract and be in compliance with the Project/Program Statement.

II. The State of Michigan shall compensate the Commissioning Agent for providing their building commissioning design and construction administration services for the Project in accordance with the conditions of this Professional Services Contract.

IN WITNESS, WHEREOF, each of the parties has caused this Professional Services 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 Commissioning Agent 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 COMMISSIONING AGENT:

TOWER PINKSTER TITUS ASSOCIATES, INC
Firm Name

[redacted]
Federal Identification (I.D.) Number

Signature,

2/24/15
Date

PRINCIPAL
Title

FOR THE STATE OF MICHIGAN:

FEB 27 2015

Director, Department of Technology, Management and Budget

Date

ARTICLE I
PROFESSIONAL SERVICES SCOPE OF WORK

The Commissioning Agent shall provide all building commissioning services, technical staff, and support personnel necessary to achieve the Project as described in its Project/Program Statement, in the best interest of the State, and be within the Commissioning Agent's fee(s) herein authorized by the State. Assigned project services shall comprise, without exception, every professional discipline and expertise necessary to meet all the requirements as described in the Project/Program Statement and be in accordance with the accepted industry standards for professional building commissioning practice and services. The Commissioning Agent's services include attendance at Project related meetings and conferences. Building commissioning services for the assigned projects under this contract shall be provided in the Phase/Task sequence shown below. Building commissioning services shall be rendered in accordance with the Commissioning Agent's proposed and approved commissioning plan, specifications and schedule as coordinated with the Project's design and construction specifications and with the Project's construction schedule. Project design and construction specifications and project construction schedule will be provided by the Department, and/or by the Department's Prime Professional Design and Construction Administrative Services Contractor (hereinafter called the Professional).

The Commissioning Agent's commissioning plan, specifications and schedule shall be detailed, undated, and time sequence related for all Phase/Task services appropriate for the Project. The Commissioning Agent shall field-check and verify the accuracy of any drawings and/or data furnished by the Department, the State/Client Agency or any other Project related source. The Commissioning Agent shall not employ or consult with any firms in completing the Commissioning Agent's obligations herein who it anticipates will be a construction Bidder for the Project or any part thereof, unless specifically authorized, in writing, by the Department. The Commissioning Agent acknowledges that the Department is the first interpreter of the Commissioning Agent's performance under this Contract.

The Department will designate an individual to serve as the Project Director for the Project scope of work who shall be fully acquainted with the Project/Program Statement and have the authority to render Project decisions and furnish information promptly. Except in connection with issues under the Article XII - Contract Claims and Disputes text, the Project Director will exercise general management and administration for the Commissioning Agent's services in so far as they affect the interest of the State. The Commissioning Agent shall indemnify, defend, and hold harmless the State against exposure to claims arising from delays, negligence, or delinquencies by the Commissioning Agent for the building commissioning services of this Contract.

The Commissioning Agent acknowledges by signing this Professional Building Commissioning Contract having a clear understanding of the requested building commissioning services required by the Department, and further agrees that the terms and conditions of this Professional Building Commissioning Contract provide adequate fee(s) for the Commissioning Agent to provide the requested Project scope of work requirements for each assigned project. No increase in fee to the Commissioning Agent will be allowed unless there is a material change made to the Project as described in its Project/Program Statement and the change in scope to the Project/Program Statement is accepted and approved in writing, by the Project Director and the Commissioning Agent. Building commissioning services shall not be performed and no Project expenses shall be incurred by the Commissioning Agent prior to the issuance of a written and signed Contract Order authorizing the Commissioning Agent to start the Project work. Compensation for Department directed changes to the Project will be provided to the Commissioning Agent by a Contract Modification and/or Contract Change Order signed by the Department.

The Commissioning Agent shall immediately inform the Department whenever it is indicated that the Commissioning Agent's authorized not-to-exceed Budget for any of the assigned Projects may be exceeded. The Commissioning Agent shall make recommendations to the Department for revisions to bring the Project Cost back to the Commissioning Agent's original authorized Budget amount. Any revision to the Project must be accepted and approved by the Department in writing.

No substitution of any "Key Principal Personnel/Employee" essential for the successful completion of the Project and identified in the Commissioning Agent's Organizational Chart will be allowed by the Commissioning Agent for this Contract without the prior written consent from the Project Director. Before any "Key Principal Personnel/Employee" substitution takes place, the Commissioning Agent shall submit a written request to the Project Director, and this substitution request shall include the following information: (1) A request in writing for a No Cost Contract Modification; (2) Detailed written justification for this substitution; (3) The Commissioning Agent's qualifications of any proposed "Key Principal Personnel/Employee" replacement; and (4) A written statement from the Commissioning Agent assuring the Department that the Project scope of work will not be adversely affected by this substitution. This request to modify their Professional Building Commissioning Contract must be accepted and approved in writing by the Project Director and the Director of the Department.

During the construction administration services of the Project, the Commissioning Agent shall be required to complete and submit, the on-site Inspection record form titled "DMB-452, The Commissioning Agent's Inspection Record" for all on-site Inspection visits to the Project site. The Commissioning Agent's Inspection Record shall be completed and signed by the Commissioning Agent. The Commissioning Agent's signed Inspection Record shall accompany the Commissioning Agent's monthly submitted payment request.

All building commissioning services will be consistent with requirements in the Department's current "Capital Outlay Design Manual for State Universities, Community Colleges, State Agencies and Professional Building Commissioning Contractors" and with the

Department's current "State of Michigan, Department of Technology, Management and Budget Building Design Standards" unless otherwise approved in writing by the Department.

The building commissioning services required for each Phase of this Contract shall be performed by the Commissioning Agent and its Consultants in accordance with service descriptions in this article. The following service descriptions outlined in this Contract represent the Department's standard of care method for describing the Commissioning Agent's responsibilities for providing the building commissioning services of this Contract, but by inclusion, or omission, do not limit or exclude any regular or normal building commissioning services necessary to accomplish the Project and be in accordance with the approved Project Budget and the industries accepted practice and standards for building commissioning services. The services outlined in this Contract may or may not be applicable to the Project/Program Statement and will require the Commissioning Agent to identify only the services that are applicable for the Project at hand. The Commissioning Agent shall determine and coordinate the interface of the services required for the Project at hand and be responsible for identifying any additional services necessary to successfully complete their Project.

PHASE 500 - FINAL DESIGN

The objective of commissioning is to provide documented confirmation that a facility fulfills the functional and performance requirements of DTMB, the Agency and the Agency's occupants and maintenance staff. To reach this goal, it is necessary for the Commissioning Agent to establish and document the Agency's Project Requirements, which are criteria for system function, performance, and maintainability (design intent); and to also verify and document compliance with these criteria throughout design, construction, start-up, and the initial period of operation. In addition, the Commissioning Agent shall verify that the Agency's building maintenance staff has been provided with complete operation and maintenance (O&M) manuals, as well as training on system operation to ensure the building continues to operate as intended.

The Commissioning Agent shall be involved throughout the project from design development through the warranty phase. The primary role of the Commissioning Agent during Design is to review the design to ensure that it meets DTMB and Agency objectives and to develop detailed commissioning specifications. During construction, the Commissioning Agent shall coordinate the execution of a testing plan, which includes observing and documenting all systems' performance to ensure that the systems are functioning in accordance with the Owner's Project Requirements and the contract documents. The Commissioning Agent is not responsible for design or general construction scheduling, cost estimating, or construction management, but may assist with problem-solving and in resolving nonconformance issues or deficiencies.

The Commissioning Agent will serve as an objective advocate of DTMB, oversee and coordinate the commissioning process, and present final recommendations to DTMB regarding the performance of the commissioned building systems. The Commissioning Agent shall work in conjunction with the project design team through the design process, preparing a commissioning plan and a final commissioning report.

The Commissioning Agent shall be responsible for carrying out the following tasks. The Commissioning Agent is free to suggest changes and improvements to the following task list, but for this proposal it is assumed that these tasks will be completed.

