

OWNER/ARCHITECT AGREEMENT
BETWEEN
WAYNE COUNTY BUILDING AUTHORITY
AND
AECOM SERVICES OF MICHIGAN, INC.,
FOR
PROGRAM MANAGEMENT AND ARCHITECTURAL
SERVICES FOR THE CREATION OF A NEW WAYNE
COUNTY JUSTICE CENTER

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AGREEMENT

This **PROGRAM MANAGEMENT AND ARCHITECTURAL SERVICES AGREEMENT**, hereinafter the "Agreement" is by and between the **CHARTER COUNTY OF WAYNE, MICHIGAN, BUILDING AUTHORITY**, created pursuant to the provisions of the State of Michigan Public Act No. 31, Extra Session of 1948, and whose address is 500 Griswold, 21st Floor, Detroit, Michigan 48226, and hereinafter shall be referred to as the "Authority" or the "Owner" and **AECOM SERVICES OF MICHIGAN, INC.**, a Michigan Corporation, whose address is 500 Griswold Street, 26th Floor, Detroit, Michigan 48226, and hereinafter shall be referred to as the "Program Manager/Architect." The Authority and the Program Manager/Architect shall be collectively referred to as the parties.

This Agreement is for Services in connection with the following described project:

WAYNE COUNTY JUSTICE CENTER

The Program Manager/Architect for the Project is: **AECOM SERVICES OF MICHIGAN, Inc.**

TERMS AND CONDITIONS OF AGREEMENT BETWEEN AUTHORITY AND PROGRAM MANAGER/ARCHITECT

PURPOSE

This Agreement is made for the purpose of providing professional design and program management services in conjunction with the Authority's development of the Wayne County Justice Center ("Project"). The Authority desires to engage the Program Manager/Architect to provide all professional, administrative and procurement services, including, but not limited to, clerical support, labor, material, equipment, supplies, travel and related expenditures, necessary to perform the Services as described in this Agreement, all documents referenced in this Agreement, and in all Exhibits attached hereto and incorporated herein by reference. The Services provided by the Program Manager/Architect shall include but are not limited to Exhibit A, the Program Manager/Architect's Defined Scope of Services; Exhibit B, the Program Manager/Architect's Progress Schedule; Exhibit C, the Pricing Schedule will indicate the price for each task and phase of development; and, Exhibit D, Standard Form of Owner's Representative Agreement, all of which are incorporated herein and made a part hereof. In the event there are any inconsistencies between the definition of Services contained in this Agreement or its Exhibits, the parties agree that this Agreement shall control.

STANDARD OF CARE

The Authority desires to engage the Program Manager/Architect and the Program Manager/Architect desires to accept the relationship of trust and confidence bestowed

by the Authority on the terms and conditions set forth herein. In performing its duties hereunder, the Program Manager/Architect covenants with the Authority to furnish the professional skill and judgment of like professionals performing services of a like or similar nature under like or similar circumstances in furthering the interests, goals and objectives of the Authority. The Program Manager/Architect agrees to furnish efficient business administration and superintendence, and perform all obligations hereunder expeditiously, economically, faithfully and diligently and to perform the Services in accordance with the terms and conditions contained in this Agreement and each of the attached Exhibits. The Program Manager/Architect will comply with all applicable building codes, statutes, rules and regulations having effect and jurisdiction over the Project.

Program Manager/Architect shall not be responsible for construction means, construction methods, construction techniques, or for construction procedures, nor for construction related safety precautions and programs in connection with the Project, and shall not be responsible for the Contractor or its subcontractor's failure to carry out its work on the Project.

TERM

The Parties agree that the Term of this Agreement shall begin on August 1, 2010. The Program Manager/Architect agrees to perform the Services in the Agreement and its Exhibits within five (5) years of the Effective Date. Both parties agree that the Authority shall have the option to renew this Agreement for up to one (1) additional year.

DEFINITIONS

1. *Addendum* shall mean a written or graphic instrument issued by the Program Manager/Architect prior to the execution of the Contract for Construction which modifies or interprets the bidding documents by additions, deletions, clarifications or corrections.
2. *Adjustment* shall mean a monetary revision to Program Manager/Architect's fee or to the entire Agreement.
3. *American Recovery and Reinvestment Act of 2009* is abbreviated as ARRA and is the Federal law, together with its amendments, guidelines and regulations commonly referred to as the Stimulus Act or The Recovery Act, under which the bonds issued by the County for the Project were issued.
4. *Authorization* shall mean the written order of the Owner's Representative or when necessary by board authorization of the Authority, on regulation forms, for changes in the scope of Program Manager/Architect's services to be provided under this Agreement. Authorizations duly signed by the Program Manager/Architect constitute authorized modifications of the Agreement.

5. *Certificate of Occupancy* shall mean the document issued by a governmental authority certifying that all or a designated portion of a building is approved for its designated use.

6. *Change Order* shall mean a written order signed and issued by the Owner's Representative, directing the Program Manager/Architect to perform additional or different services without the Program Manager/Architect's consent.

7. The *Contract Documents* form the *Contract for Construction* or *Construction Contract* and consist of :

a. this Agreement and its Exhibits, as amended;

b. Contract Modifications, Change Orders and written amendments to the Agreement between Owner and Contractor, including exhibits and appendices, signed by both the Owner and Contractor;

c. the Agreement between Owner and Contractor and Conditions of the Contract (General, Supplementary and other Conditions);

d. the most current Drawings, Specifications and Addenda approved by the Owner;

e. the Owner's Program provided pursuant to Paragraph 4.1.

In case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above.

8. Consultant shall for the purposes of this Agreement, those corporations, individuals , or professional entities hired by the Program Manager/Architect in furtherance of those duties indicated in this Agreement and its Exhibits.

9. *Contract Modification* shall mean any written alteration of Program Manager/Architect's scope of services, period of performance, fee, or other provision of the Agreement accomplished by mutual action of the parties to the Agreement.

10. *Contract Sum* is the stated amount in the Contract for Construction and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

11. *Contract Time* is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

12. *Contractor* shall mean the person or entity responsible for performing the Work under the Contract for Construction.

13. *Data or Product Data* are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate a material, product or system for some portion of the Work.

14. The term *day* shall mean calendar day unless otherwise specifically defined.

15. The *Drawings* are the graphic and pictorial portions of the Contract Documents, where located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

16. *Environmental Laws* shall mean all federal, state, and local laws, ordinances, rules, regulations, requirements, permits, licenses, authorizations, approvals, criteria, guidelines, and judicial and administrative orders, decrees, or judgments, now or hereafter in effect, and in each case as amended, and any judicial or administrative interpretation thereof, relating to the regulation and protection of human health, safety, the environment and the natural resources including, without limitation, laws (and all other items recited above) relating to emissions, discharges, releases, threatened releases or remediation of, or any other response action related to, contamination or Hazardous Materials or otherwise relating to the generation, use, treatment, storage, recycling, disposal, transport, or handling of or exposure to contamination or Hazardous Materials. Environmental Laws include but are not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601, et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §6901 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq. and the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; each as amended from time to time, and each of their state and local counterparts or equivalents including, but not limited to, the Michigan National Resources and Environmental Protection Act, 1994 PA 451, as amended.

17. *Final Completion* occurs on the date when the Contractor's obligations under the Contract for Construction are complete and accepted by the Owner and final payment becomes due and payable which shall be achieved within sixty (60) days of Substantial Completion.

18. *Hazardous Materials* shall mean any hazardous waste, toxic substance or related materials identified now or during the term of this Agreement as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up, including, without limitation, substances defined as "hazardous substances" or "toxic substances" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802.

19. *Legal Requirements* shall mean the requirements of American Recovery and Reinvestment Act ("ARRA") and all other applicable laws, ordinances, codes, rules and regulations, orders and decisions of all governmental authorities having jurisdiction over the Owner, Program Manager/Program Manager/Architect, Contractor, Worksite, the Work or any part of any of the foregoing as the same may be changed or modified with the approval of the applicable governmental authority.

20. The *Owner* is the CHARTER COUNTY OF WAYNE, MICHIGAN, BUILDING AUTHORITY.

21. *Owner's Manual* is the document comprising the agreed upon documents referenced in Exhibit A, Parts 1 through 5, under the heading captioned "A. Programming and Pre-Design Phase".

22. The *Owner's Program* is a description of the Owner's objectives, budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and Worksite requirements.

23. The *Owner's Representative* shall be a third party independent corporation retained by Program Manager/Architect and shall have the duties identified in an Owner's Representative Agreement, the form of which is attached as Exhibit D, to be finalized within thirty (30) days from the effective date of this Agreement. It is understood that Owner's Representative is a sub-consultant to Program Manager/Architect recommended by Owner and agreed to by Program Manager/Architect for the convenience of the Owner and that the arrangement is solely for the benefit of the Owner and that Program Manager/Architect has no responsibility or liability for the performance or nonperformance of Owner's Representative's services, and conversely, Owner's Representative will have no duty, obligation, or loyalty to Program Manager/Architect except as provide in the Owner's Representative Agreement, and that payments due on account of Owner's Representative is an allowance agreed upon by Owner and Program Manager/Architect as identified in Exhibit B and will not be subject to any offset. The Parties acknowledge that the Owner's Representative has a duty and fiduciary responsibility to Owner which is independent of his duty to receive payment for his services from Program Manager/Architect. The Parties also agree that the allowance for the Owner's Representative is at a rate and amount less than ordinary market rates.

24. The *Project* is a new Wayne County Justice Center including offices and detention facilities on the property which shall be formally acknowledged in Exhibit E of this Agreement by the Owner, prior to the commencement of construction.

25. The *Project Manual* is the volume assembled for the Work which shall include the bidding requirements, sample forms, Conditions of the Construction Contract and Specifications.

26. *Samples* shall mean physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

27. The *Specifications* are that portion of the Contract Documents consisting of written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.

28. *Shop Drawings* are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

29. A *Subconsultant* is a party or entity retained by Program Manager/Architect as an independent contractor to provide services necessary to complete the Work.

30. A *Subcontractor* is a party or entity retained by the Contractor as an independent contractor to provide the on site labor, materials, equipment and/or services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Program Manager/Program Manager/Architect/Engineer or any separate contractor employed by the Owner or any separate contractor's subcontractor.

31. *Substantial Completion of the Work*, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended. This occurs when (a) the portion of the Work is designated in a Certificate of Substantial Completion prepared by the Program Manager/Program Manager/Architect, (b) appropriate insurer(s) and/or the Surety consents to the occupancy or use, and (c) appropriate public authorities authorize the occupancy or use. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Contractor. The Certificate shall list the items to be completed or corrected, and establish the time for their completion and correction within the timeframe for the Date of Final Completion.

32. A *Sub-subcontractor* is a party or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

33. The *Surety* is the corporate body which is authorized to do business in this State and which is bound with and for the Contractor for the acceptable performance of the Agreement and for the payment of all lawful debts incurred in fulfilling the Agreement.

34. *Wayne County Code* shall mean the County of Wayne, Michigan Code of Ordinances.

35. The *Work* means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or part of the Project.

36. *Worksite* means the geographical area where the Work is to be performed.

Terms used in this Agreement which are defined in the Contract Documents shall have the meanings designated in the Contract Documents. Unless otherwise stated in the Contract Documents, words and abbreviations which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Terms which are defined in the Contract Documents shall have their meanings as defined, whether or not such terms are capitalized unless the context clearly indicates otherwise.

ARTICLE 1

PROGRAM MANAGER/ARCHITECT'S RESPONSIBILITIES

1.1 The Services performed by Program Manager/Architect, Program Manager/Architect's employees and Program Manager/Architect's consultants shall be as enumerated in Articles 2 ("Basic Services"), 3 ("Additional Services") and 12 ("Other Services").

1.2 Program Manager/Architect recognizes and understands that time is of the essence in the completion of the Services required under this Agreement, and that the timely and orderly completion of the Project is critical to Owner's interests. Program Manager/Architect shall submit for Owner's approval a schedule for the completion of each phase of Program Manager/Architect Basic Services required by this Agreement which may be adjusted as the Project proceeds. This schedule shall include allowances for periods of time required for Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Time limits established in the schedule approved by Owner shall not be exceeded by Program Manager/Architect, except where the delay is caused by an Excusable Delay Event as defined in Paragraph 8.2 herein.

1.3 Upon completion of the performance of each phase of Program Manager/Architect's Basic Services, Program Manager/Architect shall submit to Owner an evaluation of the tasks completed. Program Manager/Architect must receive written authorization from Owner at the conclusion of each phase before it can advance to the next phase of the services to be provided under this Agreement.

1.4 Program Manager/Architect shall designate a representative authorized to act on Program Manager/Architect's behalf with respect to the Project. Program Manager/Architect's designated representative for the Project is Andrew Cupples, AIA, NCARB

1.5 Program Manager/Architect's Basic Services and responsibilities specifically exclude services involving asbestos and/or other hazardous materials in any form.

1.6 Program Manager/Architect shall be responsible for the professional quality, technical accuracy, and coordination of all Drawings, Specifications and other design documents relating to Program Manager/Architect's design and used on the Project, regardless of whether such Drawings, Specifications or other documents are prepared or performed by Program Manager/Architect or by Program Manager/Architect's consultants. If preliminary or design development services have been performed by others engaged by Program Manager/Architect, Program Manager/Architect is nevertheless fully responsible for and accepts full responsibility for such earlier work as if such work had been performed by Program Manager/Architect itself. Program Manager/Architect shall be responsible for coordination and internal checking of all Drawings and for the accuracy of all dimensional and layout information contained therein, as fully as if each Drawing were prepared by Program Manager/Architect. Such review and responsibility does not extend to confirming or checking the accuracy of manufacturer's specifications or Product Data.

1.7 Program Manager/Architect's duties and responsibilities as set forth herein shall at no time be in any way diminished by reason of any approval by Owner of the Drawings and Specifications or any other work product of Program Manager/Architect nor shall the Program Manager/Architect be released from any liability by reason of such approval by Owner, it being understood that Owner at all times is ultimately relying upon Program Manager/Architect's special professional skill and knowledge in preparing the Drawings and Specifications and all other work products of the Program Manager/Architect to be provided hereunder.

1.8 Program Manager/Architect shall submit a form of subcontract and consultant agreement for written approval and acceptance by Owner.

ARTICLE 2

SCOPE OF PROGRAM MANAGER/ARCHITECT'S BASIC SERVICES

2.1 DEFINITION

Program Manager/Architect's Basic Services consist of those described in Paragraphs 2.2 through 2.6, which include usual and customary civil, structural, mechanical and electrical engineering services, the scope of services set forth in Exhibit A which is incorporated herein by this reference, any other services identified in Article 12, and all other professional services and expertise determined by Program Manager/Architect to be reasonably necessary for the complete design and documentation of the Project within the amount authorized by Owner (the "Project Cost") and in accordance with applicable professional standards, laws, regulations, rules, codes, ordinances and orders of any governmental authority having jurisdiction over the Project.