Task 501 COORDINATION: Assemble a commissioning team to meet the work scope requirements within the Project Statement. In addition to the Commissioning Agent and the Commissioning Agent's consultants, the commissioning team shall include the DTMB Project Director, the DTMB Field Representative and representatives from the Agency and the Project Professional. Schedule and lead commissioning meetings as needed with the Commissioning Team. Coordinate the commissioning work during design. Review DTMB and Agency Project Requirements for clarity and completeness. Perform focused reviews of the Project Professional's design, drawings and specifications at various stages of development. Conduct/facilitate program review meetings with DTMB, the Agency and the Project Professional at the beginning of the design phase and at key intervals during the design phase. Review any updates to the Owner's Project Requirements and Basis of Design with commissioning team members after each design review submission.

Task 502 COMMISSIONING PLAN: Based on the requirements of the Project Statement, prepare a Preliminary Commissioning Plan for review by the DTMB Project Director, the Agency, and the Project Professional. Incorporate comments to the plan as may be required. The plan shall include team member responsibilities & a team directory, communication structure, specific systems & equipment to be commissioned and a commissioning process schedule. Update the Commissioning Plan as necessary to incorporate design changes and in preparation for construction.

The following is a general list of systems and assemblies to may be commissioned. The DTMB Project Director, the Project Professional and the Agency will work with the Commissioning Agent to develop a specific list of systems to be commissioned on a project by project basis.

- Central Building automation system
- All equipment of the heating, ventilation and air conditioning systems
- Scheduled or occupancy sensor lighting controls

- Daylight dimming controls and interior dimming system controls
- Refrigeration systems
- Emergency power generators and automatic transfer switching; paralleling equipment (if applicable)
- Uninterruptible power supply systems
- Fire Protection & Life safety systems (egress system, fire alarm system, fire detection systems, fire suppression systems, smoke management systems, smoke removal systems, emergency lighting systems, security / egress locking interface systems, elevator emergency recall operation, elevator emergency in-car operation)
- Electrical (switch gear, distribution panels, transformers, motor control centers, power monitoring and metering, transient voltage surge suppressors, variable speed drives, grounding and ground fault systems, overcurrent protective devices, low voltage busway, white sound systems)
- Domestic and process water pumping and mixing systems
- Equipment sound control systems and testing
- Data and communications
- Paging systems
- Security system
- Irrigation
- Plumbing
- Vertical transport
- Building envelope including the different types of curtain wall assemblies (specify roofing, windows and doors, construction joints, etc.)
- Process instrumentation and controls
- Lighting and Lighting Control Systems and Clock Systems

Task 503 COMMISSIONING SPECIFICATIONS: Develop full commissioning specifications for all commissioned equipment. Coordinate commissioning specifications with the DTMB Project Director and the Project Professional such that commissioning specifications are integrated into the overall project specification package. The commissioning specification will include general commissioning requirements common to all systems and assemblies and a detailed description of the responsibilities of all parties, details of the commissioning process; reporting and documentation requirements including formats; alerts to coordination issues, deficiency resolution; construction checklist and start-up requirements; functional testing process; and specific functional test requirements including testing conditions and acceptance criteria for each piece of equipment being commissioned. The commissioning specification shall clearly indicate who is witnessing and documenting start-up of each commissioned system. The specifications will be clear as to who is writing, directing, conducting and documenting functional tests and regulatory-required tests. This may vary between systems, especially between electrical and mechanical. Provide language to enhance current project specifications to ensure comprehensive controls submittals, full control contractor accountability for documented point-to-point checkout and commissioning participation, comprehensive test, adjusting and balancing, full contractor documentation of start-up and training and O&M manual documentation.

Task 504 PROJECT SPECIFICATION REVIEW: review the project specifications and provide comments and additional language, as needed for items such as contractor qualifications, submittal requirements, test, adjust and balance specifications, training requirements and operations and maintenance and system manual requirements.

Task 505 BUILDING AUTOMATION SYSTEM CONTROLS INTEGRATION: Coordinate a controls integration meeting where the Project Professional's electrical engineers, fire protection engineers and mechanical engineers as well as the DTMB Project Director, and the Agency to discuss integration issues between equipment, systems and disciplines to ensure that integration issues and responsibilities are clearly described within the project specifications.

Task 506 FUNCTIONAL TEST PROCEDURES: Write step-by-step functional test procedures and documentation formats for all commissioned equipment and assemblies. Test procedures will include manual functional testing, energy management control system trending and may include stand-alone data-logger monitoring.

Task 507 FINAL ACCEPTANCE TESTS FOR FIRE PROTECTION AND LIFE SAFETY SYSTEMS: Commissioning specifications shall include all required procedures for final acceptance tests of fire protection and life safety systems. The Agency's Safety and Security Services Supervisor or designated representative shall be provided the opportunity to witness final acceptance tests of fire protection and life safety systems. Testing and commissioning for fire protection and life safety systems shall comply with all applicable codes and standards.

PHASE 600 - CONSTRUCTION ADMINISTRATION - OFFICE SERVICES

During the construction Phase of this Project, the "DTMB-0460, Project Procedures" documents package shall be used by the Commissioning Agent in the administration of this Contract.

The Commissioning Agent shall use the "DTMB-0452, The Professional's Inspection Record" for all on-site Inspection visits to the Project site. The form shall be completed and signed by the Commissioning Agent and compiled monthly with the original form document sent to the Department's, Project Director and a copy sent to the Construction Contractor. The on-site Inspection record standard document form shall be completed and accompany the Commissioning Agent's monthly payment request.

The Commissioning Agent shall provide all required commissioning services in a timely manner as circumstances of the Project construction may require in order to allow the design intent requirements of the Professional's Contract Documents to be successfully implemented into a completed Project through the Construction Contractor's completion of the Construction Contract work.

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 Commissioning Agent shall inform the Construction Contractor of the situation and their observations. The Commissioning Agent shall immediately record and report such situations to the Department in writing.

The Commissioning Agent shall have access to the Construction Contractor(s) work at all times.

Establish and maintain effective commissioning procedures, systems and records too progressively, and exclusively, manage and control the Commissioning Agent's obligations, commitments, achievements and expenditures under this construction Phase administration.

Monitor the construction quality and progress as it is associated with those systems scheduled to be commissioned. Maintain all necessary commissioning records, provide on-site visitation reports, and provide all administrative office action as may be necessary to inform the DTMB Project Director, the Project Professional and the Construction Contractor, in writing, with respect to their compliance with the design intent of the Contract Documents for those systems being commissioned.

Advise and assist the Department in taking all practical steps necessary to address and complete the Project in the event of performance delays or of a default by the Construction Contractor.

Task 601 COORDINATION: Coordinate and direct the commissioning activities in a logical, sequential and efficient manner using consistent protocols and forms, centralized documentation, clear and regular communications and consultations with all necessary parties, frequently updated timelines and schedules and technical expertise. Coordinate the commissioning work with the Project Professional and General Contractor to ensure that commissioning activities are being incorporated into the project construction schedule.

Task 602 COMMISSIONING PLAN: Revise, as necessary, the commissioning plan developed during design to include construction scope and schedule.

Task 603 COMMISSIONING MEETINGS: Plan and conduct commissioning meetings as needed and distribute minutes.

Task 604 SHOP DRAWINGS, SUBMITTALS AND APPROVALS: Concurrently with General Contractor and Project Professional, review submittals applicable to systems being commissioned for compliance with commissioning needs. Review requests for information and change orders for impact on commissioning and for impact on DTMB and Agency objectives.

Task 605 CONTRACTOR START-UP AND CHECK-OUT PROCEDURES: Request and review contractor start-up and check-out procedures for all systems scheduled to be commissioned. Before start-up, gather and review the current control sequences and interlocks and work with the Project Professional and General Contractor until sufficient clarity has been obtained, in writing, to be able to write detailed testing procedures. Based on this review, write and distribute construction checklists, enhanced start-up procedures and initial system checkout plans for equipment to be commissioned.

Task 606 OPERATIONS AND MAINTENANCE MANUALS AND CONTRACTOR START-UP AND CHECK-OUT PROCEDURES: Request and review Operations and Maintenance Manuals to assure that operations and maintenance procedures have been included for all commissioned equipment including shop drawings, documentation of equipment settings, check lists and startup procedures as applicable.

Task 606 FINAL COMMISSIONING REPORT: Compile a Commissioning Record, which shall include:

A. A summary report that includes a list of participants and roles, building description, overview of commissioning and testing scope, and a general description of testing and verification methods. In addition, for each piece of commissioned equipment, the report shall contain the disposition of the Commissioning

Agent regarding the adequacy of the equipment, documentation and training in complying with the contract documents in the following areas:

1) Equipment installation,

2) Functional performance and efficiency,

3) Equipment compliance with equipment specifications,

4) Equipment documentation, and

5) Operator training.

B. All outstanding non-compliance items shall be specifically listed. Recommendations for improvement to equipment or operations, future actions, commissioning process changes, etc. shall also be listed. Each non-compliance issue shall be referenced to the specific functional test, inspection, trend log, etc. where the deficiency is documented.

C. The Final Commissioning Report shall include a copy of the Commissioning Plan, a summary of commissioning requirements as detailed in the Project Statement, a copy of the Commissioning Specifications, design review, submittal review and issues logs, construction checklists, Commissioning Agent site visit reports, Commissioning Meeting minutes, O&M review, training documentation, test procedures, warranty review and test data reports.

D. The Final Commissioning Report shall include a Re-commissioning Management Manual which provides guidance and establishes timelines for re-commissioning of building systems and components. The format of the Re-Commissioning Management Manual shall closely parallel the Commissioning Plan for the facility.

E. Submit four (4) bound copies and one (1) electronic copy of the Final Commissioning Report including all information listed in A through D above.

PHASE 700 - CONSTRUCTION ADMINISTRATION - FIELD SERVICES

The Department may provide full or part-time Department Field Representatives to monitor the coordination and progress of the services of the Commissioning Agent and the Project work of the Construction Contractor(s). Such Inspections may generate reports, minutes of meetings, notes and documents, which will be available to, and may be useful for, the Commissioning Agent. These Department Field Representatives will be under the direction of the Project Director. The Project Director, or Department Field Representative, has the authority to require the Commissioning Agent to respond to and assist the Professional in resolving design related problems, construction field problems and attending Project related meetings when those problems or meetings may be relative to the commissioning services being provided under this Contract. Unless delegated by specific written notice from the Department, the Department Field Representative does not have any authority to order any changes in the Project scope of work or authorize any adjustments in Contract price or Contract time.

The Commissioning Agent shall provide sufficient field Inspections of the Project to administer the Commissioning Plan. The extent of field Inspections are directly related to the degree of Project complexity. The commissioning field Inspections shall occur as the construction on-site field conditions and the Project require and during the regularly scheduled commissioning and progress meetings. The Commissioning Agent shall use for their commissioning field Inspection services, only personnel having such professional expertise, experience, authority, and compatibility with departmental procedures as the Department may approve. The Professional 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 Professional, in writing, of their unacceptable performance.

The Professional shall review the Project construction work in place. The Professional shall determine whether the actual Project construction schedule progress appears to be in accordance with the approved Project commissioning schedule and whether the quality of the work for the systems being commissioned appears to be in accordance with the design intent of the Professional's Phase 500 - Contract Documents/architectural and/or engineering drawings and specifications requirements and that the newly installed systems to be commissioned are without apparent defects or deficiencies. No on-site advertising by, or of, the Commissioning Agent will be permitted.

Task 701 COORDINATION: Coordinate functional testing for all commissioned systems and assemblies with the Prime Professional Services Contractor, the Construction Contractor, the Agency and the DTMB Project Director and Field Representative.

Task 702 PRECONSTRUCTION MEETING: Attend Preconstruction/Organizational Meetings for each Construction Contract.

Task 703 SITE VISITS: Perform site visits, as necessary, to observe component and system installations for those systems scheduled to be commissioned. Attend selected planning and job-site meetings to obtain information on construction progress. Review construction meeting minutes for revisions/substitutions relating to the commissioning process. Assist in resolving any discrepancies.

Task 704 WITNESSING OF COMMISSIONED SYSTEMS AND ASSEMBLIES: Witness and document manual functional performance tests performed by the Construction Contractor for all commissioned systems and assemblies, except: a) some smaller equipment may be tested and documented by the Construction Contractor at the Commissioning Agent's discretion, b) electrical equipment testing and regulated testing may be directed and documented by the Construction Contractor with only spot witnessing and report review by the Commissioning Agent.

The functional Testing shall include operating the system and components through each of the written sequences of operation, and other significant modes and sequences, including start-up, shutdown, unoccupied mode, manual mode, staging, miscellaneous alarms, power failure, security alarm when impacted and interlocks with other systems or equipment. Sensors and actuators shall be calibrated by the installing contractors, and spot-checked by the Commissioning Agent. Analyze functional performance trend logs and monitoring data to verify performance. Coordinate retesting as necessary until satisfactory performance is achieved.

Tests on respective HVAC equipment shall be executed, if possible, during both the heating and the cooling seasons. Some overwriting of control values to simulate heating or cooling conditions shall be allowed. Functional testing shall be done using conventional manual methods, control system trend logs, and readouts or stand-alone data loggers, to provide a high level of confidence in proper system function, as deemed appropriate by the Commissioning Agent and DTMB.

Witness HVAC pipe pressure testing and flushing sufficient to be confident that proper procedures were followed. Include testing documentation in the Commissioning Record.

Witness any ductwork testing and cleaning sufficient to be confident that proper procedures were followed. Include documentation in the Commissioning Record.

Witness and document manual functional performance tests performed by the Construction Contractor for all commissioned systems and assemblies, except: a) some smaller equipment may be tested and documented by the Construction Contractor at the Commissioning Agent's discretion, b) electrical equipment testing and regulated testing may be directed and documented by the Construction Contractor with only spot witnessing and report review by the Commissioning Agent.

The functional Testing shall include operating the system and components through each of the written sequences of operation, and other significant modes and sequences, including start-up, shutdown, unoccupied mode, manual mode, staging, miscellaneous alarms, power failure, security alarm when impacted and interlocks with other systems or equipment. Sensors and actuators shall be calibrated by the installing contractors, and spot-checked by the Commissioning Agent. Analyze functional performance trend logs and monitoring data to verify performance. Coordinate retesting as necessary until satisfactory performance is achieved.

Tests on respective HVAC equipment shall be executed, if possible, during both the heating and the cooling seasons. Some overwriting of control values to simulate heating or cooling conditions shall be allowed. Functional testing shall be done using conventional manual methods, control system trend logs, and readouts or stand-alone data loggers, to provide a high level of confidence in proper system function, as deemed appropriate by the Commissioning Agent and DTMB.

After manual testing and initial trouble shooting is complete, the Commissioning Agent shall monitor system operation and performance for selected data points for up to two weeks by requesting trend logs from the Construction Contractor from the building automation system. For needed system points not able to be trended by the building automation system, furnish and install temporary portable data loggers. Analyze monitored data to verify operation and performance and issue a written report. Time frame and monitoring points may be modified to accurately commission the building.

Task 705 FINAL ACCEPTANCE TESTING: Final acceptance tests of all fire protection and life safety systems shall be witnessed by the Commissioning Agent and by the Agency's Safety and Security Services Supervisor or their designated representative. Testing and commissioning for the fire protection and life safety systems shall be per the requirements of the Project specifications and per the requirements of the applicable codes and standards. Once the Agency's Safety and Security Services Supervisor has ensured that to the best of their knowledge all the fire protection and life safety systems have been completed, inspected, successfully tested and approved and all outstanding fire and life safety deficiencies have been corrected to afford a reasonable degree of safety to the building occupants from fire and similar emergencies, a written acceptance will be issued. No building or portion thereof shall be occupied until the Agency's Safety and Security Services Supervisor has issued that written acceptance.