The Basic Services shall be accomplished in five phases, as set forth in Paragraph 2.2 (Programming and Schematic Design Phase), Paragraph 2.3 (Design Development Phase), Paragraph 2.4 (Construction Documents Phase), Paragraph 2.5

(Bidding or Negotiation Phase) and Paragraph 2.6 (Administration of the Construction Contract Phase). The description of each phase of design services in this Agreement intends to define, but not exclude, any regular, usual or customary service necessary to accomplish an effective, efficient, and economical project within accepted requisites and the highest standards of professional practice in the industry.

The Project Cost as referenced herein also means the total project cost of Owner as identified in Exhibit C, including but not limited to the Construction Cost, the cost of the Project Consultant, and the cost for Program Manager/Architect's services. Exhibit C shall also include the Program Manager/Architect's methodology of the means by which such costs were calculated. The Program Manager/Architect shall regularly review the Project Cost and advise Owner of any changes to Project Cost in accordance with the procedures herein; however, no change in Project Cost shall be authorized by Owner unless Owner consents in writing.

2.2 PROGRAMMING AND SCHEMATIC DESIGN PHASE

2.2.1 Program Manager/Architect shall create the Program for the Project, in consultation with the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of such requirements with the Owner.

2.2.2 Program Manager/Architect shall provide a preliminary evaluation of Owner's Program, schedule and construction budget requirements, each in terms of the other, subject to the limitations set forth in Subparagraph 5.2.1.

2.2.3 Program Manager/Architect shall review with Owner alternative approaches to design and construction of the Project. If the estimate of the Construction Cost based upon the Schematic Design package prepared by Program Manager/Architect does not conform to the initial agreed upon construction budget, Program Manager/Architect shall provide a written statement to Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Construction Cost within the Owner's budget.

2.2.4 Program Manager/Architect shall make investigations, inventories of materials or equipment, or valuations and detailed appraisals of existing sites and if applicable facilities, provide services to verify the accuracy of drawings or other information furnished by the Owner. Program Manager/Architect may not rely on accuracy of information provided by Owner, unless Owner consents in writing.

2.2.5 Based on the mutually agreed-upon program, schedule and construction budget requirements, Program Manager/Architect shall prepare, for approval by Owner, Schematic Design Documents consisting of Drawings and other documents illustrating the scale and relationship of Project components.

2.2.6 Program Manager/Architect shall submit to Owner a preliminary estimate of Construction Cost based on current area, volume or similar conceptual estimating techniques.

2.2.7 Program Manager/Architect shall inform Owner in writing as to which of the information designated in this Agreement as "Owner-provided" is necessary for the performance of Program Manager/Architect's services. Upon the request of the Owner, Program Manager/Architect shall, as an Additional Service, prepare a request for proposal for such services as well as a list of Consultants that Program Manager/Architect believes to be reputable, competent, and appropriately licensed to perform such work. Program Manager/Architect shall submit this request and list for Owner's approval. Upon approval by the Owner, Program Manager/Architect shall issue the requests to approved consultants and shall obtain proposals from those consultants, forwarding the proposals with the Program Manager/Architect's recommendation for selection to the Owner. The Owner and the Program Manager/Architect agree that the Program Manager shall have the ability to select certain Consultants without seeking a proposal from such consultants. Under such circumstances, the Program Manager/Architect agrees and understands that the Owner shall have the ability to reject the use of such consultants and require the Program Manager/Consultant to select and recommend a consultant that is acceptable to the Owner.

2.3 DESIGN DEVELOPMENT PHASE

2.3.1 Based on the approved Schematic Design Documents and any adjustments authorized by Owner in the Program, schedule or construction budget, Program Manager/Architect shall prepare, for approval by the Owner, Design Development Documents consisting of Drawings and other documents to fix and describe the size and character of the Project as to Program Manager/Architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

2.3.2 Program Manager/Architect shall advise Owner of any adjustments to the preliminary estimate of Construction Cost. If the estimate of the Construction Cost based upon the Design Development package prepared by Program Manager/Architect does not conform to Owner's construction budget, as may have been amended, Program Manager/Architect shall provide a written statement to the Owner describing the specific reasons for the deviation and suggesting alternative designs or changes that can be made to the design in order to bring the Construction Cost within the Owner's budget.

2.4 CONSTRUCTION DOCUMENTS PHASE

2.4.1 Based on the approved Design Development Documents and any further adjustments in the scope or quality of the Project or in the construction budget authorized by the Owner, Program Manager/Architect shall prepare, for approval by Owner, Construction Documents consisting of Final Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The Construction Documents shall, in Program Manager/Architect's best professional judgment and in accordance with the corresponding standards of practice applicable to a fully competent first-class Program Manager/Architect that specializes in the design and construction of public facilities, be complete and unambiguous and in compliance with applicable Legal Requirements in effect as of the date of the Agreement. By submitting Final Drawings and Specifications, or other Construction Documents for Construction Contract purposes, Program Manager/Architect acknowledges that Program Manager/Architect has informed Owner in writing of any tests, studies, analyses or reports which are necessary or advisable to be performed by or for Owner at that point in time.

2.4.2 Program Manager/Architect shall submit and obtain all approvals of its professional work product, required by governmental authorities having jurisdiction over the Project. In addition, Program Manager/Architect shall file documents and obtain other approvals of governmental authorities having jurisdiction over the Project.

2.5 BIDDING OR NEGOTIATION PHASE

2.5.1 Program Manager/Architect, following the Owner's approval of the Construction Documents and of the latest preliminary estimate of Construction Cost, shall assist Owner in obtaining bids or negotiated proposals and assist in awarding and preparing contracts for construction which shall be subject to the review of Owner and Owner's counsel.

2.5.2 Program Manager/Architect shall submit an evaluation of all responses to the Invitations for Bids/Proposals submitted to Owner. Program Manager/Architect shall further prepare a detailed analysis of the ability of each bidder/respondent to perform the contract, including past history of performance. Based upon this evaluation and analysis, Program Manager/Architect shall make a recommendation for award to the Owner. The evaluation, analysis and recommendation are to be completed and delivered to Owner within five (5) working days of receipt of the bid summary from the Owner.

2.5.3 As soon as practicable after the award of the Construction Contract, Contractor shall furnish in writing to the Owner through the Program Manager/Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. Program Manager/Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Program Manager/Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner

or Program Manager/Architect to reply promptly shall constitute notice of no reasonable objection.

2.5.4 If Owner or Program Manager/Architect has reasonable objection to a person or entity proposed by Contractor, the Contractor shall propose another to whom Owner or Program Manager/Architect has no reasonable objection.

2.6 CONSTRUCTION PHASE - ADMINISTRATION OF THE CONSTRUCTION CONTRACT

2.6.1 Program Manager/Architect's responsibility to provide Basic Services for the Construction Phase under this Agreement commences with the execution of the Contract for Construction. Program Manager/Architect shall be a representative of and shall advise and consult with the Owner, and provide administration of the Contract for Construction (1) during construction, (2) until Final Completion, (3) with Owner's concurrence, from time to time during the warranty period provided for in the Construction Contract, and (4) as provided in Paragraph 12.1 herein. The Program Manager/Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement unless otherwise modified by written amendment.

2.6.2 Duties, responsibilities and limitations of authority of Program Manager/Architect under this Paragraph 2.6 shall not be restricted, modified or extended without written agreement of the Owner and Program Manager/Architect with consent of the Contractor, which consent will not be unreasonably withheld.

2.6.3 Program Manager/Architect, as a representative of the Owner, shall visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become familiar with and to keep Owner informed about the progress and quality of the portion of the Work completed, (2) to guard Owner against defects and deficiencies in the Work, and (3) to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, Program Manager/Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Program Manager/Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

2.6.4 Program Manager/Architect shall not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents, unless Program Manager/Architect, exercising the skill and care required of it under this Agreement, could have prevented such defective or deficient Work. Program Manager/Architect shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work; however, Program Manager/Architect shall be responsible to inform the Owner of any

acts or omissions of the Contractor, Subcontractors, or their agents or employees which have caused or will cause deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor.

2.6.5 Program Manager/Architect shall at all times have access to the Work wherever it is in preparation or progress.

2.6.6 Except as otherwise provided in this Agreement or when direct communications have been specially authorized, Owner shall endeavor to communicate with the Contractor through the Program Manager/Architect about matters arising out of or relating to the Contract Documents. With exception of the Owner's Representative, communications by and with Program Manager/Architect's consultants shall be through the Program Manager/Architect.

2.6.7 SCHEDULE OF VALUES AND APPLICATIONS FOR PAYMENT

2.6.7.1 Before the first Application for Payment, Contractor shall submit to Program Manager/Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Program Manager/Architect may require. This schedule, unless objected to by Program Manager/Architect, or the Owner's Representative, shall be used as a basis for reviewing Contractor's Applications for Payment.

2.6.7.2 At least ten days before the date established for each progress payment, Contractor shall submit to Program Manager/Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized and supported by such data substantiating Contractor's right to payment as Owner or Program Manager/Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage provided for in the Contract Documents. Such documentation shall include, but is not limited to a certification that all requested payments comply with the requirements of the Legal Requirements including ARRA.

2.6.8 CERTIFICATES FOR PAYMENT

2.6.8.1 Program Manager/Architect will, within seven days after receipt and evaluation of Contractor's Application for Payment and supporting documentation, either issue to Owner a Certificate for Payment, with a copy to the Contractor, for such amount as Program Manager/Architect determines is properly due, or notify the Contractor and Owner in writing of Program Manager/Architect's reasons for withholding certification in whole or in part as provided in Subparagraph 2.6.8.4.

2.6.8.2 The issuance of Program Manager/Architect's Certificate of Payment shall constitute a representation to the Owner, based on Program Manager/Architect's evaluation of the Work as provided in Subparagraph 2.6.3 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point

indicated and that, to the best of Program Manager/Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Program Manager/Architect.

2.6.8.3 The issuance of a Certificate for Payment shall not be a representation that the Program Manager/Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract sum.

2.6.8.4 Program Manager/Architect may withhold a Certificate of Payment in whole or in part, to the extent reasonably necessary to protect Owner, if in Program Manager/Architect's opinion the representations to the Owner required by Subparagraph 2.6.8.2 cannot be made. If Program Manager/Architect is unable to certify payment in the amount of the Application, Program Manager/Architect will notify the Contractor and Owner as provided in Subparagraph 2.6.8.1. If the Contractor and Program Manager/Architect cannot agree on a revised amount, Program Manager/Architect will promptly issue a Certificate of Payment for the amount for which the Program Manager/Architect is able to make such representation to Owner. Program Manager/Architect also may withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Program Manager/Architect's opinion to protect Owner from loss for which Contractor is responsible, including loss resulting from acts and omissions of Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its Subcontractors. Such loss may be because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the time provided for in the Contract for Construction, and the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

2.6.8.5 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

2.6.9 Program Manager/Architect shall have authority to recommend that the Owner reject Work that does not conform to the Contract Documents. Whenever the Program Manager/Architect considers it necessary or advisable, the Program Manager/Architect shall have authority, with concurrence by the Owner, to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Program Manager/Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Program Manager/Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

2.6.10 Program Manager/Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Program Manager/Architect's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Program Manager/Architect's professional judgment to permit adequate review. In no event shall such review take longer than fifteen (15) days after receipt of the Contractor's submittal. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of the other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. Program Manager/Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Program Manager/Architect, of any construction means, methods, techniques, sequences or procedures. Program Manager/Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.6.11 Program Manager/Architect shall issue a written answer to the Contractor and Owner for each Contractor-generated Request for Information ("RFI") (along with necessary descriptive drawings, specifications, or other documents) with the

promptness necessary to avoid unnecessary delay or cost, but in no case more than twelve (12) days after the RFI is received by the Program Manager/Architect.

2.6.12 If professional design services or certifications by Program Manager/Architect related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Program Manager/Architect shall specify appropriate performance and design criteria that such services must satisfy. Shop Drawings and other submittals related to the Work designed or certified by the Program Manager/Architect retained by the Contractor shall bear such professional's written approval when submitted to the Program Manager/Architect. The Program Manager/Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such other Program Manager/Architects.

2.6.13 Program Manager/Architect shall prepare Change Orders and Construction Change Directives, with supporting documentation and data if deemed necessary by the Program Manager/Architect as provided in Subparagraphs 3.1.1 and 3.3.3, for Owner's approval and execution in accordance with the Contract Documents, and may authorize minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time which are consistent with the intent of the Contract Documents.

2.6.14 Program Manager/Architect shall conduct observations to determine the date or dates of Substantial Completion and the date of Final Completion, shall receive from the Contractor and forward to Owner, for Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

2.6.15 After Final Completion, Program Manager/Architect shall furnish Owner with an electronic copy of the complete Project file including, but not limited to, copies of all communications between Program Manager/Architect, its subconsultants, and Owner, and copies of all inspections, testing, reports and meeting minutes pursuant to a schedule to be developed in consultation with Owner's Representative.

2.6.16 After Final Completion, Program Manager/Architect also shall furnish Owner with reproducible record drawings, As-builts, quantity computations, design notes and calculations in fully indexed loose leaf binders. The record drawings shall show significant changes in the Work made during construction based on marked-up prints, drawings and other data furnished by the Contractor to the Program Manager/Architect. Program Manager/Architect may rely upon the information supplied by the Contractor, and has no duty to verify the adequacy or accuracy of such information, unless it has reason to believe that the information provided by the Contractor is incorrect. Plans shall be prepared using a computer aided drafting system

approved by , Owner. A set of computer files are to be provided in a format compatible to Owner's current computer-aided drafting (AutoCAD) system.

2.6.17 Program Manager/Architect shall interpret and decide matters concerning performance of the Owner and Contractor under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. Program Manager/Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

2.6.18 Interpretations and decisions of the Program Manager/Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, Program Manager/Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions so rendered in good faith.

2.6.19 Program Manager/Architect shall render initial decisions on claims, disputes or other matters in question between the Owner and Contractor as provided in the Contract Documents. However, Program Manager/Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

2.6.20 Program Manager/Architect's decisions on claims, disputes or other matters in question between the Owner and Contractor, except for those relating to aesthetic effect as provided in Paragraph 2.6.19, shall be resolved as provided in this Agreement and in the Contract Documents.