Task 706 ISSUES LOG: Maintain a master issues log and a separate record of functional testing. Report all issues through the Project Design Professional and the DTMB Project Director as they occur. Provide through the Project Design Professional and DTMB Project Director written progress reports and test results with recommended actions.

Task 707 CONSTRUCTION CLOSEOUT SUBMITTAL REVIEW: Review commissioned equipment warranties to ensure that Agency responsibilities are clearly defined and that they comply with Specification requirements. Facilitate, oversee and review the training of Agency operations and maintenance staff for commissioned systems. If videotaping has been specified, oversee videotaping of this training. Attend and participate in key training sessions. Review the preparation of the O&M Manuals for commissioned equipment. Document construction checklist completion by reviewing completed construction checklists and by selected site observation. Document systems start-up through a review of start-up records and by selected site observation. Approve air and water system balancing by spot testing, by reviewing completed reports and by selected site observation.

Task 708 POST CONSTRUCTION: Coordinate and supervise required opposite season or deferred testing and deficiency corrections and provide final testing documentation for the Final Commissioning Report and O&M Manuals.

Return to the site at 10 months into the 12 month warranty period and review with the facility staff the current building operation and the condition of outstanding issues related to original and seasonal commissioning. Also interview facility staff and identify problems or concerns they have with operating the building as originally intended. Make suggestions for improvements and for recording these changes in the O and M Manuals. Identify areas that may come under warranty or under the original construction contract. Assist facility staff in developing reports and documents and requests of services to remedy outstanding problems.

ARTICLE II
COMPENSATION

In consideration of the performance of this Contract, the Department agrees to pay the Commissioning Agent, as compensation for commissioning services, an hourly billing rate for each employee providing a direct service to this Project, on a not-to-exceed basis as specified herein, subject to subsequent modification mutually agreeable to the parties hereto; provided, however, the Commissioning Agent may not incur costs, or bill the Department, for commissioning services in excess of the estimates established for this Project without the prior written agreement of the Department. The attached proposal prepared by the Commissioning Agent 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.

Compensation to the Commissioning Agent shall be on an hourly billing rate basis for commissioning services rendered by salaried and non-salaried professional, technical and technical support employees, except for any authorized reimbursable expenses provided for in this Contract. Total compensation for any Phase shall not exceed the amount authorized for that Phase, unless authorized in writing by the Department's approved Contract Change Order. Commissioning services shall not be performed and no Project expense shall be incurred by the Commissioning Agent prior to the issuance of a written and signed Contract Order (Form DMB-402) by the Department to the Commissioning Agent, authorizing the Commissioning Agent to start the Project work.

2.1 PREMIUM TIME/OVERTIME: This Contract anticipates that no premium or overtime is required to achieve this Project's scope of work. No compensation will be allowed to the Commissioning Agent for any premium or overtime cost incurred to achieve the Project schedule of this Contract, unless directed in writing by the Project Director.

2.2 EMPLOYEE HOURLY BILLING RATES: Hourly billing rates will include all direct and indirect monetary costs to the State for the Commissioning Agent's services under this Contract other than the authorized and approved reimbursements. Hourly billing rates shall be based on the Commissioning Agent'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 Commissioning Agent may not provide different hourly billing rates for the same individual for different Phases.

No lump-sum subcontracts for the commissioning services of any employee may be billed against this Contract. Any employee associated with this Project who performs the commissioning 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 hourly billing rate charge of any employee may be changed by the Commissioning Agent with a written and Department approved Contract Modification during the life of this Contract to account for normal personnel pay increases.

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 Commissioning Agent's Michigan office, computer costs/operating costs and time, telephone, telephone-related services, and all reproduction services (except Contract Bidding Documents).

The hourly billing rate also includes all reproduction costs for building commissioning interpretations and building commissioning clarifications and all similar, or avoidable costs shall be accounted as part of the Commissioning Agent's calculated hourly billing rate. 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, computer/typing/word processing, editing, and clerical services utilized in any way for the Project as well as other non-technical and/or overhead employees. The hourly billing rate also includes all profit without regard to its form or distribution.

Items not allowable as part of the Commissioning Agent's calculated hourly billing rate include, but are not limited to: Any costs associated with litigation and settlements for the Commissioning Agent, 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.

The hourly billing rate for the Commissioning Agent may not be applied to the work of the Commissioning Agent's Consultant's staff. Each Consultant firm must submit a separate hourly billing rate with proper documentation for the Consultant services they will provide as part of the Proposal. The hourly billing rate of the respective Consultant firm shall be used for that Consultant firm's personnel only. The Commissioning Agent may propose a moderate mark-up to their Consultant firm's charges. The Commissioning Agent's Consultant services shall be billed as an authorized reimbursable expense item at a direct cost times the Firm's mark-up percentage accepted by the Department.

2.3 RANGE OF EMPLOYEE HOURLY BILLING RATES: The Commissioning Agent shall identify the service being provided and include the Commissioning Agent's or Consultant's employee(s) full names and position classifications for the Project and their current hourly billing rates at the beginning and at the anticipated end of the Project. This hourly billing rate range shall reflect any anticipated pay increases over the life of the Contract. The range of hourly billing rates for any employee position or classification may not be changed without an approved Contract Modification.

2.4 DIRECT COST REIMBURSEMENT ITEMS: The Commissioning Agent's Consultant services and authorized reimbursable expenses shall be treated as an authorized reimbursable expense item at a direct cost times the firm's mark-up percentage amount approved by the Department. Reimbursement of authorized expense items at direct cost times the firm's mark-up percentage amount is intended only as a means to compensate the Commissioning Agent for their direct costs. The Commissioning Agent shall be responsible for the selection of the supplier of their commissioning services or materials, the coordination, adequacy and application of their commissioning services, whether provided by the Commissioning Agent's staff or provided by their Consultant, any Project costs that exceed the Contract per Phase reimbursement Budget.

Project related travel expenses (mileage, meals, lodging) for Projects **more than** one-hundred (100) miles in one-way from the Commissioning Agent's Michigan office shall be treated as an authorized reimbursable expense at the State of Michigan's current travel rates.

Unless authorized elsewhere in this Contract, direct cost reimbursement items shall be limited to the actual cost of printing and reproduction of specified project deliverables such as multiple copies of the Final Commissioning Report and shall be limited to the cost of U.S. Mail regular shipping postage for distribution of those specified project deliverables. In addition, direct cost reimbursement items may include mobilization and rental of specialized testing equipment essential to complete the specified commissioning services for this Project.

Compensation for this Contract shall not exceed the amounts per Project Phase shown in the attached Contract Order unless authorized by a Department approved Contract Modification. It shall be the Commissioning Agent's responsibility to carefully monitor their and their Consultant firms Project costs, activities, and progress and to give the Project Director timely notification of any justifiable need to increase the authorized fee. The Commissioning Agent may not proceed with commissioning services that have not been authorized by the Project Director and shall immediately notify the Project Director if such services have been requested or have become necessary.

Identification of Commissioning Agent and Consultant staff, hourly billable rates, and an itemized list per Project Phase of authorized direct cost reimbursement items are identified in the attached Commissioning Agent's proposal.

ARTICLE III
PAYMENTS

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

a) Phase Numbers for the commissioning services provided.
b) Commissioning Agent's personnel and position/classification providing service and hours worked
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) Itemized invoices from each of the Commissioning Agent's Consultants' documenting that firm's commissioning services charge and the Project work related services provided.
g) Authorized reimbursable expense items provided with receipts and invoices.

ARTICLE IV
ACCOUNTING

The Commissioning Agent shall keep current and accurate records of Project costs and expenses, of hourly billing rates, authorized reimbursable expense items, and all other Project related accounting document to support the Commissioning Agent's 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 Commissioning Agent. 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 V
INSURANCE

The Commissioning Agent 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 Commissioning Agent's services under this Contract, whether such service is performed by the Commissioning Agent or performed by any of the Commissioning Agent's consultants 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 Commissioning Agent 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 Commissioning Agent's or a Subcontractor's performance, including any person directly or indirectly employed by the Commissioning Agent or a Subcontractor, or any person for whose acts the Commissioning Agent or a Subcontractor may be liable.
(b) The Commissioning Agent waives all rights against the State for the recovery of damages that are covered by the insurance policies the Commissioning Agent is required to maintain under this Section. The Commissioning Agent'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 that have been approved to do business in the State. 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 Commissioning Agent's policy contains higher limits, the State is entitled to coverage to the extent of the higher limits.

(g) The Commissioning Agent 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 Commissioning Agent 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 Commissioning Agent to any indemnified party or other persons.

(i) The Commissioning Agent is responsible for the payment of all deductibles.

(j) If the Commissioning Agent 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 Commissioning Agent 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 Commissioning Agent, or require the Commissioning Agent 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 Commissioning Agent must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Commissioning Agent's domicile. If the applicable coverage is provided by a self-insurer, the Commissioning Agent must provide proof of an approved self-insured authority by the jurisdiction of domicile.

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

5.2 Motor Vehicle Insurance

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

5.3 Commercial General Liability Insurance

For claims for damages because of bodily injury or death of any person, other than the Commissioning Agent'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 Commissioning Agent 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 Commissioning Agent 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.

5.4 Professional Liability Insurance (Errors and Omissions)

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

Minimal Limits:

$1,000,000 Each Occurrence
$2,000,000 Annual Aggregate

Contractual Liability Insurance for claims for damages that may arise from the Commissioning Agent'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 building commissioning 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 Commissioning Agent must require any Consultant/Subcontractor to purchase and maintain the insurance coverage required in this Article. Alternatively, the Contractor may include a Consultant/Subcontractor under the Commissioning Agent's insurance on the coverage required in that Section. The failure of a Consultant/Subcontractor to comply with insurance requirements does not limit the Commissioning Agent'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 Commissioning Agent'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 attached, Certificates of Insurance documents required for this Project shall be in force for this Project until the final payment by the State to the Commissioning Agent is made and shall be written for not less than any limits of liability specified above. The Commissioning Agent has the responsibility for having their Consultant firm's comply with these insurance requirements.

ARTICLE VI
INDEMNIFICATION

(a) To the extent permitted by law, the Commissioning Agent 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 Commissioning Agent in the performance of this Contract and that are attributable to the negligence or tortious acts of the Commissioning Agent 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 Commissioning Agent 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 Commissioning Agent 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 Commissioning Agent 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 Commissioning Agent 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 Commissioning Agent's opinion be likely to become the subject of a claim of infringement, the Commissioning Agent shall at the Commissioning Agent'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 Commissioning Agent, (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 the Commissioning Agent, (iii) accept its return by the State with appropriate credits to the State against the Commissioning Agent'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 Commissioning Agent 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 Commissioning

Agent, 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 Commissioning Agent under this Contract.

ARTICLE VII
OWNERSHIP OF DOCUMENTS

All Project deliverables prepared and furnished by the Commissioning Agent shall become the property of the State of Michigan upon completion of the Project, upon completion and acceptance of the Commissioning Agent's work, or upon termination of the Contract. Project deliverables shall be delivered to the Department upon their request. The Commissioning Agent shall have no claim for further employment or additional compensation as a result of this Contract requirement. The Commissioning Agent may retain a copy of all Project documents for their files.

If the Commissioning Agent is in default or breach of its obligations under this Contract, the State shall have full ownership rights of the Project deliverables. If the Commissioning Agent is in default or this Contract Agreement is terminated, the State shall not use the commissioning data and deliverables of this Contract for completion of the Project by others without the involvement of other qualified Commissioning Agents who shall assume the professional obligations and liability for the Project work not completed by the Commissioning Agent. To the fullest extent allowed by law, the State releases the Commissioning Agent, the Commissioning Agent's consultant(s) and the agents and employees of any of them from and against legal claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of the State's use of commissioning data and deliverables other than in accordance with this Contract Agreement.

All Contract deliverables listed may be published or issued for informational purposes without additional compensation to the Commissioning Agent. The Commissioning Agent may not use any of the Contract Documents and Contract deliverables for any purpose that may misrepresent the building commissioning services they provided.

The Commissioning Agent shall retain full rights to the Final Commissioning Report and deliverables and the right to reuse component information contained in them in the normal course of the Commissioning Agent's activities.

The Final Commissioning Report or other documents and deliverables produced under this Contract may be used by the Department, or others employed by the Department or State of Michigan, for reference in any completion, correction, remodeling, renovation, reconstruction, alteration, modification of or addition to the Project, without monetary compensation to the Commissioning Agent.

The State of Michigan will not construct additional Projects or buildings based on the work of this Contract without notice to the Commissioning Agent.

ARTICLE VIII
TERMINATION

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

a) Immediately discontinue all building commissioning 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 Commissioning Agent 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 building commissioning services.

8.2 If the termination is due to the failure of the Commissioning Agent 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 Commissioning Agent 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 Commissioning Agent 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 IX
SUCCESSORS 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 X
GOVERNING LAW

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

ARTICLE XI
NONDISCRIMINATION

In connection with the performance of the Project under this, the Commissioning Agent agrees as follows:

a) The Commissioning Agent 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 Commissioning Agent 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 Commissioning Agent will, in all solicitations or advertisements for employees placed by or on behalf of the Commissioning Agent, 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 Commissioning Agent 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 Commissioning Agent's nondiscrimination commitments under this article.

d) The Commissioning Agent will comply with the Elliot-Larsen Civil Rights Act, 1976 PA 453, as amended, MCL 37.2201 et seq; the Michigan Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended, MCL 37.1101 et seq; and all published rules, regulations, directives and orders of the Michigan Civil Rights Commission which may be in effect on or before the date of award of this Contract.

e) The Commissioning Agent 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 Commissioning Agent and of each of their Consultant firms. The Commissioning Agent 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 nondiscrimination compliance with this Contract and with rules, regulations, and orders of the Michigan Civil Rights Commission relevant to 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 Commissioning Agent 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 Commissioning Agent 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 Commissioning Agent 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 Commissioning Agent 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 Commissioning Agent shall also comply with the nondiscrimination provisions of 1976 PA 220, as amended, concerning the civil rights of persons with physical or mental disabilities.

h) The Commissioning Agent will include, or incorporate by reference, the nondiscrimination provisions of the foregoing paragraphs a) through g) in every subcontract or Contract 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 each of the Commissioning Agent's Consultant's or seller.

ARTICLE XII
CONTRACT CLAIMS AND DISPUTES

In any claim or dispute by the Commissioning Agent which cannot be resolved by negotiation, the Commissioning Agent shall submit the claim or dispute for an administrative decision by the Department of Technology, Management and Budget, Director of Facilities and Business Services Administration within thirty (30) consecutive calendar days of the end of the disputed negotiations, and any decision of the Director of Facilities and Business Services Administration may be appealed to the Michigan Court of Claims within one (1) year of the issuance of the Director's decision. The Commissioning Agent agrees that the Department's appeal procedure to the Director of Facilities and Business Services Administration is a prerequisite to filing a suit in the Michigan Court of Claims.

ARTICLE XIII
DEFINITION OF TERMS

The definition of terms and conditions of this Contract are described and outlined in the following Articles 1 through 14 and attached appendices. The capitalized defined terms used in this Professional Building Commissioning Contract shall have the following definitions:

ADDENDA: Written or graphic numbered documents issued by the Department and/or the Professional prior to the execution of the Construction Contract which modify or interpret the Project Bidding Documents, including architectural and/or engineering drawings, and specifications, 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 Addenda; and (5) Specify the date of Addenda issuance. As such, the Addenda are intended to become part of the Project Contract Documents when the Construction Contract is executed by the Professional's recommended lowest responsive, responsible qualified Construction Contractor. An Addendum issued after the competitive construction Bid opening to those construction Bidders who actually submitted a Bid, for the purpose of rebidding the Project work without re-advertising, is referred to as a post-Bid Addendum.