2.6.21 Program Manager/Architect shall assist and cooperate with Owner in the investigation and defense of any claims initiated by parties other than the Owner which arise from the designs prepared by Program Manager/Architect and/or its consultants or which are alleged to have occurred in whole or in part as a result of or due to Program Manager/Architect's breach of the Agreement or negligent acts, errors, or omissions in the performance of any of the services furnished under the Agreement. Such assistance and cooperation on the part of the Program Manager/Architect shall be at no cost to the Owner. If the claims asserted against Owner are unrelated to the Program Manager/Architect's services under this Agreement, then Program Manager/Architect's litigation assistance shall be compensated by the Owner as an Additional Service.

2.6.22 Program Manager/Architect shall agree upon the Owner's Manual, as defined herein, no later than thirty (30) days from the effective date of this Agreement.

ARTICLE 3

ADDITIONAL SERVICES

3.1 GENERAL

3.1.1 The services described in this Article 3 are not included in Basic Services unless so identified in Article 12, and they shall be paid for by Owner as provided in this Agreement, in addition to the compensation for Basic Services. The services described under Paragraphs 3.3 and 3.4 shall only be provided if authorized or confirmed in writing by the Owner. If services described under Contingent Additional Services in Paragraph 3.3 are required due to circumstances beyond the Program Manager/Architect's control, the Program Manager/Architect shall notify Owner prior to commencing such services. If the Owner deems that such services described under Paragraph 3.3 are not required, Owner shall give prompt written notice to the Program Manager/Architect. If the Owner indicates in writing that all or part of such Contingent Additional Services are not required, Program Manager/Architect shall have no obligation to provide those services.

3.2 CONTINGENT ADDITIONAL SERVICES

3.2.1 Making revisions in Drawings, Specifications or other documents when such revisions are:

- .1 required by the enactment or revision of codes, laws or regulations subsequent to the preparation of such documents; or
- .2 due to changes required as a result of the Owner's failure to render decisions in a timely manner.

When revisions are required as a result of Program Manager/Architect's provision of defective, incomplete or erroneous plans, Drawings, Specifications or instructions, Program Manager/Architect shall, at its own cost, make good any defects in its services as soon as the Program Manager/Architect becomes aware of the defects or is notified of them. Should the Program Manager/Architect refuse or neglect to make good the defects within a reasonable time after receiving notice requesting the remedial services, then Owner shall be entitled to make good the defective services at the expense of the Program Manager/Architect. This commitment by Program Manager/Architect shall not be construed in any way as a substitute for any other remedy for defective or deficient services which Owner may have at law or in equity.

3.2.2 Providing consultation concerning replacement of Work damaged by fire or other cause during construction, and furnishing services required in connection with the replacement of such Work.

3.2.4 Providing services made necessary by the termination or default of the Contractor, by major defects or deficiencies in the Work of the Contractor which the

Program Manager/Architect, exercising the skill and care required of it under this Agreement, could not have prevented or mitigated, or by failure of performance of either Owner or Contractor under the Contract for Construction.

3.2.5 Providing services in evaluating an extensive number of claims submitted by the Contractor or others in connection with the Work except where the claims against the Owner arise, in whole or in part, as a result of Program Manager/Architect's alleged acts, errors or omissions.

3.2.6 Providing services in connection with a public hearing, a dispute resolution proceeding or a legal proceeding except where the Program Manager/Architect is party thereto or the claims against the Owner arise, in whole or in part, as a result of Program Manager/Architect's alleged acts, errors or omissions.

3.2.7 Preparing documents for alternate, separate or sequential bids or providing services in connection with bidding, negotiation or construction prior to the completion of the Construction Documents Phase.

3.3 OPTIONAL ADDITIONAL SERVICES

3.3.1 Providing special studies.

3.3.2 Providing services relative to future facilities, systems and equipment.

3.3.3 Providing coordination of construction performed by separate contractors or by the Owner's own forces and coordination of services required in connection with construction performed and equipment supplied by the Owner.

3.3.4 Providing services for planning tenant or rental spaces.

3.3.5 Except as otherwise provided in Article 12, providing services after Final Completion.

3.3.6 Providing services involving asbestos and/or other hazardous materials in any form.

3.3.7 Providing any other services not otherwise included in this Agreement.

3.4 CONTRACT MODIFICATIONS/CHANGE ORDERS AND FEE ADJUSTMENTS

3.4.1 Program Manager/Architect may request and/or Owner, without invalidating this Agreement, may direct, changes in the scope of Program Manager/Architect's services as provided in this Article 3 resulting in an adjustment of Program Manager/Architect's fee or time of performance. All such changes shall be authorized by either Change Order or Contract Modification, as those terms are defined in this Agreement.

3.4.2 Owner and Program Manager/Architect shall negotiate in good faith an appropriate adjustment to Program Manager/Architect's fee and/or an extension of Program Manager/Architect's time of performance and shall conclude these negotiations as expeditiously as possible. Acceptance of the Contract Modification or Change Order and any adjustment in the Program Manager/Architect's fee and/or time of service shall not be unreasonably withheld. When practicable, any such adjustment shall be made before the Program Manager/Architect provides the requested services. Failure of the parties to agree to an adjustment shall not excuse Program Manager/Architect from proceeding with the Contract Modification or Change Order.

3.4.3 Program Manager/Architect acknowledges that any change in Program Manager/Architect's fee as a result of Owner's issuance of a Contract Modification or Change Order represents full compensation for all costs associated with the change request, including delay costs, impacts, acceleration, disruption, consequential damages and any other cost of any nature. No action, conduct, omission, prior failure or course of dealing by Owner shall act to waive, modify, change or alter the requirement that Contract Modifications must be in writing and signed by Owner's Representative, or when applicable by action of the Authority's Board Program Manager/Architect further acknowledges that Change Orders and Contract Modifications are the exclusive method for effecting any change to the Agreement.

3.4.4 Any adjustment in Program Manager/Architect's fee as a result of Owner's exercise of its rights under this Article 3 shall be made in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices, if any, specified in the Agreement or subsequently agreed upon;
- (c) by the costs attributable to the event or situation, plus appropriate profit or fee, if applicable, as specified in the Agreement or subsequently agreed upon;
- (d) in such other manner as the parties may mutually agree; or
- (e) in the absence of agreement between the parties, by a unilateral determination of the Owner of the costs attributable to the event or situation, with adjustment of profit or fee, as computed by the Owner in accordance with generally accepted accounting principles. Program Manager/Architect shall provide cost or pricing data for any price adjustments.

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 The Parties agree and acknowledge that unless otherwise identified in this Agreement, the Owner's responsibilities shall be completed by the Owner's Representative, under the terms and conditions of the Owner's Representative Agreement, the form of which is attached as Exhibit D. The Parties agree that for purposes of this Article 4, Owner, shall mean Owner's Representative. The Owner shall develop, with the assistance of Program Manager/Architect, information regarding requirements for and limitations on the Project, including a written program which shall set forth Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

4.2 Owner shall establish and may periodically update an overall budget for the Project, including the Construction Cost, the Owner's other costs and reasonable contingencies related to all of these costs. Nevertheless, Program Manager/Architect shall design the Project to meet Owner's budget requirements as required in Articles 2 and 3.

4.3 Owner shall render decisions in a timely manner pertaining to documents submitted by the Program Manager/Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Program Manager/Architect's services.

4.4 Owner shall furnish all legal, accounting and insurance services that may be necessary at any time for the Project to meet Owner's needs and interests. Such services shall include auditing services Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor has used the money paid by or on behalf of Owner or to audit Program Manager/Architect's records as provided in Paragraph 12.8.

4.5 Owner shall provide prompt written notice to Program Manager/Architect if Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Program Manager/Architect's Instruments of Service, as defined below, subject to the limitations set forth in Paragraph 1.7 herein.

ARTICLE 5

CONSTRUCTION COST

5.1 DEFINITION

5.1.1 The Construction Cost shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Program Manager/Architect.

5.1.2 The Construction Cost shall include the cost at current market rates of labor and materials furnished by Owner and equipment designed, specified, selected or specially provided for by Program Manager/Architect, including the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

5.1.3 Construction Cost does not include the compensation of the Program Manager/Architect and the Program Manager/Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner as provided in Article 4.

5.2 RESPONSIBILITY FOR CONSTRUCTION COST

5.2.1 Evaluations of the Owner's Project budget, the preliminary estimate of Construction Cost and detailed estimates of Construction Cost, if any, prepared by the Program Manager/Architect, represent Program Manager/Architect's judgment as an Program Manager/Architect familiar with the construction industry. Program Manager/Architect acknowledges that an accurate estimate of Construction Cost is of paramount importance to the Owner, and is of the essence to Owner's management and administrative functions relating to the Project. Owner intends to rely upon the Program Manager/Architect's estimate Project Cost and of Construction Cost, and Owner intends to employ the Program Manager/Architect's cost estimates and opinions for purposes of financing and constructing the Project. In furtherance of this understanding the Program Manager/Architect has provided the Owner with a certification of such estimated costs and construction schedule that was represented and relied upon in the issuance of the bonds under the ARRA. It is recognized, however, that neither the Program Manager/Architect nor the Owner has control over the cost of labor, materials or equipment, over the Contractor's methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Program Manager/Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's Project budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Program Manager/Architect. The form of such certifications shall be included within Exhibit C.

5.2.2 No fixed limit of Construction Cost shall be established as a condition of this Agreement by the furnishing, proposal or establishment of a Project budget, unless such fixed limit has been agreed upon in writing and signed by the parties hereto. If such a fixed limit will be established, Program Manager/Architect shall be permitted to include contingencies for design, bidding and price escalation, to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents, to make reasonable adjustments in the scope of the Project and to include in the Contract Documents alternate bids as may be necessary to adjust the Construction Cost to the fixed limit. Fixed limits, if any, shall be increased in the

amount of an increase in the Contract Sum occurring after execution of the Contract for Construction.

5.2.3 If the Bidding or Negotiation Phase has not commenced within 90 days after Program Manager/Architect submits the Construction Documents to Owner, any Project budget or fixed limit of Construction Cost shall be adjusted to reflect changes in the general level of prices in the construction industry.

5.2.4 If a fixed limit of Construction Cost (adjusted as provided in Subparagraph 5.2.3) is exceeded by the negotiated proposal, Owner shall:

- .1 give written approval of an increase in such fixed limit;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Paragraph 8.3; or
- .4 cooperate in revising the Project scope and quality as required to reduce the Construction Cost.

5.2.5 If Owner chooses to proceed under Clause 5.2.4, Program Manager/Architect, without additional compensation, shall modify the documents for which Program Manager/Architect is responsible under this Agreement as necessary to comply with the fixed limit, if established as a condition of this Agreement. The modification of such documents without cost to the Owner shall be the limit of Program Manager/Architect's responsibility under this Subparagraph 5.2.5. Program Manager/Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced. If Owner chooses to proceed under Clause 5.2.4 and to the extent that the Authority has caused delays for any reason after Program Manager/Architect submits the Construction Documents to Owner which causes an increase in Construction Cost, Program Manager/Architect, at the Owner's cost, shall modify the documents for which Program Manager/Architect is responsible under this Agreement as necessary to comply with the fixed limit, if established as a condition of this Agreement.

ARTICLE 6

USE OF PROGRAM MANAGER/ARCHITECT'S INSTRUMENTS OF SERVICE

6.1 Program Manager/Architect hereby assigns to Owner, without reservation, all copyrights to all Project-related documents, including those in electronic form, models, photographs, and other expression created by Program Manager/Architect. Among those documents are certain "Instruments of Service," including the design drawings and the Drawings and Specifications that are included in the Contract Documents ("Program Manager/Architect's Work Product"). Owner's obligation to pay Program Manager/Architect is expressly conditioned upon the Program Manager/Architect obtaining a valid comprehensive assignment of the copyrights from its consultants, if

any, in terms identical to those that obligate Program Manager/Architect to Owner as expressed in this Paragraph, which copyrights Program Manager/Architect, in turn, assigns to Owner. If and upon the date that Owner is adjudged by a court of competent jurisdiction or panel of arbitrators in default of this Agreement, including Owner's failure to pay all sums properly due to Program Manager/Architect, the foregoing license shall be deemed terminated until such time as Owner has cured said default.

Owner, in return, hereby grants to Program Manager/Architect a nonexclusive license to reproduce the documents for purposes relating directly to Program Manager/Architect's performance of this Project, for Program Manager/Architect's archival records, and for Program Manager/Architect's reproduction of drawings and photographs in Program Manager/Architect's marketing materials. No other copyrights are included in this grant of a nonexclusive license to Program Manager/Architect. This nonexclusive license shall terminate automatically and immediately upon the occurrence of either a breach of this Agreement by Program Manager/Architect or the commission by Program Manager/Architect of a tort or a crime potentially affecting Owner or the Project. This nonexclusive license is granted to Program Manager/Architect alone and shall not be assigned by Program Manager/Architect to any other person or entity. However, nothing in this Paragraph shall be construed to preclude the Program Manager/Architect from, in turn, assigning to its consultants a nonexclusive license coextensive with Program Manager/Architect's license applying to the documents originally created by that consultant.

6.2 Notwithstanding anything contained herein to the contrary, Owner may utilize the Program Manager/Architect's Work Product in connection with the maintenance or repair of the Project. Moreover, Owner may utilize Program Manager/Architect's Work Product in connection with the expansion or modification of the Project or in connection with other projects only if (a) Owner engages Program Manager/Architect to perform Program Manager/Architectural service with respect thereto; or (b) Owner engages another licensed Program Manager/Architect with respect to such other project and agrees to hold Program Manager/Architect harmless and indemnifies Program Manager/Architect from any claims arising out of the Owner's subsequent use thereof.

6.3 Program Manager/Architect shall not be permitted to utilize for purposes other than the Project any portion of the Program Manager/Architect's Work Product containing unique or distinctive Program Manager/Architectural components or effects which taken independently or in combination would produce a result with similar and distinctive features.

6.4 Any computer programs or modifications to a program for the specific benefit of Owner shall become the property of Owner. Any and all documentation pertaining to any program or modification for the specific benefit of Owner, shall be surrendered to and become the property of Owner.

6.5 Upon transmission of the information, Owner shall be provided with a copy of the source code and script for any programs provided which are critical to the operation of the system.

6.6 Any computer services or products requiring the use of pre-existing or proprietary computer programs or software of the Program Manager/Architect shall, upon request, be provided for the Owner's use in effecting completion of the specific objectives of this Agreement and for use by Owner in operating and maintaining the Project during its useful life.

6.7 Notwithstanding any other provisions of this Agreement, all of Program Manager/Architect's pre-existing or proprietary computer programs or software developed by Program Manager/Architect outside of this Agreement shall remain the exclusive property of Program Manager/Architect.

6.8 If Owner requests Project Documentation in Electronic Format (CD's) including Computer Aided Drafting & Design (CAAD), then such electronically recorded information may be used by the Owner for internal purposes of the Authority or as reasonably necessary to complete or operate the Project.