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

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

BIDDING DOCUMENTS: The Professional's Project Contract Documents as advertised, and all Addenda issued before the construction Bid opening, and after the construction Bid opening, if the Project construction work is rebid without re-advertising. Bidding Documents shall consist of: the Phase 500 - Final Design architectural and/or engineering drawings and specifications, any Addenda issued, 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 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 Budget amount to be provided by the State of Michigan and available for a specific purpose or combination of purposes to accomplish the Project for this Contract.

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 sequentially numbered change in the Project under consideration by the Department and the Professional and to request the Construction Contractor

to submit a proposal for the corresponding adjustment in the Contract price and/or Contract time, if any. These standard document forms are a part of the "DMB-460, Project Procedures" documents package.

COMMISSIONING: A systematic process of assuring by verification and documentation from the design stage until generally 1 year after construction that all facility systems perform interactively in accordance with the design documentation and intent, and in accordance with the Agency's operational needs, including training of maintenance and operational personnel.

COMMISSIONING AGENT: A qualified person, company or agency that plans, coordinates and oversees the entire commissioning process.

COMMISSIONING PLAN: The document prepared for each project that describes all aspects of the commissioning process including schedules, responsibilities, documentation requirements and communication structures.

COMMISSIONING REPORT: A final report prepared by the Commissioning Agency on the results of the commissioning. See detailed report requirements under Task 606 of in Article 1 within this Contract.

CONSTRUCTION CONTRACT: A separate written Contract 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 firm under a separate Contract to the Department for construction services.

CONSTRUCTION INSPECTION SERVICES: The Professional's field Inspections of the Project during the construction Phase of this Contract which includes but is not limited to: (1) Documenting the quantity and quality of all Project construction work and verifying that the Project construction work is properly completed; (2) Resolve Project problems that are affecting the Project construction work, certify payment requests, process Bulletins, Contract Change Order recommendations, and requests for information (RFI's) in a timely manner as prescribed in the Department's, "MICHSPEC 2001 Edition of The Owner and Contractor Standard Construction Contract and General Conditions for Construction (Long Form)" or the current Department, 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" as adopted and modified by the State of Michigan and incorporated into the Construction Contract; and the (3) Inspection of Project construction work completed or in progress by the Construction Contractor to determine and verify to the Department's Project Director and their Department Field Representative that the Project construction work is in compliance with the Professional's design intent and that the Project has been completed by the Construction Contractor in accordance with the Professional's Phase 500 - Contract Documents/architectural and/or engineering drawings and specifications requirements.

The Professional shall provide sufficient Inspections of the Project during the construction Phase to administer the construction Phase field and office services as directly related to the degree of Project complexity, up to and including full-time field Inspections. Construction field Inspections shall occur as the construction field conditions and the Project may require and during the regularly scheduled monthly progress and payment meetings. The Professional shall use for their construction field Inspection services, only personnel having professional expertise, experience, authority, and compatibility with departmental procedures as the Department may approve. The Professional 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 Professional, in writing, of their unacceptable performance.

CONSULTANT: Any individual, firm, or employee thereof, not a part of the Professional's staff, but employed by the Professional and whose professional service cost is ultimately paid by the State of Michigan, either as a direct cost or authorized reimbursement. This includes the recipient(s) of Contract Orders for material, support, and/or technical services. Also, included are persons and firms whose management and/or direction of services are assigned to the Prime Professional as may be provided elsewhere in this Contract.

CONTRACT CHANGE ORDER: A standard document form (DMB-403) issued and signed by the State of Michigan and signed by the Professional which amends the Project Design Professional's Contract Documents for changes in the Appendix 1 – Project/Program Statement or an adjustment in Contract price and/or Contract time, or both.

CONTRACT DOCUMENTS: The Professional's Phase 100 – Study, Final Report and Phase 500 - Final Design architectural and/or engineering plans/drawings, specifications, Construction Contract, instructions to construction Bidders, proposal, Bidding Documents, agreement, conditions of the Contract, payment bond, performance/labor and material bond, prevailing wages, all Addenda, and attachments as may be necessary to comprise a Construction Contract for the Project. Specifications for this Contract will be prepared for Division 00 through 49, in the 2004 MasterFormat Outline by the Construction Specifications Institute (C.S.I.), as appropriate for the Project.

CONTRACT MODIFICATION: A form (DMB-410) amending the Contract signed by the Department and the Professional. The preparation of Bulletins and Contract Change Orders resulting from changes in the Appendix 1 – Project/Program Statement or previously unknown on-site field conditions as approved by the Department will be compensated to the Professional by way of the Contract Modification in accordance with the Article 2, Compensation text of this Contract. Any Contract Modification of this Professional Building Commissioning 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 Professional for correcting, or for responding to claims or litigation for, the Professional's Phase 100 – Study, Final Report and Phase 500 - Contract Documents/architectural and/or engineering study/design errors, omissions or neglect on the part of the Professional.

CONTRACT ORDER: A form (DMB-402) issued and signed by the State of Michigan authorizing a Professional to: (1) Begin to incur Project expenses and proceed with the Project on-site; and (2) Provide professional services for the fee amount designated in the Phases of the Contract Order. Issuance of the DMB-402 certifies that: (1) The State will enter into a Professional Building Commissioning Contract for the professional services described in the various Phases of this Contract; and that (2) The proper three (3) sets of Certificate of Insurance documents have been received and accepted by the State along with the approval and signing of the Professional's Professional Building Commissioning Contract by the FBSA, DCD Director.

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

DESIGN MANUAL: Provides the Professional with information regarding the Department's current "Major Project Design Manual for Professional Services Contractors and State/Client Agencies" review process requirements regarding the uniformity in Contract materials presented to it by the Professional and the State/Client Agency (ies). This manual contains the following noted standards, instructions, and procedures information for: (1) General instructions for planning documents from Phase 100-Study through Phase 500-Final Design; (2) Net and gross area/volume; (3) Project cost format; (4) Outline architectural and engineering specifications; (5) Specifications in documentation Phase; (6) Instructions for proposal; (7) Bidders questionnaire; and the (8) Project job sign.

DIRECTOR: The Director of the Department of Technology, Management and Budget or their authorized State of Michigan representative.

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

DEPARTMENT FIELD REPRESENTATIVE: An employee of the State under the direction of the Project Director who provides the Inspection of construction Projects for compliance with the design intent of the Professional's Phase 500 - Contract Documents/architectural and/or engineering drawings and specification requirements and the building construction codes. The Department Field Representative is the liaison between the Construction Contractor, the Professional, and the Project Director. The Project Director, or their Department Field Representative, has the authority to require the Professional to respond to and resolve study/design related problems, construction field problems and to attend Project meetings. Unless delegated by specific written notice from the Department, the Department Field Representative has no authority to order any changes in the Project scope of work or authorize any adjustments in Contract price or Contract time.

INSPECTION: The Professional and their Consultant firm's on-site and/or off-site examination of the Project construction work completed or in progress by the Construction Contractor to determine and verify to the Department's, Project Director and their Department Field Representative that the quantity and quality of all Project construction work is in accordance with the design intent of the Professional's Phase 500 - Contract Documents/architectural and/or engineering drawings and specifications requirements.

KEY PRINCIPAL PERSONNEL/EMPLOYEE: An individual employee of a Professional who is essential for the successful completion of the Project.

NOTICE OF INTENT TO AWARD: A written notice to the Construction Contractor, by the Department accepting the Professional's written recommendation to award the construction Bid to the lowest responsive, responsible qualified construction Bidder. The Notice of Intent to Award letter will also designate the Contract price and itemize the alternates that the Department, at its sole discretion has accepted.

PHASE: A discretely distinguishable step necessary to produce the Project in the course of the Professional providing architectural and/or engineering study, design, and construction administration services.