ARTICLE 7

DISPUTE RESOLUTION

7.1 Owner and Program Manager/Architect may mutually agree, in writing, to submit any dispute or claim arising out of this Agreement to binding or non-binding arbitration. In the absence of such an agreement, it is understood that Owner and Program Manager/Architect may resort to any and all legal and/or equitable remedies for any claim or dispute arising out of this Agreement. However, in the event of any dispute or claim arising over the interpretation or application of this Agreement, the aggrieved party shall submit, in writing, to the other party a description of the problem or concern and the proposed resolution or remedy. Within thirty (30) days of receipt of the aggrieved party's written statement, the other party shall respond, in writing, indicating its position and proposed resolution. The parties shall then schedule a face-to-face meeting to determine whether the matter can be resolved.

7.2 In the event of any controversy, claim or dispute between the parties arising out of or related to this Agreement, Program Manager/Architect agrees to continue the performance of the services under this Agreement until such controversy, claim or dispute is resolved through mediation, arbitration, litigation and/or such other dispute mechanism as may be provided for hereunder and Owner agrees to continue to make payments to Program Manager/Architect as provided under this Agreement of all undisputed amounts owed to Program Manager/Architect during such period.

ARTICLE 8
SUSPENSION, EXCUSED PERFORMANCE OR TERMINATION

8.1 STOP WORK

8.1.1 Owner may, at any time, by written stop work order to the Program Manager/Architect, require that Program Manager/Architect stop all, or any part, of the services called for by this Agreement for a period of up to ninety (90) days after the stop work order is delivered to Program Manager/Architect, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such, state the reasons why Program Manager/Architect's services are being suspended, and shall indicate that it is issued under this provision. Upon receipt of the stop work order, Program Manager/Architect immediately shall comply with its terms and take all reasonable steps to minimize the costs allocable to its services covered by the stop work order during the period of work stoppage. Within the period of the stop work order, the Owner shall either:

- (a) Cancel the stop work order; or
- (b) Cancel the services covered by the stop work order as provided in the termination provisions of this Agreement.

8.1.2 If a stop work order issued under this Paragraph 8.1 is canceled or the period of the stop work order or any extension thereof expires, Program Manager/Architect shall resume its services. Owner shall make an equitable adjustment in the Program Manager/Architect's fee or time of performance, or both, and the Agreement shall be modified, in writing, accordingly, if:

- (a) The stop work order results in an increase in the time required for, or in the Program Manager/Architect's costs properly allocable to the performance of any part of this Agreement; and
- (b) The Program Manager/Architect asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage.

8.1.3 If Owner decides not to cancel the stop work order and terminates the Agreement for reasons other than a material breach by the Program Manager/Architect, Owner shall pay Program Manager/Architect for all services performed and expenses incurred as of the date specified by Owner in the stop work order, together with all other expenses recoverable by Program Manager/Architect pursuant to Subparagraph 8.3.3 of this Agreement governing Program Manager/Architect's rights upon Owner's termination of the Agreement for its convenience.

8.1.4 If Owner decides not to cancel a stop work order and terminates the Agreement for material breach, Owner shall have no obligation to pay, by equitable adjustment or otherwise, any costs resulting from the stop work order.

8.2 EXCUSABLE FAILURE

8.2.1 Neither party shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, rebellions or revolutions in any country; the failure of the other party to perform its material responsibilities under the Agreement (either itself or through another party); injunctions (provided the injunction was not issued as a result of any fault or negligence of the party seeking to have its default or delay excused); or any other cause beyond the reasonable control of such party (collectively, "Excusable Delay Events"), provided the non-performing party is without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions or reasonably circumvented by the non-performing party through the use of alternate sources, work around plans or other means, including disaster recovery plans. In such event, the non-performing party will be excused from any further performance or observance of the obligations so affected for as long as (1) such circumstances prevail and (2) such party continues to use its best efforts to complete its contract obligations whenever and to whatever extent possible without delay. To obtain the benefit of this provision, the non-performing party must promptly notify the other party in writing of the inception of the Excusable Delay Event, and also of its abatement or cessation. In the event of a dispute between the parties with regard to what constitutes an excusable failure, Owner's reasonable determination is controlling.

8.2.2 If an Excusable Delay Event substantially prevents, hinders, or delays performance of Program Manager/Architect's services for more than thirty (30) consecutive days, and Owner determines that performance is not likely to be resumed within a period of time that is satisfactory to Owner, in its reasonable discretion and at Owner's option: (a) Owner may procure the affected services from an alternate source for so long as the delay in performance shall continue; in such case, Owner shall not be liable to Program Manager/Architect for payments for services provided by others; (b) Owner may cancel any portions of the Agreement so affected and the charges payable thereunder shall be equitably adjusted to reflect those services canceled; or (c) the Agreement will be canceled without liability of Owner to Program Manager/Architect as of the date specified by Owner in a written notice of cancellation to Program Manager/Architect. The Program Manager/Architect will not have the right to any additional payments from Owner as a result of any Excusable Delay Event or to payments for services not rendered as a result of the excusable failure condition. Owner also shall not be liable to Program Manager/Architect for loss of anticipated profit, unabsorbed overhead, interest on claims, unamortized depreciation costs, and general and administrative burden if the termination is the result of an Excusable Delay Event.

8.2.3 Defaults or delays in performance by Program Manager/Architect which are caused by acts or omissions of its consultants will not relieve Program Manager/Architect of its obligations under this Agreement except to the extent that a

consultant is itself subject to any Excusable Delay Event and Program Manager/Architect cannot reasonably circumvent the effect of the consultant's default or delay in performance through the use of alternate sources, work around plans or other means.

8.3 TERMINATION BY OWNER

8.3.1 When in Owner's best interest, Owner may unilaterally terminate this Agreement at any time, whether or not Program Manager/Architect is in default of any of its obligations under the Agreement, by giving written notice to the Program Manager/Architect. Upon terminating the Agreement, Owner shall not incur any further liability to Program Manager/Architect, except as provided in this Paragraph 8.3, which sets forth Program Manager/Architect's exclusive remedies. Except as provided below, Owner shall provide Program Manager/Architect with at least fifteen (15) days notice prior to the effective date of the termination.

8.3.2 In the event that Program Manager/Architect breaches any of its duties or obligations under the Agreement which, (1) as determined by Owner, are either incurable or not subject to being cured, (2) are not cured within the time period specified in the written notice of breach provided by Owner, (3) pose a serious and imminent threat to the health and safety of any person or the imminent loss, damage or destruction of any real or tangible personal property, or (4) a judgment is taken against Program Manager/Architect and execution is issued thereon which adversely affects its ability to perform its obligations under the Agreement, Program Manager/Architect's termination shall be effective as of the date specified in the notice of termination.

8.3.3 If Owner terminates this Agreement for its own convenience, Owner will pay the Program Manager/Architect only for its services conforming to the requirements of the Agreement rendered prior to termination. Within thirty (30) days of termination, Program Manager/Architect shall submit to Owner an itemized invoice of its fees and Reimbursable Expenses incurred prior to termination, together with a list identifying all creditors, consultants and other parties with which Program Manager/Architect has incurred financial obligations pursuant to the Agreement, together with copies of all supporting receipts and other documents evidencing the expenditure of funds relating to the Agreement. Owner will approve the amount of payment, on the basis of services rendered, and other means which, in the judgment of the Owner, represent a fair value of the services provided, less the amount of any previous payments made. Further, if Owner is terminating this Agreement for its convenience, Owner agrees to relieve Program Manager/Architect from all future responsibilities under its lease of office space in the Guardian Building.

8.3.4 Owner shall have no obligation for and shall not be required to make payments to the Program Manager/Architect, directly or on account of claims by Program Manager/Architect's consultants, for loss of anticipated profit, unabsorbed overhead, interest on claims, unamortized depreciation costs, and general and administrative burden charges, resulting from the termination of the Agreement.

Owner's obligations to Program Manager/Architect upon termination shall not exceed those that Owner would have had to Program Manager/Architect in the absence of termination. Upon payment of any approved accrued amounts so invoiced, Owner shall have no further liability or obligation to Program Manager/Architect whatsoever for any further fees, expenses or payment. If Program Manager/Architect accepts the payment, the Agreement is satisfied. Owner may audit Program Manager/Architect's records before payment to verify the amounts requested in the Program Manager/Architect's termination claim.

8.3.5 If Owner terminates this Agreement for cause, Program Manager/Architect shall not be paid any further fees or Reimbursable Expenses until Program Manager/Architect's services under this Agreement are finally completed by Owner. If the expense of completing Program Manager/Architect's services exceeds the unpaid contract balance, Program Manager/Architect shall be liable for the payment of the amount of such excess to the Owner and any associated damages, which obligation shall survive termination of this Agreement. The additional cost incurred by Owner of completing Program Manager/Architect's services as a result of Program Manager/Architect's default and the additional damage incurred by Owner resulting therefrom, shall be paid by Program Manager/Architect to Owner upon demand, and may be offset against any monies which are due and owing or that may be owed to Program Manager/Architect under any concurrent, successive or future contracts between the parties. All such excess expenses and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Agreement.

8.4 INTENTIONALLY DELETED

8.5 PROGRAM MANAGER/ARCHITECT'S OBLIGATIONS TO OWNER UPON RECEIPT OF TERMINATION NOTICE

8.5.1 After receipt of a notice of termination and irrespective of whether Program Manager/Architect disputes Owner's right to terminate this Agreement pursuant to said notice, and except as otherwise directed by Owner, Program Manager/Architect must:

- (a) Stop work under the Agreement on the date and to the extent specified in the notice of termination;
- (b) Make no further commitments with respect to the Agreement beyond the date Owner specifies, except as may be necessary for completion of those services which Owner has elected not to terminate;
- (c) Take all action as may be necessary or as Owner may reasonably direct to assure the protection of the property in Program Manager/Architect's possession and in which Owner has or may acquire any interest, the cost of which action shall be paid by

Owner, unless the termination is the result of Program Manager/Architect's default hereunder; and

(d) Deliver to Owner all data, Drawings, Specifications, reports, estimates, summaries, files and such other information and materials as may have been accumulated by Program Manager/Architect in performing this Agreement, whether completed or in process ("Work Product"), and carry out any directive issued by Owner concerning the safeguarding or disposition of the Work Product.

8.5.2 Program Manager/Architect also shall terminate all orders and subcontracts to the extent that they relate to the portion of Program Manager/Architect's services so terminated, except as otherwise directed by Owner. If directed by Owner in writing, Program Manager/Architect shall execute and deliver all such documents and take all such steps, including the legal assignment of its contractual rights, as Owner may reasonably require, for the purpose of vesting in Owner all of Program Manager/Architect's rights and benefits under all or any portion of the obligations, contracts, commitments and unsettled claims incurred or undertaken in compliance with this Agreement. If Program Manager/Architect has complied with the terms of this Paragraph 8.5, Owner shall, subject to the maximum compensation payable under this Agreement, assume and become liable for such assigned obligations, contracts, commitments and unsettled claims described herein unless Owner has terminated this Agreement for cause.

8.5.3 Upon termination of the Agreement, all Work Product prepared by Program Manager/Architect under this Agreement or in anticipation of this Agreement shall, at the option of Owner, become its exclusive property, whether or not in the possession of Program Manager/Architect. The Work Product shall be free from any claim or retention of rights on Program Manager/Architect's part.

8.5.4 Program Manager/Architect acknowledges that any intentional failure or delay by the Program Manager/Architect to deliver the Work Product to Owner will cause irreparable injury to Owner not adequately compensable in damages and for which Owner has no adequate remedy at law. Program Manager/Architect will pay Owner \$100 per day as damages, and not as a penalty, until it delivers all Work Product to Owner. The Program Manager/Architect's aggregate liability for liquidated damages under this Agreement shall not exceed Two-Hundred Forty Thousand (\$240,000) Dollars. Owner may seek and obtain injunctive relief in a court of competent jurisdiction to compel Program Manager/Architect to deliver the Work Product to Owner. Program Manager/Architect hereby consents to such an action, the relief sought therein, and agrees to pay Owner its damages, costs and attorneys' fees for having to bring such an action.

8.5.5 Access to any Work Product prior to delivery must be restricted to authorized representatives of Owner and Program Manager/Architect. Program Manager/Architect has no right to disclose or use any information gathered in the course of performing the services required under this Agreement without obtaining the

written concurrence of Owner, or as otherwise provided herein. All the information must be confidential and handled in such a manner at all times as to preserve confidentiality. Program Manager/Architect recognizes that the Work Product as well as any related products and materials are proprietary to Owner, having been developed for Owner for its own and sole use.

8.5.6 In the event of a termination under this Agreement, Program Manager/Architect consents to the Owner's selection of another Program Manager/Architect of the Owner's choice. Upon receipt of the Work Product from Program Manager/Architect, Owner shall have unrestricted use of the Work Product for the purpose of completing the Project. Program Manager/Architect consents to and authorizes the making of any reasonable changes to the design of the Project as Owner and Program Manager/Architect's successor may desire. Program Manager/Architect shall not be held responsible for any changes made to the design of the Project by its successor. If any further services are provided by Program Manager/Architect which are requested by Owner after termination of this Agreement, the Program Manager/Architect shall be fairly compensated by Owner.

8.5.7 Each party will assist the other party in the orderly termination of this Agreement and the transfer of all items or property, tangible or intangible, as may be necessary for the orderly, non-disrupted business continuance of each party.

8.6 PROGRAM MANAGER/ARCHITECT'S RIGHT TO SUSPEND OR TERMINATE AGREEMENT

8.6.1 If Owner has for more than sixty (60) days improperly failed to pay Program Manager/Architect pursuant to Paragraph 11.1, Program Manager/Architect may give written notice of its intent to terminate this Agreement. If Program Manager/Architect does not receive payment within seven (7) business days of giving written notice to Owner, then upon five (5) days additional written notice to the Owner, Program Manager/Architect may terminate this Agreement.

8.6.2 If Program Manager/Architect elects to suspend services rather than terminate the Agreement, prior to suspension of services, Program Manager/Architect shall give fifteen (15) business days' written notice to Owner. In the event of a suspension of services, Program Manager/Architect shall have no liability to Owner for delay or damage caused Owner because of such suspension of services. Before resuming services, Program Manager/Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Program Manager/Architect's services. Program Manager/Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

8.6.3 If the Project is suspended or Program Manager/Architect's services are suspended for more than ninety (90) consecutive days, Program Manager/Architect may terminate this Agreement by giving not less than seven (7) days' written notice.

8.7 BANKRUPTCY OR INSOLVENCY

8.7.1 If Program Manager/Architect is adjudicated bankrupt or insolvent, or if a trustee is appointed over Program Manager/Architect or any of its property, whether it is a third party or Program Manager/Architect as debtor-in-possession (referred to as "Program Manager/Architect" in this Paragraph unless the context clearly requires otherwise) the following rights, obligations and limitations control:

(a) Program Manager/Architect or any trustee must not assign any or all of its rights, title or interest, in or to this Agreement, as this Agreement is for the delivery of professional services, as to which Owner is entitled to insist upon performance solely by Program Manager/Architect.

(b) Program Manager/Architect or any trustee may only assume this Agreement if it provides adequate assurance of future performance. Adequate assurance of future performance means proof reasonably satisfactory to Owner of:

(i) adequate financial capacity to employ or contract with sufficient personnel to perform the services assigned to Program Manager/Architect as provided in this Agreement, and to pay for all services contracted for by Program Manager/Architect;

(ii) adequate financial capacity to own, operate, lease or obtain sufficient facilities and supplies to perform the services assigned to Program Manager/Architect as provided for in this Agreement; and

(iii) adequate financial and professional capacity to maintain the professional standard provided in this Agreement; the reasonable determination of Owner as to the adequate professional capacity of Program Manager/Architect is determinative.

(c) Because of the unique nature of the services that Program Manager/Architect is required to provide under this Agreement, Program Manager/Architect agrees that any requests by Owner that the trustee or it as debtor-in-possession assume or reject this Agreement in a shorter time than provided for in 11 U.S.C. §365 is reasonable so long as the trustee or Program Manager/Architect receives no less than five (5) business days' notice.

(d) If this Agreement is terminated during bankruptcy proceedings or if the trustee or debtor-in-possession successfully and properly obtains a court order rejecting this Agreement, Program Manager/Architect as debtor-in-possession or its trustee must cooperate with Owner in arranging for the orderly transfer of responsibilities to persons or entities as Owner may designate. The rejection is not effective until the orderly transfer of responsibilities, consistent with sound professional practice, has been completed.

8.7.2 Although neither party has the right to terminate the Agreement merely because the other is adjudicated bankrupt or insolvent or a trustee or a debtor-in-

possession is appointed over any parties' property, each party retains all of the other termination rights set forth elsewhere in this Agreement during the period of any proceedings under the Bankruptcy Code.

ARTICLE 9

MISCELLANEOUS PROVISIONS

9.1 In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them by or within the scope of the Agreement, there shall be no liability upon Owner or its authorized representatives, either personally or as officials of Owner, it being understood that in all such matters they act solely as agents and representatives of Owner.

9.2 Owner and Program Manager/Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. All rights, powers, privileges, immunities and duties of Owner under this Agreement including, but not limited to, any notices required or permitted to be delivered by Owner to Program Manager/Architect hereunder may, at Owner's option, be exercised or performed by Owner's agent or attorney.

9.3 Program Manager/Architect will not assign or in any manner transfer this Agreement, or any part or parts hereof, or interest herein, without the prior, written consent of Owner. Any unauthorized assignment or transfer will be considered a breach of this Agreement and result in the cancellation of the Agreement at Owner's discretion. If the Agreement is not cancelled, the assignment shall be deemed null and void. Consent by Owner to one or more assignments of this Agreement will not operate to exhaust Owner's rights under this Paragraph. The sale of fifty percent (50%) or more of the capital stock of the Program Manager/Architect (if the Program Manager/Architect is a corporation having fewer than ten (10) shareholders) will constitute an assignment of this Agreement within the meaning of this Paragraph. Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume Owner's rights and obligations under this Agreement. Program Manager/Architect shall execute all consent reasonably required to facilitate such assignment. Nevertheless, Program Manager/Architect shall retain the right to pledge receipts due for services in connection with the Agreement as collateral.

9.4 This Agreement represents the entire and integrated agreement between Owner and Program Manager/Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Program Manager/Architect.

9.5 No payment by Owner of any monies to Program Manager/Architect for any period or periods after default of any of the terms, covenants, or conditions hereof to be performed, kept, and observed by Program Manager/Architect, no act or thing

done or omitted to be done by Owner, and no failure by Owner to insist upon the strict performance of any term, covenant or condition of this Agreement shall be deemed to be a waiver of the right of Owner to cancel this Agreement or any other rights or remedies to which Owner may be entitled because of any breach thereof. No waiver by Owner of any default on the part of Program Manager/Architect in the performance of any of the terms, covenants, and conditions hereof to be performed, kept, or observed by Program Manager/Architect shall be or be construed to be a waiver by Owner of any other or subsequent default in the performance of any of the said terms, covenants, and conditions; but rather, every term, covenant and condition of this Agreement remains effective with respect to any other then existing or subsequent breach.

9.6 NOTICES

9.6.1 All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Agreement must be given in writing and mailed by first-class mail and addressed as follows:

If to the Program Manager/Architect:

Andrew M. Cupples, AIA, NCARB
AECOM
999 Town & Country Road
Orange, California 92868

With copy to:

Sarah Sabunas
AECOM
1501 Quail Street
Newport Beach, California 92660

If to the Owner:

Carla Sledge, Chief Financial Officer and Resident Agent of
Wayne County Building Authority
500 Griswold, 31st Floor
Detroit, Michigan 48226

With copy to:

Steven Collins Lead Attorney
Wayne County Corporation Counsel
500 Griswold, 11th Floor
Detroit, MI 48226

9.6.2 All Notices are deemed given on the day of mailing. Either party to this Agreement may change its address for the receipt of notices at any time by giving notice to the other as provided. Any Notice given by a party must be signed by an authorized representative of such party.

9.6.3 Termination notices, change of address notices, and other notices of a legal nature, are an exception and must be sent by registered or certified mail, postage prepaid, return receipt requested.

9.7 RELATIONSHIP OF PARTIES

9.7.1 The relationship of Program Manager/Architect to Owner is and will continue to be that of an independent contractor. No liability or benefits, such as workers' compensation, pension rights, or insurance rights, arising out of, or related to a contract for hire or employer/employee relationship, accrues to either party or either party's agent, subcontractor or employee as a result of this Agreement. No relationship, other than that of independent contractor will be implied between the parties, or either party's agent, employee, or subcontractor. Program Manager/Architect agrees to hold Owner harmless from any claims, and any related costs or expenses.

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

9.8 Owner or the Program Manager/Architect may contract with other firms providing the same or similar services so long as Program Manager/Architect's obligations to Owner contained in this Agreement will not be affected in any manner.

9.9 Unless otherwise provided herein, this Agreement is not made for the benefit of anyone other than the parties hereto, and no provision of this Agreement is intended to be a third party beneficiary contract provision.

9.10 If any provision of this Agreement or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Agreement, or the application of the provision to persons or circumstances other than those as to which it is invalid or unenforceable, is not affected and is enforceable.

9.11 RIGHTS, REMEDIES, JURISDICTION AND LAW

9.11.1 The duties and obligations imposed by this Agreement and any rights and remedies available thereunder shall be in addition to and not as a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

9.11.2 This Agreement, and all actions arising from it, must be governed by, subject to, and construed according to the laws of the State of Michigan.

9.11.3 The parties' rights, liabilities, responsibilities and remedies with respect to this Agreement, whether in contract, tort, negligence or otherwise, shall be exclusively those expressly set forth in this Agreement.

9.11.4 Program Manager/Architect consents to the personal jurisdiction of any competent court in Wayne County, Michigan, for any action arising out of this Agreement. Service of process at the address and in the manner specified in this Agreement will be sufficient to put the Program Manager/Architect on notice.

9.11.5 Program Manager/Architect will not commence any action against Owner, its officers, agents, servants or employees with regard to any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Agreement, in any courts other than those in Wayne County, Michigan, unless original jurisdiction is in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court or the Michigan Court of Appeals.

9.12 The title given to the articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose. The grouping of the articles in this Agreement and of the Owner's specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

9.13 The parties to this Agreement expressly agree that this Agreement was jointly drafted, and that both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

9.14 Unless otherwise provided in this Agreement, Program Manager/Architect and Program Manager/Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site, including but not limited to asbestos, asbestos products, polychlorinated biphenyl (PCB) or other toxic substances. Should the Program Manager/Architect become aware of the presence of such hazardous materials or toxic substances on the Project site, it shall immediately report that presence to the Owner in writing.

9.15 Program Manager/Architect shall have the right to include photographic or artistic representations of the design of the Project among Program Manager/Architect's promotional and professional materials. Program Manager/Architect shall be given reasonable access to the completed Project to make such representations. However, Program Manager/Architect's materials shall not include Owner's confidential or proprietary information if Owner has previously advised Program Manager/Architect in writing of the specific information considered by the Owner to be confidential or proprietary. Owner shall provide professional credit for the Program Manager/Architect in the Owner's promotional materials for the Project.

9.16 If Owner requests Program Manager/Architect to execute certificates, the proposed language of such certificates shall be submitted to the Program Manager/Architect for review at least fourteen (14) days prior to the requested dates of execution. Program Manager/Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

9.17 AUTHORIZATION AND CAPABILITY

9.17.1 Program Manager/Architect warrants that it is authorized to do business under the laws of the State of Michigan and is qualified to perform the services in this Agreement. The execution of this Agreement is within the Program Manager/Architect's authorized powers, and is not in contravention of federal, state, or local law. Program Manager/Architect further warrants that it has taken all corporate actions necessary for the authorization, execution, delivery and performance of this Agreement.

9.17.2 This Agreement is effective only upon review and approval by the Wayne County Commission and execution by the Wayne County Executive.

ARTICLE 10

PAYMENTS TO THE PROGRAM MANAGER/ARCHITECT

10.1 DIRECT PERSONNEL EXPENSE

Direct Personnel Expense is defined as the direct salaries of the Program Manager/Architect's personnel engaged on the Project..

10.2 REIMBURSABLE EXPENSE MULTIPLIER

10.2.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Program Manager/Architect and Program Manager/Architect's employees and consultants directly related to the Project. The Program Manager/Architect and the Owner have agreed that the Program Manager Architect shall assume risk on such expenses. The Owner shall allow the Program Manager/Architect to add an agreed upon multiplier to each Direct Personnel expense to address the cost of their mandatory and customary contributions and

benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions. This agreed upon multiplier shall also include any necessary expenses that the Program Manager/Architect may have on the Project. This multiplier shall not include the following expenses:

- .2 fees paid for securing approval of authorities having jurisdiction over the Project;
- .7 reimbursable expenses as designated in Article 12;

10.3 PAYMENTS ON ACCOUNT OF BASIC SERVICES

Payments for Basic Services shall be made monthly and, where applicable, payments shall be in proportion to services performed within each phase of service, on the basis set forth in Subparagraph 11.1.1.

10.4 PAYMENTS ON ACCOUNT OF ADDITIONAL SERVICES

Payments on account of the Program Manager/Architect's Additional Services and for Reimbursable Expenses shall be made monthly upon presentation of the Program Manager/Architect's statement of services rendered or expenses incurred.

10.5 PAYMENTS WITHHELD

Owner shall be entitled to withhold from Program Manager/Architect's compensation, pending clarification and satisfactory explanation, without breach of this Agreement, portions (in whole or in part) of the Program Manager/Architect's invoiced amounts, to which Owner reasonably disagrees, and/or to the extent that such sums are not properly authorized, or supported by appropriate documentation. Owner shall be further authorized to withhold from the Program Manager/Architect's compensation, sums for which the Program Manager/Architect is, or may be, obligated to the Owner resulting from Program Manager/Architect's negligence, errors, omissions, and/or defaults under this Agreement. These rights are not exclusive of other rights and remedies that the Owner may pursue. Should Owner elect to withhold payment from Program Manager/Architect: (i) Owner shall deposit such funds in a separate interest bearing account until the dispute between the parties is settled or determined by the legal process; (ii) Owner and Program Manager/Architect shall enter into non-binding mediation within twenty (20) days of such election to resolve the dispute using a mediator selected by mutually agreed upon by the Parties. If the dispute cannot be resolved within twenty (20) days of the commencement of mediation, then the Parties shall immediately enter into binding arbitration under mutually agreeable terms.

10.6 PROGRAM MANAGER/ARCHITECT'S ACCOUNTING RECORDS

In addition to Owner's audit rights provided in Paragraph 12.8, Program Manager/Architect shall make records of Reimbursable Expenses and expenses pertaining to Additional Services and services performed on the basis of hourly rates or a multiple of Direct Personnel Expense available to Owner or Owner's authorized representative at mutually convenient times.

ARTICLE 11 **BASIS OF COMPENSATION**

Owner shall compensate Program Manager/Architect as follows:

11.1 BASIC COMPENSATION

11.1.1 For Architectural and Engineering Services as described in Article 2 and Exhibit A, any other services included in Article 12 as part of Basic Services, the insurance coverage required in Article 13 and Program Manager/Architect's indemnification obligations in Article 14, Owner will pay Program Manager/Architect a fixed fee of Thirteen Million Four Hundred Sixty Three Thousand Five Hundred and Fifty Five Dollars (\$13,463,555). Progress payments will be made on a monthly basis on a percentage complete basis according to the following schedule:

Not-to-Exceed Price

| | | |
|-----------------------------|---|---------------------|
| Phase A | Programming and Schematic Design | \$ 1,766,430 |
| Phase B | Design Development | \$ 2,924,282 |
| Phase C | Construction Documents | \$5,848,562 |
| Phase D | Bidding | \$ 584,856 |
| Phase E | Administration of Construction Contract | <u>\$ 2,339,425</u> |
| Total Basic Compensation:\$ | | \$13,463,555 |

11.1.2 For Program Management Services as described in Article 2 and Exhibit A, any other services included in Article 12 as part of Basic Services, the insurance coverage required in Article 13 and Program Manager/Architect's indemnification obligations in Article 14, Owner will pay Program Manager/Architect a not-to exceed fee of Eight Million Nine Hundred Six Thousand Six Hundred Twenty Five (\$8,906,625) Dollars. Progress Payments will be made on a monthly basis based on the following:

- For Home Office staff and Project Office Staff & consultants on the basis of actual hourly rates times a multiplier of 3.0 which is inclusive of all direct personnel expense, direct overhead, project related expenses and profit.
- For Site Office construction staff and consultants on the basis of actual hourly rates times a multiplier of 2.55 which is inclusive of all direct personnel expense, direct overhead, site project related expenses and profit.

11.1.3 Program Manager/Architect agrees that the Basic Fee, as stated above, represents adequate and sufficient consideration for its provision of professional services (including those of its consulting structural, mechanical, and electrical engineers and any other consultants retained by Program Manager/Architect) necessary to completely design the Project and prepare the documents that are necessary to fully indicate the requirements for construction, whether or not those services are individually expressed in this Agreement, the only exceptions to this being (1) the cost of those services that are provided by third parties and that are expressly designated herein as being the "Owner's responsibility" or are "Owner-provided" and (2) the cost of those engineering or consulting services that become necessary as a result of a change in Project scope affecting the Program Manager/Architect and that are the subject of a written agreement between the Owner and Program Manager/Architect.