PRIME PROFESSIONAL SERVICES CONTRACTOR/PROFESSIONAL: An individual, firm, partnership, corporation, association, or other legal entity who is legally permitted by law to sign and seal final design construction 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, geology, civil, land surveying, or landscape architecture services in the State of Michigan.

The Prime Professional Services Contractor/Professional is also legally permitted by the State of Michigan'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.

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

PROJECT COST: The total Project cost including, but not limited to, site purchase, site survey and investigation, hazardous material abatement, construction, site development, new utilities, telecommunications (voice and data), professional fees, construction quality control and material testing services, 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 professional licensed employee of the Department who is responsible for directing and supervising the Professional's services during the life of this Contract. The Project Director, or their Department Field Representative, has the authority to require the Professional to respond to and resolve study/design related problems, construction field problems and to attend Project related meetings.

PROJECT/PROGRAM STATEMENT: The Project/Program Statement is provided by the Department and defines the scope of the problem, describes why this Project is desirable, and provides a preferred resolution of the problem.

PROJECT TEAM: The Professional, the Project Director, Department Field Representative, a representative of the State/Client Agency, and others as considered appropriate by the Department.

PUNCH LIST: A list of minor construction Project items to be completed or corrected by the Construction Contractor, any one of which do not materially impair the use of the Project work, or the portion of the Project work inspected, for its intended purpose. A Punch List shall be prepared by the Professional upon having made a determination that the Project work, or a portion of the Project construction work inspected, in concert with the Professional, the Construction Contractor, the Department, the Project Director and their Department Field Representative, the State/Client Agency and any construction manager, is substantially complete and shall be attached to the respective DMB-455, Certificate of Substantial Completion form. This standard document form is a part of the "DMB-460, Project Procedures" documents package.

RETRO-COMMISSIONING: First time commissioning as implemented in an existing building in which a documented commissioning plan was not previously implemented. In many cases, design documents of the existing building may be incomplete or they may no longer represent the current building situation.

RE-COMMISSIONING: The process of commissioning a facility beyond project development and warranty phases. The purpose of re-commissioning is to assure the facility performs as expected over its useful life. Periodic re-commissioning ensures that the original performance persists. Re-commissioning reapplies the original commissioning in order to maintain building system performance.

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 reduce or eliminate the off-site migration of soils via water runoff, wind, vehicle tracking, etc. and comply with the Soil Erosion and Sedimentation Control in the State of Michigan as regulated under the 1994 Public Act 451, as amended – The Natural Resources Environmental Protection Act, Part 91 – Soil Erosion and Sedimentation Control. Soil Erosion and Sedimentation Control associated with this Contract will be monitored and enforced by the Department of Technology, Management and Budget, Facilities and Business Services Administration, Soil Erosion and Sedimentation Control Program.

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, for whose use the Project will ultimately serve, which requires professional architectural and/or engineering design services.

SUBSTANTIAL COMPLETION: The form (DMB-445) stating that the Project work, or a portion of the Project work eligible for separate Substantial Completion, has been completed in accordance with the design intent of the Professional's Contract Documents to the extent that the Department and the State/Client Agency can use or occupy the entire Project work, or the designated portion of the Project work, for the use intended without any outstanding, concurrent work at the Project work site, except as may be required to complete or correct the Project work Punch List items.

SUSTAINABLE DESIGN: The Professional's use of a balance of appropriate materials, products and design methods that reduce the impact to the natural ecosystems and are within the Budget constraints of the Project. Sustainable Design shall be used wherever possible by the Professional in their Project design and an itemized list shall be provided with the Professional's Contract Documents that identifies the processes and products.

TASK: Shall mean the following: (1) A quantifiable component of design related professional architectural and/or engineering study/design Task services required to achieve a Phase of the Project; (2) The most manageable sub-element within a study/design Phase; (3) A unique item of work within a study/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, and construction Phase.

ARTICLE XIV
COMPLETE AGREEMENT/MODIFICATION

This Professional Building Commissioning Contract constitutes the entire agreement as to the Project between the parties. Any Contract Modification of this Contract and the 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 Professional for correcting, or for responding to claims or litigation for errors, omissions or neglect on the part of the Professional.

APPENDIX 1

PROJECT/PROGRAM STATEMENT

PROJECT STATEMENT

STATE OF MICHIGAN
DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
Facilities and Business Services Administration
Second Floor, Stevens T. Mason Building
P.O. Box 30026
Lansing, Michigan 48909

FILE NUMBER	INDEX NUMBER(S)	COMPTROLLER OBJECT	APPROVAL DATE
Various	Various		

DEPARTMENT
Department of Technology, Management and Budget

AGENCY
Various

ADDRESS
Various

DTMB PROJECT MANAGER	TELEPHONE NUMBER
Judson Sorensen	517-284-7916

PROJECT DESCRIPTION
Provide professional building commissioning Indefinite-Scope Indefinite-Delivery (ISID) services for a variety of state funded construction projects.

The Professional shall submit five (5) hard and two (2) electronic (.pdf, via CD or DVD) copies of the technical and the cost proposal. The Professional must use the attached appropriate forms to indicate the billing rates. The State reserves the right not to award the contract(s) or award the contract(s) to one or more firms.

SPECIAL WORKING CONDITIONS
Working on-site and in the vicinity of the assigned projects.

DESIRED SCHEDULE OF WORK
Dependent on the assigned project.

LOCATION OF WORK AREAS
Various

REFERENCE STANDARDS: This project will comply with all codes, standards, regulations, and workers' safety rules that are administered by federal agencies (EPA, OSHA, and DOT), state agencies (MIOSHA, DNR, and DPH), and any other local regulations and standards that may apply.

CERTIFICATE OF AWARDABILITY:
All Professional Service Contractors submitting proposals over $100,000.00 must be certified by the Department of Civil Rights for compliance with State of Michigan Equal Employment Opportunity requirements. The Professional must not discriminate on the basis of religion, race, color, national origin, age, sex, marital status, height, weight, arrest record or disability. Prior to the award of any Contract of $100,000.00 or more, the DTMB Contract Compliance Representative will notify the Michigan Department of Civil Rights (DCR) Contract Compliance Representative, providing a bid tabulation and providing a description of the recommended awardee(s) including business(es)' name, business(es)' designated contact person, last four digits of company(ies)' tax identification number, business(es)' address, and business(es)' contact person telephone number. In the event a Professional does not possess a valid Certificate of Awardability and is the selected proposer, the Professional must immediately submit, upon notification by DTMB, their application to DCR. **DO NOT SUBMIT APPLICATION TO DCR UNLESS YOU ARE NOTIFIED BY DTMB.**

The time required by DCR to process and render a decision on such application is nine (9) calendar days from the date of transmission of selection information by DTMB to DCR. Communications concerning Certificates of Awardability should be directed to:

Michigan Department of Civil Rights
Business and Community Affairs
Cadillac Place
3054 West Grand Boulevard, Suite 3-600
Detroit, Michigan 48202
Telephone: (313) 456-3822
Fax: (313) 456-3826

This form is required to be a part of the professional service contract. (Authority: 1984 PA 431)
Attachment(s)

APPENDIX 2

PROFESSIONAL'S PROPOSAL
(See Back Cover)

APPENDIX 3

DEBARMENT, SUSPENSION AND RESPONSIBILITY CERTIFICATION

AND

CERTIFICATION OF A MICHIGAN BASED BUSINES

R 12/16/13

DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
Facilities and Business Services Administration
Design & Construction Division

Certification of a Michigan Based Business

(Information Required Prior to Contract Award for Application of State Preference/Reciprocity Provisions)

To qualify as a Michigan business:

Vendor must have, during the 12 months immediately preceding this bid deadline:
or
If the business is newly established, for the period the business has been in existence, it has:

(check all that apply):

- [X] Filed a Michigan single business tax return showing a portion or all of the income tax base allocated or apportioned to the State of Michigan pursuant to the Michigan Single Business Tax Act, 1975 PA 228, MCL ~208.1 – 208.145; or
- [X] Filed a Michigan income tax return showing income generated in or attributed to the State of Michigan; or
- [ ] Withheld Michigan income tax from compensation paid to the bidder's owners and remitted the tax to the Department of Treasury; or

I certify that **I have personal knowledge** of such filing or withholding, that it was more than a nominal filing for the purpose of gaining the status of a Michigan business, and that it indicates a significant business presence in the state, considering the size of the business and the nature of its activities.