11.2 COMPENSATION FOR ADDITIONAL SERVICES

11.2.1 Additional Services of the Program Manager/Architect, as described in Article 3. compensation shall be negotiated by the Program Manager/Architect and memorialized by an addendum to this Agreement.

11.3 *Consultant Allowances.* The following allowances are established for specialized services. Costs will be invoiced to the Authority at actual cost and may vary within the total amount established. Allowances are also subject to adjustment based on final costs. The selection of all consultants is subject to approval of the Building Authority.

| | |
|------------------------------------|-----------------|
| 11.3.1 Owners Representative | \$2,002,500 |
| 11.3.2 IT Consultant | \$200,000 |
| 11.3.2 E Project Management System | \$120,000 |
| 11.3.4 Site Survey | \$35,000 |
| 11.3.5 Traffic Consultant | \$25,000 |
| 11,3,6 Hazardous Materials | \$115,000 |
| <u>11.3.7 Geotechnical</u> | <u>\$90,000</u> |

| | |
|-----------------------------|-------------|
| Total Consultant Allowances | \$2,587,500 |
|-----------------------------|-------------|

11.4 Upon selection of a "construction manager at-risk" by Program Manager/Architect, an incentive package will be developed to share cost and time savings.

ARTICLE 12

OTHER CONDITIONS OR SERVICES

12.1 As part of the Basic Services provided by Program Manager/Architect, during the tenth (10th) month after Final Completion, Program Manager/Architect shall visit the Project to review the Work and shall prepare a report to be issued to Owner and Contractor indicating outstanding Work to be corrected and warranty issues to be addressed by the Contractor. With the exception of site review and preparation of this report, to the extent that services are required of the Program Manager/Architect for correction or satisfaction of a warranty and such services are requested in writing by the Owner and are not required, in whole or in part, as a result of the Program Manager/Architect's failure to fully and properly perform its services as provided in this Agreement, such services shall be considered an Additional Service for which the Program Manager/Architect will be compensated.

12.2 Program Manager/Architect shall incorporate the terms, conditions and obligations of this Agreement into all contracts that it enters into with others, including, but not limited to, consultants, in connection the provision of the services required by this Agreement for the Project.

12.4 NON-DISCRIMINATION PRACTICES

12.4.1 Program Manager/Architect agree and understand that the Owner is constructing the Project for the benefit of the Charter County of Wayne. In furtherance of that understanding the Program Manager/Architect has agreed to comply with the following provisions and those applicable codes of the Wayne County Ordinances:

A. Titles VI and VII of the Civil Rights Act (42 U.S.C. §§ 2000d et seq) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.

B. The Age Discrimination Act of 1985 (42 U.S.C. §6101-07).

C. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794).

D. The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq) and its associated regulations.

E. The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Persons With Disabilities Civil Rights Act (P.A. 1976 No. 220).

F. The anti-discrimination provisions as required by section 120.11104 of the Wayne County Code.

G. In furtherance of this duty, and in compliance with any applicable and federal laws, the Program Manager/Architect has agreed to hire an OutReach Program Director

for the benefit of the Owner and to provide requested reports to the Owner. The duties of the OutReach Program Director have been agreed upon as a consultant of the Program Manager/Architect and will enter into a separate consultant's agreement in a form acceptable to Owner as provided in Section 1.8 herein.

12.4.2 Program Manager/Architect must not:

A. Refuse to recruit, hire, employ, promote or to bar or discharge from employment an individual, or discriminate against an individual in compensation, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.

B. Limit, segregate, or classify an employee or applicant for employment in a way which deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects the employment status of an employee because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.

C. Print or publish or cause to be printed or published a notice, application, or advertisement relating to employment by the Program Manager/Architect indicating a preference, limitation, specification, or discrimination based upon race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.

D. Except as permitted by rules and regulations promulgated pursuant to section 120.11104 of the Wayne County Code, or applicable state or federal law, make or use a written or oral inquiry or form of application that elicits or attempts to solicit information concerning the race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight, of perspective employees. Program Manager/Architect also shall not make or keep a record of that information or disclose such information.

E. Make or use a written or oral inquiry or form of application that expresses a preference, limitation or specification based on religion, race, color, creed, national origin, age, height, weight, marital status, handicap, sex, or sexual orientation.

12.4.3 Program Manager/Architect must notify any consultant of the obligations relative to non-discrimination under this Agreement when soliciting the consultant. Program Manager/Architect will include the provisions of this Paragraph 12.4 in any subcontract.

12.4.4 Program Manager/Architect and its consultants must not discriminate against disadvantaged business enterprises as defined in section 120.11102 of the Wayne County Code (which includes minority, small and women business enterprises) in selecting and retaining subcontractors to perform work on this Agreement.

12.4.5 Program Manager/Architect and its consultants must not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Agreement, with respect to hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight. The burden of proof that the occupational qualifications are bona fide is upon the Program Manager/Architect.

12.4.6 Breach of any of the covenants in this Paragraph 12.4 may be regarded as a material breach of this Agreement.

12.4.7 Intentionally Deleted.

12.4.8 If Program Manager/Architect does not comply with the non-discrimination and affirmative action provisions of this Agreement, Owner may impose sanctions, as it determines to be appropriate, including but not limited to:

(a) the withholding of payments to the Program Manager/Architect under this Agreement until the Program Manager/Architect attains compliance;

(b) cancellation, termination or suspension of this Agreement, in whole or in part; and/or

(c) the imposition of liquidated damages (not a penalty) in the amount of \$100 per day for each day that Program Manager/Architect fails to comply with the requirements of this section 12.4.8, as determined by the Owner's Representative and in consultation with the Owner's legal counsel. The Program Manager/Architect's aggregate liability for liquidated damages under this Agreement shall not exceed Two-Hundred Forty Thousand (\$240,000) Dollars.

12.4.9 If the Agreement is funded, in whole or in part, by federal funds:

A. Program Manager/Architect's breach of the affirmative action commitments set forth in this Paragraph 12.4 constitutes a material breach of the Agreement sufficient to warrant termination and the imposition of liquidated damages as set forth above, based upon the decision of Owner's Board of Commissioners;

B. Program Manager/Architect must provide immediate notice to the OutReach Director and the Owner's Representative when a subconsultant who was part of the Program Manager/Architect's affirmative action commitment is terminated or substantially displaced ; and

C. Program Manager/Architect must establish and implement a good faith plan and goal to eliminate the continuing effects of past discrimination, which is determined by OutReach Director to be appropriate for that purpose

12.4.10 In the event that this Agreement is or becomes subject to federal or state law which conflicts with the requirements of section 120.11104 of the Wayne County Code, the provisions of the federal or state law shall apply and the Agreement shall be interpreted and enforced accordingly.

12.5 ETHICS IN CONTRACTING

12.5.1 Program Manager/Architect must comply with Article 12 of Chapter 120 of the Wayne County Code governing "Ethics in Public Contracting" ("Chapter 120").

12.5.2 Program Manager/Architect's material misrepresentation or delinquency in the disclosures required by Chapter 120. constitutes a material breach of this Agreement, sufficient to warrant immediate.

12.6 LIQUIDATED DAMAGES

12.6.1 Owner and the Program Manager/Architect hereby agree to the requirements set forth in this Agreement. Owner and Program Manager/Architect further agree that Owner's actual damages as a result of Program Manager/Architect's failure to timely perform as required under this Agreement would be difficult or impossible to determine with accuracy. Owner and Program Manager/Architect therefore agree that liquidated damages as set out below shall be a reasonable approximation of the damages that will be suffered by Owner as a result of Program Manager/Architect's untimely performance. Accordingly, if Program Manager/Architect fails to timely provide Owner with the services required under this Agreement, at the written direction of the Owner, Program Manager/Architect shall pay Owner the indicated amount as liquidated damages, and not as a penalty. The assessment of liquidated damages against Program Manager/Architect shall not impair Owner's right to enforce Program Manager/Architect's indemnity obligation as provided in Article 14 of this Agreement. Amounts due Owner as liquidated damages, if not paid by Program Manager/Architect within fifteen (15) days of notification of assessment, may be deducted by Owner from any money payable to the Program Manager/Architect pursuant to this Agreement. Owner will notify Program Manager/Architect in writing of any claim for liquidated damages pursuant to this Paragraph on or before the date the Owner deducts such sums from money payable to the Program Manager/Architect. No delay by the Owner in assessing or collecting liquidated damages shall be construed as a waiver of such rights.

12.6.2 Program Manager/Architect shall not be liable for liquidated damages when, in the sole opinion of the Owner, incidents or delays result directly from causes beyond the control and without the fault or negligence of the Program Manager/Architect such as an Excusable Delay Event.

12.6.3 Liquidated damages under this section will be assessed as follows: Five Thousand (\$5,000) Dollars per day for Program Manager/Architect's failure to timely

perform as required under this Agreement. The Program Manager/Architect's aggregate liability for liquidated damages under this Agreement shall not exceed Two-Hundred Forty Thousand (\$240,000) Dollars.

12.7 TAX REPORTING

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

12.7.2 If in accordance with Owner's direction Program Manager/Architect claims an exemption for taxes, Owner shall defend, indemnify and hold Program Manager/Architect harmless from all liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Program Manager/Architect as a result of any action taken by Program Manager/Architect in accordance with Owner's direction.

12.8 RIGHT TO AUDIT

12.8.1 Program Manager/Architect must maintain all pertinent financial and accounting records and evidence pertaining to the Agreement in accordance with generally accepted principles of accounting and other procedures specified by Owner.

12.8.2 Owner has the right to examine and audit all books, records, documents and other supporting data, as Owner deems necessary, of the Program Manager/Architect, or any subconsultants, or agents, performing services under this Agreement, whether direct or indirect, that will permit adequate evaluation of the services performed by the Program Manager/Architect and any subconsultants. Program Manager/Architect must include a similar covenant allowing for Owner audit in any agreement it has with a subconsultant or agent related to this Agreement. Owner may delay payment to the Program Manager/Architect pending the results of any such audit.

12.8.3 Program Manager/Architect must make available to Owner, or its authorized representatives, at any time Monday through Friday, inclusive, between the hours of 8:00 a.m. and 5:00 p.m., at Owner's election, at that location among its offices which the Agreement is principally performed or which is closest and most convenient for Owner's auditors, all records, books, statements, reports, or other pertinent information that Owner deems necessary concerning the services of Program Manager/Architect and any subconsultant under this Agreement, as may be required for audit purposes. Program Manager/Architect shall make its staff available to answer all questions and provide all information reasonably necessary to complete both a financial and compliance audit of the Agreement. If, in the course of the inspections, the representatives of the Owner should note any deficiencies in the services of the Program Manager/Architect, or any other deficiencies, the alleged deficiencies will be reported promptly to the Program Manager/Architect, in writing. Program Manager/Architect agrees to promptly remedy and correct any reported deficiencies within ten (10) days of notification by the Owner.

12.8.4 If, as a result of any audit conducted by or for a County, State of Michigan or federal agency relating to the Program Manager/Architect's performance under this Agreement, a discrepancy should arise as to the amount of compensation due the Program Manager/Architect, the Program Manager/Architect shall pay to Owner on demand the amount of compensation in question. If Program Manager/Architect fails or refuses to make payment, in addition to any other legal remedies available to the Owner, the Owner may retain said amount from any funds allocated to the Program Manager/Architect but not yet disbursed under the Agreement or may offset such a deficiency against the compensation to be paid the Program Manager/Architect in any concurrent, successive or future contracts between the parties.

12.8.5 A breach of this Paragraph 12.8 constitutes a material breach of the Agreement sufficient to warrant termination, the imposition of liquidated damages (not a penalty) of Five Hundred (\$500) Dollars per day and debarment from further work for the Owner for up to three (3) years. The Program Manager/Architect's aggregate liability for liquidated damages under this Agreement shall not exceed Two-Hundred Forty Thousand (\$240,000) Dollars.

12.8.6 Program Manager/Architect and its consultant(s) shall maintain all documents pertinent to the Agreement or subcontract(s) for a period of three (3) years from the date each receives final payment under their respective contracts. If the Agreement is funded, in whole or in part, by federal and/or state funds, Program Manager/Architect and its consultant(s) shall maintain all such documents for a period of three (3) years after Owner completes its final audit. Program Manager/Architect shall make this a condition of any subcontract with its consultants. Program Manager/Architect shall maintain all documents at that location among its offices in which the Agreement is principally performed or which is closest and most convenient for Owner's auditors.

12.9 APPROVAL OF ACCOUNTING SYSTEM

Except in those instances in which there is a fixed fee, Program Manager/Architect shall not begin contract performance unless and until Owner's Purchasing Director has determined, in writing, that Program Manager/Architect's accounting system: (a) permits timely development of all cost data in a form reasonably acceptable to Owner; and (b) is adequate to allocate costs in accordance with generally accepted cost accounting principles.

12.10 RIGHT TO INSPECT PLANT

Owner also has the right to inspect that part of the plant, place of business, or work site of Program Manager/Architect, or any of its subconsultants, which is pertinent to the services provided for in this Agreement.

ARTICLE 13 **INSURANCE**

13.1 Program Manager/Architect, at its expense, must take out, carry and maintain insurance coverage meeting Owner's requirements during the term of this Agreement. Owner may review the requirements set forth below on a project by project basis with the Owner's Risk Management Division of the Department of Management and Budget.

13.2 All insurance must be effected under valid and enforceable policies, issued by recognized, responsible insurers qualified to conduct business in Michigan which are well-rated by national rating organizations. All companies providing the coverage required shall be licensed or approved by the Insurance Bureau of the State of Michigan and shall have a financial rating no lower than XI and a policy holder's service rating no lower than [A] as listed in A.M. Best's Key Rating Guide, current edition or interim report. Companies with ratings lower than [A] or XI will be acceptable only upon written consent of the Owner.

13.3 The coverages afforded under Program Manager/Architect's policies required by this Article shall not be modified or canceled until at least thirty (30) days prior written notice is provided to Owner. This requirement shall be clearly set forth on the Certificates of Insurance.

13.4 Program Manager/Architect shall purchase and maintain such insurance as will protect the Program Manager/Architect from the claims set forth below, which may arise out of or result from the Program Manager/Architect's services under this Agreement, whether such service is performed by the Program Manager/Architect or by any consultant, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- a) Workers' compensation insurance for claims under Michigan's worker's compensation acts or other similar statutory provision of any other state applicable to an employee with insurance limits of not less than:
 - Bodily Injury by accident: \$1,000,000 for each person;
 - Bodily Injury by disease: \$1,000,000 for each person; and,
 - Policy Limit for Bodily Injury by disease: \$1,000,000.
- b) Employer's liability insurance for claims for damages because of bodily injury, occupational sickness or disease or death of an employee when worker's compensation may not be an exclusive remedy, subject to a limit of liability of not less than \$300,000 each accident;
- c) Automobile insurance required by law for claims arising from the ownership, maintenance and use of a motor vehicle (including hired and no-owned vehicles) with minimum limits for bodily injury and property damage of \$1,000,000 combined single limits.
- d) Professional liability insurance which provides for Errors and Omission coverage for claims for damages arising out of a negligent act, error or omission in the performance of professional services, and endorsed to include coverage for contractual liability, of not less than \$5,000,000 per claim and \$10,000,000 annual aggregate with a deductible not greater than \$500,000.
- e) General liability insurance for claims for damages because of bodily injury or death of any person, other than the Program Manager/Architect'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, subject to bodily injury limits of not less than \$1,000,000 each occurrence and \$5,000,000 annual aggregate and property damage limits of not less than \$1,000,000 each occurrence. Such insurance shall exclude off-site operations, unless scheduled, and shall include provisions that reinstate limits, renew annually (except products), and that include completed operations. Excess liability insurance shall exclude off-site operations and include bodily injury, property damage, personal and Advertising Injury, and EPLI.
- f) Contractual liability insurance for claims for damages that may arise concerning Program Manager/Architect's indemnification of Owner under this Agreement for Program Manager/Architect's negligent acts, errors or omissions in the course of its professional services or other provision within this Agreement.
- g) Inland Marine Insurance with limits equal to the replacement cost of the equipment or property.

- h) Property Insurance for owned or leased property, with coverage for contractual obligations, with limits equal to the replacement cost of the equipment or property.

13.5 Except as otherwise provided herein, the insurance required above, shall be kept in force until Final Completion, and shall be written for not less than any limit of liability specified. Any insurance coverage maintained by Program Manager/Architect on a "claims made" basis shall be continued by Program Manager/Architect under the same or similar policy or policies for six (6) years following the expiration or termination of this Agreement. Program Manager/Architect shall continue to list Owner as an additional insured under its general liability policy for six (6) years following the expiration or termination of the Agreement. Notwithstanding the foregoing with respect to Professional Liability Insurance in d) above only, Program Manager/Architect shall continue such coverage for ten (10) years following expiration or termination of this Agreement.

13.6 Certificates of Insurance, acceptable to the Owner, shall be filed with the Owner's Risk Management Division and Engineering Division, prior to the commencement of any professional service. Owner shall be named as an additional named insured and loss payee on all insurance required by this Agreement, to the extent available. Owner reserves the right to request complete copies of any insurance policies required by this Agreement if deemed necessary to ascertain the details of coverage not provided by the Certificates. Such copies shall be "Originally Signed Copies" and so designated.

13.7 If during the term of this Agreement, changed conditions or other pertinent factors should, in the reasonable judgment of the Owner, render the above insurance limits inadequate, Program Manager/Architect will furnish on demand such additional coverage as may reasonably be required and available under the circumstances.

13.8 Compliance with the insurance requirements of this Article is a continuing condition of Program Manager/Architect's rights under this Agreement. If Program Manager/Architect fails to procure and maintain such insurance, Owner shall have the right, but not the obligation, to procure and maintain the insurance for and in the name of Program Manager/Architect and the Program Manager/Architect shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance or, at Owner's option, Owner may offset the cost incurred by Owner against amounts otherwise payable to Program Manager/Architect under this Agreement.

13.9 Program Manager/Architect has the responsibility of having any consultant or subcontractor comply with these insurance requirements, however, Owner may agree to waive and/or reduce these requirements for a particular consultant. This waiver must be in writing and signed by the Owner's Designated Representative.

13.10 Program Manager/Architect shall furnish to Owner an acknowledgment receipt from any insurer for each damage claim made against the Project. The receipt shall include the insurer's assigned claim number. Upon request, Program Manager/Architect or its insurer(s) also shall furnish to Owner a status report on all damage claims. This report shall include inspections made, the disposition of claims, and any action taken to settle a claim. Upon Program Manager/Architect's failure to comply with this Article of the Agreement, Owner may withhold from Program Manager/Architect's draw request an amount equal to any damage claim made against the Project. The withheld funds will be released in Program Manager/Architect's next draw following Program Manager/Architect's compliance with the requirements of this Article.

13.11 Program Manager/Architect waives any rights of subrogation for personal injury or property damage against Owner, its officers, employees, agents and elected officials arising from this Agreement. In the event of any payment by any insurer of Program Manager/Architect, such insurer will not be subrogated to any of Program Manager/Architect's rights of recovery therefor against Owner, its officers, employees, agents and elected officials. Program Manager/Architect will not execute, nor deliver any instruments or other documents, nor take any other action to secure any such rights for Program Manager/Architect's insurer(s) against Owner, its officers, employees, agents and elected officials. In addition, Program Manager/Architect waives any rights of recovery it may have against Owner, its officers, employees, agents and elected officials for insured losses occurring to any property insured by Program Manager/Architect in accordance with this Agreement.

ARTICLE 14

INDEMNIFICATION

14.1 For the professional liability of Program Manager/Architect, in addition to any liability or obligation of the Program Manager/Architect to the Owner that may exist under any other provision of this Agreement or by law or otherwise, Program Manager/Architect unconditionally covenants and agrees to truly save, hold harmless, assume total responsibility for the defense of and unexceptionally indemnify Owner, as well as Owner's agencies, branches, divisions and departments, and each of their respective officers, agents and employees, from and against all suits, claims, demands, liability, causes of action, losses, damages or judgments, whether in equity or in law, whether injury be to person(s), property or interest, without any regard whatsoever to the nature of the complaint, arising in connection with the negligence of Program Manager/Architect.

As to any other matter not related to the professional liability of Program Manager/Architect, in addition to any liability or obligation of the Program Manager/Architect to the Owner that may exist under any other provision of this Agreement or by law or otherwise, Program Manager/Architect unconditionally covenants and agrees to truly save, hold harmless, assume total responsibility for the defense of and unexceptionally indemnify Owner, as well as Owner's agencies,

branches, divisions and departments, and each of their respective officers, agents and employees, from and against all suits, claims, demands, liability, causes of action, losses, damages or judgments, whether in equity or in law, whether injury be to person(s), property or interest, without any regard whatsoever to the nature of the complaint, arising in connection, however remote, with the performance or lack of performance of any service under or pursuant to this Agreement, whether the service be performed or neglected by the Program Manager/Architect, or by its consultant(s), or by any agent or employee of the Program Manager/Architect or its consultant(s), or by any other party for whose acts the Program Manager/Architect or its consultant(s) may be liable. Nothing contained herein shall prohibit or otherwise prevent Program Manager/Architect from initiating and pursuing an independent lawsuit against a party not indemnified herein, which may be liable to Owner or to Program Manager/Architect.

14.2 Program Manager/Architect agrees that it is Program Manager/Architect's responsibility, and not the responsibility of Owner to safeguard the property and materials that the employees of the Program Manager/Architect use in performing this Agreement. Program Manager/Architect agrees to hold Owner harmless for costs and expenses resulting from any loss of the property and materials used by Program Manager/Architect's employees pursuant to the performance of the Program Manager/Architect under this Agreement.

14.3 Program Manager/Architect agrees that it will not attempt to hold Owner liable for any personal injury suffered by any employee, agent or consultant of the Program Manager/Architect while providing services under this Agreement which is not held in a court of competent jurisdiction to be directly and solely attributable to the gross negligence of Owner or any employee of Owner acting within the scope of his or her employment. Program Manager/Architect agrees to hold all parties indemnified in Paragraph 14.1 harmless from any such claim by Program Manager/Architect's employees.

14.4 Except as provided, Program Manager/Architect's indemnity under this Article 14 applies without regard to whether suits, claims, demands, liability, causes of action, losses, damages or judgments are based on breach of contract, breach of warranty, negligence, strict liability or other tort. This indemnity survives delivery and acceptance of services.

14.5 Program Manager/Architect waives any rights of subrogation for personal injury or property damage against Owner, its officers, employees, agents and elected officials arising from this Agreement. In the event of any payment by any insurer of Program Manager/Architect, such insurer will not be subrogated to any of Program Manager/Architect's rights of recovery therefor against Owner, its officers, employees, agents and elected officials. Program Manager/Architect will not execute, nor deliver any instruments or other documents, nor take any other action to secure any such rights for Program Manager/Architect's insurer(s) against Owner, its officers, employees, agents and elected officials. In addition, Program Manager/Architect waives any rights of recovery it may have against Owner, its officers, employees, agents and elected

officials for insured losses occurring to any property insured by Program Manager/Architect in accordance with this Agreement.

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

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

14.8 If Owner's use of any portion of the products or documentation provided by Program Manager/Architect as part of its services under this Agreement is enjoined by a court of competent jurisdiction, Program Manager/Architect shall at its option and expense and within five (5) days of the enjoinder:

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

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

14.9 In the event that any claim for damages is made, asserted or threatened against Owner and/or its officers, agents, employees or elected officials and/or a lien is

recorded against Owner's property as a result of Program Manager/Architect's failure to pay for any labor, services, materials, equipment, taxes or other items or obligations furnished or incurred for or in connection with the services to be provided under this Agreement, upon written notice, Owner may withhold from any payments due or to become due to Program Manager/Architect under this Agreement an amount sufficient, in its judgment, to (1) satisfy, discharge, and/or defend against any such claim or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and/or (3) compensate Owner for and indemnify and hold it harmless against any and all losses, liability, damages, costs and expenses, including legal fees and costs, which may be sustained or incurred in connection therewith. If the amounts withheld under the Agreement are insufficient to compensate Owner for its losses, damages, costs and expenses, Owner may require Program Manager/Architect to make immediate payment of any such deficiency or offset such deficiency against the compensation to be paid Program Manager/Architect in any concurrent, successive or future contracts between the parties.

14.10 In furtherance to but not in limitation of the indemnity provisions in this Agreement, Program Manager/Architect hereby expressly and specifically agrees that its obligation to indemnify, defend and save Owner harmless as provided in this Agreement shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under worker's compensation laws nor by any applicability or non-applicability of insurance.

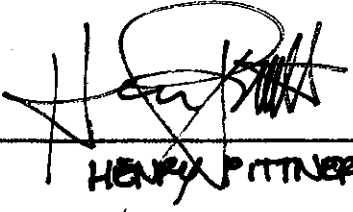
14.11 Indemnity under this Article 14 must not in any way be construed as a waiver of any governmental immunity to which Owner or any other party indemnified in Paragraph 14.1 may be entitled, as provided by statute or modified by judicial decisions.

14.11 Notwithstanding anything to the contrary in this Agreement, in no event shall Program Manager/Architect be responsible to Owner for the acts or omissions of Owner's Representative.

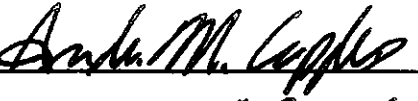
[Signatures appear on the following page]

EXECUTION

WITNESS


HENRY PITTNER

AECOM SERVICES OF MICHIGAN,
INC.

By: 
ANDREW M COPPLES
Its: Principal/Vice President

[Signatures continue on the following page]

WITNESS

Zall alhd
Valerie Khong

**CHARTER COUNTY OF WAYNE,
MICHIGAN, BUILDING AUTHORITY**

By:

Nathan Ford
Its: Chairman

GUARANTY OF AECOM TECHNICAL SERVICES, INC.

In consideration of the Owner entering into the Agreement with Program Manager/Architect, the undersigned ("**Guarantor**") hereby absolutely, unconditionally and irrevocably guarantees prompt payment when due and at all times thereafter of the indebtedness under the Agreement or any other payment obligation under the Agreement of Program Manager/Architect. The liability of the Guarantor to the Owner is ONE HUNDRED PERCENT (100%) of the indebtedness or any other payment obligation of the Program Manager/Architect including costs, attorneys' fees and expenses and other charges incurred by Owner under the Agreement. Guarantor shall reimburse Owner for all costs, attorneys' fees and expenses and other charges at any time expended or incurred by Owner in the collection or attempted collection amounts due under the Agreement or in the enforcement of this Guaranty or the realization upon any security for this Guaranty. The effectiveness of this Guaranty is not subject to the satisfaction of any conditions, including, without limitation, execution of this or another guaranty, or the granting of any other security, by any other person, firm or corporation. Guarantor warrants and represents to Owner that Guarantor will directly benefit from the Agreement. Guarantor hereby certifies to Owner that there are no actions, suits, or proceedings pending or, to his knowledge threatened, involving (or which would involve) Guarantor which could materially adversely affect the ability of Guarantor to satisfy, observe and perform its obligations under this Guaranty. Guarantor waives presentment, protest, notice, demand or action with respect to any default in payment of all or any part of the amounts due and with respect to any default by Guarantor in Guarantor's obligations under this Guaranty. The validity and enforceability of this Guaranty shall not be impaired or affected by acts or omissions by Owner under the Agreement and shall continue beyond the term of the Agreement. This Guaranty shall be governed by and interpreted according to the laws of the State of Michigan, without giving effect to principles of conflict of laws. Guarantor irrevocably agrees and consents that any action against Guarantor for collection or enforcement of this Guaranty may be brought in any state or federal court that has subject matter jurisdiction and is located in, or whose district includes, any county in which Owner has an office and that any such court shall have personal jurisdiction over Guarantor for purposes of the action. This Guaranty embodies the entire agreement between Guarantor and Owner with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein. This Guaranty may not be modified except by writing signed by the party to be charged. In this Guaranty, "**Guarantor**" means each, all and any of those who have executed this Guaranty. This Guaranty shall be binding upon and inure to the benefit of Owner and Guarantor, and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns. This Guaranty may not be assigned by Guarantor without Owner's prior written consent which may be granted or withheld in Owner's sole discretion. Guarantor acknowledges that the right to trial by jury is a constitutional right, but that it may be waived. Guarantor, after consulting with counsel of its choice, knowingly and voluntarily waive any right to trial by jury in the event of litigation regarding the performance or enforcement of, or in any way related to this Guaranty.

GUARANTOR ACKNOWLEDGES HAVING READ ALL OF THE PROVISIONS OF THIS GUARANTY.

Dated: February 24, 2011

GUARANTOR:

AECOM TECHNICAL SERVICES, INC.

By: Andrew M. Copley
Its: ANDREW M. Copley
Principal / Vice President

Guarantor Address: 515 South Flower Street
4th Floor
Los Angeles, CA 90071

EXHIBIT A

Scope of Services

Exhibit 'A'

Scope of Services

Wayne County Jail

PLANNING AND DESIGN PHASE SERVICES

STATEMENT OF WORK

The essential activities to define the mission, intent, and scope of the project lies in the planning and design activities provided at the front end of the implementation process. It is in this phase that the consultant team develops what the needs of the user agency are, defines the objectives from the County's perspective, documents project requirements, and translates these into contract documents to be utilized for construction.