I authorize the Michigan Department of Treasury to verify that the business has or has not met the criteria for a Michigan business indicated above and to disclose the verifying information to the procuring agency.

Bidder shall also indicate one of the following:

- [X] Bidder qualifies as a Michigan business (provide zip code: 49007)
- [ ] Bidder does not qualify as a Michigan business (provide name of State: _____).
- [ ] Principal place of business is outside the State of Michigan, however service/commodity provided by a location within the State of Michigan (provide zip code: _____)

Bidder: Tower Pinkster Titus Associates, Inc.

Adam Doubblestein
Authorized Agent Name (print or type)

Adam Doubblestein 2/24/15
Authorized Agent Signature & Date

Fraudulent Certification as a Michigan business is prohibited by MCL 18.1268 § 268. A BUSINESS THAT PURPOSELY OR WILLFULLY SUBMITS A FALSE CERTIFICATION THAT IT IS A MICHIGAN BUSINESS OR FALSELY INDICATES THE STATE IN WHICH IT HAS ITS PRINCIPAL PLACE OF BUSINESS IS GUILTY OF A FELONY, PUNISHABLE BY A FINE OF NOT LESS THAN $25,000 and subject to debarment under MCL 18.264.

R 12/16/13

DTMB
Technology, Management & Budget

DEPARTMENT OF TECHNOLOGY, MANAGEMENT AND BUDGET
Facilities and Business Services Administration
Design & Construction Division

Responsibility Certification

The bidder certifies to the best of its knowledge and belief that, within the past three (3) years, the bidder, an officer of the bidder, or an owner of a 25% or greater interest in the bidder:

(a) Has not been convicted of a criminal offense incident to the application for or performance of a contract or subcontract with the State of Michigan or any of its agencies, authorities, boards, commissions, or departments.

(b) Has not had a felony conviction in any state (including the State of Michigan).

(c) Has not been convicted of a criminal offense which negatively reflects on the bidder's business integrity, including but not limited to, embezzlement, theft, forgery, bribery, falsification, or destruction of records, receiving stolen property, negligent misrepresentation, price-fixing, bid-rigging, or a violation of state or federal anti-trust statutes.

(d) Has not had a loss or suspension of a license or the right to do business or practice a profession, the loss or suspension of which indicates dishonesty, a lack of integrity, or a failure or refusal to perform in accordance with the ethical standards of the business or profession in question.

(e) Has not been terminated for cause by the Owner.

(f) Has not failed to pay any federal, state, or local taxes.

(g) Has not failed to comply with all requirements for foreign corporations.

(h) Has not been debarred from participation in the bid process pursuant to Section 264 of 1984 PA 431, as amended, MCL 18.1264, or debarred or suspended from consideration for award of contracts by any other State or any federal Agency.

(i) Has not been convicted of a criminal offense or other violation of other state or federal law, as determined by a court of competent jurisdiction or an administrative proceeding, which in the opinion of DTMB indicates that the bidder is unable to perform responsibly or which reflects a lack of integrity that could negatively impact or reflect upon the State of Michigan, including but not limited to, any of the following offenses under or violations of:

   i. The Natural Resources and Environmental Protection Act, 1994 PA 451, MCL 324.101 to 324.90106.
   ii. A persistent and knowing violation of the Michigan Consumer Protection Act, 1976 PA 331, MCL 445.901 to 445.922.
   iii. 1965 PA 166, MCL 408.551 to 408.558 (law relating to prevailing wages on state projects) and a finding that the bidder failed to pay the wages and/or fringe benefits due within the time period required.
   iv. Repeated or flagrant violations of 1978 PA 390 MCL 408.471 to 408.490 (law relating to payment of wages and fringe benefits).
   v. A willful or persistent violation of the Michigan Occupational Health and Safety Act, 1974, PA 154, MCL 408.10001 to 408.1094, including: a criminal conviction, repeated willful violations that are final orders, repeated violations that are final orders, and failure to abate notices that are final orders.
   vi. A violation of federal or state civil rights, equal rights, or non-discrimination laws, rules, or regulations.
   vii. Been found in contempt of court by a Federal Court of Appeals for failure to correct an unfair labor practice as prohibited by Section 8 of Chapter 372 of the National Labor Relations Act, 29 U. s. C. 158 (1980 PA 278, as amended, MCL 423.321 et seq).

(j) Is NOT an Iran linked business as defined in MCL 129.312.

I understand that a false statement, misrepresentation, or concealment of material facts on this certification may be grounds for rejection of this proposal or termination of the award and may be grounds for debarment.

Bidder:

Authorized Agent Name (print or type)

_____

Authorized Agent Signature & Date

☐ I am unable to certify to the above statements. My explanation is attached.

APPENDIX 4

OVERHEAD ITEMS ALLOWED FOR THE PROFESSIONAL SERVICES CONTRACTOR FIRM'S HOURLY BILLING RATE CALCULATION

The following instructions are to be used by the Professional Services Contractor firm's to determine the hourly billing rate to use on State of Michigan Projects.

The Professional's Consultant must submit a separate hourly billing rate for the professional Consultant services they will provide for State of Michigan Projects. A moderate mark-up of the Professional's Consultant services hourly billing rates will be allowed.

The Department will reimburse the Professional for the actual cost of printing and reproduction of the Contract Bidding Documents, soil borings, surveys and any required laboratory testing services and use of field equipment. No mark-up of these Project costs will be allowed.

2013 HOURLY BILLING RATE

Based on 2012 Expenses

OVERHEAD ITEMS ALLOWED FOR THE PROFESSIONAL SERVICES CONTRACTOR FIRM'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)

APPENDIX 5

CERTIFICATES OF INSURANCE

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 2/25/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: certs@pciaonline.com
Professional Concepts Insurance Agency, Inc. 1127 South Old US Highway 23 Brighton MI 48114-9861	PHONE (A/C, No, Ext): (800) 969-4041 FAX (A/C, No): (800) 969-4081 E-MAIL ADDRESS: certs@pciaonline.com

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
Tower Pinkster Titus Associates, Inc. 242 E. Kalamazoo Ave., Suite 200 Kalamazoo MI 49007	INSURER A: Travelers	
	INSURER B: Travelers Indemnity Co. of CT	25682
	INSURER C: XL Specialty Ins. Co.	37885
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 14-15 ALL **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC	X		6809E188059	9/15/2014	9/15/2015	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 300,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [X] HIRED AUTOS [X] NON-OWNED AUTOS			BA-0F240816	9/15/2014	9/15/2015	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Terrorism Coverage	$ 1,000,000 $ $ $ $
A	[X] UMBRELLA LIAB [X] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [X] RETENTION $ 10,000			CUP000F238335	9/15/2014	9/15/2015	EACH OCCURRENCE AGGREGATE	$ 7,000,000 $ 7,000,000 $
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N [N] If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		UB3973T12913	9/15/2014	9/15/2015	[X] WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ 500,000 $ 500,000 $ 500,000
C	Professional Liability			DPR9718313	9/15/2014	9/15/2015	Per Claim Aggregate	5,000,000 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

File No. (TBA) Index No. (TBA) Indefinite-Scope, Indefinite-Delivery Discretionary Contract No. 00514. 2015 Building Commissioning Services Various Locations, Michigan. State of Michigan, Department of Technology, Management & Budget is considered as additional insured as respects to General Liability only when required within a written contract.

CERTIFICATE HOLDER

State of Michigan
Department of Technology
Management & Budget
General Office Building
7150 Harris Dr. PO Box 30026
Lansing, MI 48909

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Mike Cosgrove/JL Michael Cosgrove

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