A. PROGRAMMING AND PRE-DESIGN PHASE

The new scope of work will build from the previous work completed and to establish and document activities that are included in this portion of the work. Deliverables include:

1. Recommended Best Practices Report

This effort will address potential operational improvements/costs savings in a more direct way. In this effort we will be looking to maximize operational costs savings regardless of impact on individual stakeholders. Using information gathered to date which must be updated to reflect current conditions, this will also include an updated staffing analysis of the proposed new jail vs. the 2,800 bed jail included in the original study. The best practices Report will also include a separate track addressing technological innovations that can improve overall operations while reducing systemic operational costs.

2. Economic Viability Report

The report will include a full analysis of all staffing including line staff, management and support. This will actually be completed in two sub-tasks. The first task will include a preliminary look at probable construction costs and staffing as a means of determining initial viability of the project (potential annual savings vs. annual costs and when the County will receive a direct return on investment.) The second task will be a more detailed analysis completed during programming and schematic design to finalize staffing and operational costs assumptions for review and sign off by the Sheriff. This sign off is an important element of the process, as it commits the Sheriff's Department to the anticipated staffing and operational cost savings.

3. Final Site Evaluation Report

During Phase IA, preliminary site information was gathered on multiple sites. Now this effort will focus on the site across from the Frank Murphy Courthouse (referred to as The Mud Site) in order to provide complete site information. Evaluation of the site will focus on the opportunities and constraints for development of the project. Other specific task consist of:

- a. Site Survey with Existing Conditions and Primary Site Infrastructure, site utilities information.
- b. Soils Report with borings, assessment of project impact.
- c. Phase 2 Environmental Assessment
- d. Hazardous Materials Analysis Report with Proposed mitigation measures and anticipated impacts on project

4. Site Master Plan

This task will include all activities related to developing a final site Master Plan, including future expansion, potential inclusion of City Jail beds, site circulation, parking etc. Development of a

Exhibit 'A'

Scope of Services

Wayne County Jail

site master plan showing related project elements of access, utilities and building configurations, site features.

5. Detailed Facility Space Program

A written description of project design requirements consistent with project intent and incorporation of best practices by functional component area. The detailed program will include room-by-room data sheets that establish minimum design requirements. Additionally, it is important that the Sheriff's department sign-off on the program to minimize user changes after project award which would result in change orders. During this process, the planning team will focus on assuring that any and all space requests are justified based on actual need and operational imperatives targeted at reducing staffing and operational costs.

B. DESIGN PHASES

Design work proceeds once a basis for design has been established in the prior phase as follows:

1. Schematic Design Phase

The objective of this phase is to take the programming, pre-design, operational and site development information and begin the process of forming a physical design solution. Deliverables include:

- a. Collect site data from the County, including site and utility surveys, soil borings, environmental studies, and supplement this with such other work as necessary for preparation of the site demolition/preparation package and subsequent design documents.
- b. Review other government agencies' files and interview knowledgeable persons concerning the site to compile historical information germane to the project.
- c. Prepare Site Development packages Based on the County's approved goals, objectives, schedule, and construction budget requirements, prepare Schematic Design Documents for the project.
- d. Provide a package of drawings, building systems narratives and other documents describing the scope of the project.
- e. Provide a schematic level cost estimate.
- f. Update construction schedule.
- g. Review, approval and written authorization by Owner and Owner's Representatives.

2. Design Development Phase

Develop design development documents from the approved schematic design phase documents. The objective of this phase is to finalize design options and translate remaining decisions on materials, systems and equipment into a cohesive design configuration where all the elements fit together. The use of computer 3D Building Information Modeling (BIM) and Integrated Project Delivery (IPD) principals will be used to assist the project team. Design Development documents will be prepared that defines the character and construction of the project. Deliverables include:

- a. Develop site and utility plans.
- b. Develop landscape and plantings concepts based on physical site characteristics.
- c. Further develop floor plans, interior and exterior elevations and sections.

Exhibit 'A'
Scope of Services
Wayne County Jail

- d. Finalize materials selection.
- e. Develop door and finish schedules.
- f. Integration of security, control and communications elements.
- g. Finalize security envelope locations.
- h. Develop foundation and structural systems.
- i. Develop mechanical, electrical and plumbing systems.
- j. Selection of all other building systems.
- k. Prepare first draft of technical specifications.
- l. Prepare detailed cost estimate.
- m. Conduct value engineering sessions with Project Team.
- n. Identify bid packages for early construction start with Project Team.
- o. Review, approval and written authorization by Owner and Owner's Representatives.
- p. Review and initial approvals from agencies having jurisdiction over the project.

3. Construction Document Phase

Develop construction documents from the approved design development phase documents. The objective of this phase is to produce a comprehensive, coordinated set of contract documents including drawings and specifications for use in bidding and construction. The use of computer 3D Building Information Modeling (BIM) and Integrated Project Delivery (IPD) principals will be used to assist the project team. Deliverables include:

- a. Identify cost effective bid alternates to improve the flexibility for bidding.
- b. Prepare final construction documents by bid package in concert with CMc.
- c. Perform construction document quality review.
- d. Refine/finalize contract documents for all disciplines.
- e. Final code review and submission to agencies having jurisdiction.
- f. Submit drawings/specifications to agencies having jurisdiction to assist CMc in obtaining required building permits.
- g. Final cost estimate review and reconciliation with CMc.
- h. Review, approval and written authorization by Owner and Owner's Representatives.

4. Bidding

Assist the PM and CMc in obtaining bids from trade contractors. Activities include:

- a. Respond to bidder questions and prepare addendum.
- b. Assist PM and Owner's Representatives in evaluating bids.
- c. Review the adequacy of proposed substitutions.
- d. Review the adequacy of bid alternates.
- e. Assist the PM in making recommendations for the award of contracts.

5. Construction Administration

Make periodic visits to the project site and provide construction administration services and observation of the work and to assist the PM and CMc in securing completion for general conformity with the contract documents. The use of computer 3D Building Information

Exhibit 'A'
Scope of Services
Wayne County Jail

Modeling (BIM) and Integrated Project Delivery (IPD) principals will be used to assist the project team. The architect shall not have control or be responsible for the means, methods, techniques, sequences or procedures of construction, fabrication, procurement, shipment, delivery or installation, or for safety precautions and programs in connection with the work. Activities include:

- a. Notify PM of noncompliance and deviations from the contract documents.
- b. Interpret the drawings and specifications.
- c. Attend regular on-site progress review meetings.
- d. Clarification of Requests For Information (RFI's) for contractors.
- e. Processing/reviewing shop drawings and submittals.
- f. Assist the PM in determining project completion by package.
- g. Assist the PM in determining appropriate payment amounts to contractors.
- h. Participation in preparing punch lists to determine outstanding items to be completed.
- i. Review contractor submitted operations and maintenance manuals.
- j. Review contractor submitted record documents.
- k. Participate in final close out activities and that remaining work completed per contract documents.
- l. Assist in developing commissioning and move-in plan.

6. Additional Services

Additional services will only be performed when requested and approved in writing by the Owner or Owner's Representatives and agreement of any additional costs from the architect. Additional services include;

- a. Preparing drawings of existing construction when required for planning additions or alterations thereto.
- b. Revising previously approved drawings or specifications to accomplish changes ordered by the Owner or Owner's Representatives.
- c. Consultation concerning replacement of any work damaged during construction and furnishing services required with the replacement of such work.
- d. Arranging for the work to proceed should the contractor default due to delinquency or insolvency.
- e. Providing construction administration services should the original construction contract time be extended by more than 60 days through no fault of the PM/Architect.
- f. Preparing drawings or specifications for correction of defects of construction discovered after completion, or for participation in litigation arising out of the construction contract or defects of construction.
- g. Preparing plans or specifications for movable furniture.
- h. Preparing plans and specifications for telephone, communications and information systems equipment.
- i. Preparing drawings and specifications for remodeling of existing facilities.

Exhibit 'A'

Scope of Services

Wayne County Jail

The program manager acts as a key professional and technical consultant for the Wayne County Building Authority in its management of design and construction programs. The County programs may include related projects with either a common funding source or function as they relate to Wayne County's criminal justice facilities. In general, the program manager's role is to provide the Authority professional and technical services to support and implement program controls, systems and activities necessary for consistent and efficient planning, design and construction of projects. The program manager also provides project management services to support the Building Authority management staff, providing the technical services required to address issues that arise during project planning, construction, activation and commissioning of criminal justice related projects.

Services which will be required of the program manager include:

A. PROGRAM PLANNING AND MANAGEMENT SYSTEMS, CONTROLS AND ACTIVITIES

Perform and/or assist the Building Authority in its management of its programs by:

1. Program Planning, Design and Support

- a. Continuation of Monthly Reports.
- b. Develop project budget parameters, and project delivery strategies (types of construction, number of bid packages, proposed sequencing of design and construction, interfaces with agency stakeholders, etc.).
- c. Preparing studies and budgetary reports for projects.
- d. Provide information, coordination and support for the development of OCIP programs, PLA programs and other support as may be required.
- e. Preparing preliminary site evaluation and site logistics plans, reports and documents.
- f. Assist in the development of the County's communication protocols and a Program Management Plan.
- g. The development of planning documents utilizing the format prescribed by the Authority for:
 - Project authorization;
 - Architectural programs;
 - Preliminary master site plans,
- h. Providing design data for environmental documents and as required:
 - Attending public meetings for siting and public review of environmental documents.
 - Review and comment on environmental documents prepared by others.
- i. If required, perform operational evaluations of other local, regional and/or national criminal justice facilities to ensure best practices are being utilized in the development of the program.
- j. Provide any recommendations of findings necessary based upon the evaluation of Wayne County operational best practices relative to those observed elsewhere.

2. Program Cost Planning and Control

- a. The development, management and maintenance of an automated system for cost models for project costs including the costs associated with the design; construction; management and other project related costs that can be updated and utilized for estimates in the planning and reporting of costs.
- b. Preparing program and project cash flow estimates and reports as well as assisting the Authority in the preparation of budgetary reports required for ARRA compliance.

Exhibit 'A'
Scope of Services
Wayne County Jail

- c. Managing and maintaining periodically (at least monthly) a centralized automated system for the program and project cost control reports to track budgeted, planned and actual expenditures. Provide unit cost data as directed, including cost per bed, cost per courtroom and square foot or other applicable unit of measure for use in reporting and/or planning.

3. Program Scheduling Systems and Controls

- a. The development, management, and maintenance of an automated scheduling system for the Authority's design and construction program and projects for planning and managing of the work activities; resources; changes and critical deadlines necessary for the delivery of projects. The system shall be based on critical path method of scheduling allowing access to scheduling data by the Authority.
- b. Develop and maintain an overall Program Master Schedule.
- c. Preparing schedules for sub activities which will impact the overall Master Schedule.

4. Program Quality Control and Standards Systems

- a. The development, management and maintenance of an automated project design and construction issue tracking system. The system will provide for the identification of common and / or problematic issues discovered in design and construction.
- b. Providing technical support to manage and maintain the Authority's manuals and associated change and waiver processes; Design Criteria Guidelines and Space Standards and any other manuals deemed necessary by the Authority.
- c. Managing and maintaining the Authority's design documents (including building equipment lists and AutoCAD/BIM Standards) and Guideline Specifications process. Contract drawings will be maintained and updated using Building Information Modeling.
- d. Providing technical support to the Authority for product pre-qualifications, and evaluation of products for quality, durability, and maintainability in a correctional environment.
- e. Providing technical support to the Authority in the purchase of long-lead items (such as modular pre-cast cells).

B. PROJECT MANAGEMENT AND PROJECT DELIVERY SERVICES

Perform and/or assist the Authority in its management of projects by:

1. General Project Management

- a. The development and updating of Project Management Plans.
- b. The development, maintenance and updating of project cost control reports.
- c. The development, maintenance and updating of the project schedules and schedule reports.

2. Consultant Selection

- a. The preparation of Requests for Statement of Qualifications for design and construction services and environmental services.
- b. Conducting Pre-Proposal Conferences for design and construction consultant and construction management at risk services which describe the scope of services, contracting requirements, project overview, and design and construction process.
- c. Participating in the evaluation and selection process for consultants.

Exhibit 'A'
Scope of Services
Wayne County Jail

3. Contract Administration

- a. Developing scopes of services and estimates of value of services for consultant contracts.
- b. Conducting negotiations and preparation of contracts for design, construction, and environmental consultants.
- c. Tracking, review and make recommendations on approval of invoices.
- d. Performing evaluations of the contractors and other consultants.
- e. The identification, tracking, and analysis and resolution of potential changes to the work.
- f. Conducting negotiations with the contractors and firms for cost recovery due to non-conforming work.

4. Miscellaneous Contract Administration

- a. The preparation of advertisements; bid documents, scope and Authority's estimates, for miscellaneous contracts including but not limited to contracts for testing services, pre-purchased equipment or materials and other contracts necessary for the delivery of the project.

5. Program Management and Support

- a. Monitoring and management of design and construction process to assure that time and cost impacts are identified and resolved within approved budget levels and project scheduled completion dates.
- b. Conducting Authority, Architect and Contractor meetings.
- c. Performing design reviews for: accuracy; completeness; coordination of disciplines; incorporation of comments from review team
- d. Maintaining cost estimates for standard building and bid packages in approved formats. Provide estimates to design consultants as the basis for their design phase cost estimate submittals. Review and reconcile consultant submitted estimates at each phase of design and make recommendations for adjustments as appropriate.
- e. Performing Value Engineering reviews.
- f. Performing coordination of the design process with contract consultants, Authority entities, and other State or local entities, such as the Fire Marshal, Department of Health, city and/or county public works departments, etc.
- g. If required, arrange for secondary reviews. These services may include review of designs to Michigan Building Codes and other applicable standards.
- h. Reviewing of equipment lists with A/Es to provide coordination with bid packages.
- i. Coordinate with the appropriate consultants for air quality/water/wastewater regulatory activities and approvals and arrange for the completion of applications, reviews, reports, plans, permits and other necessary regulatory actions with the appropriate regulatory agencies.
- j. Provide, if required energy load analyses for the purpose of evaluating and determining utility and power alternatives.
- k. Coordinate with the Authority the development of utility services needs and agreements.
- l. Resolution of any technical architectural, engineering, testing, surveying, scheduling and estimating issues.
- m. Preparing and coordinating submittals to the Building Authority, and other control agencies, including a reconciliation of design development estimates-with working drawing estimates. These submittals typically include design packages.

Exhibit 'A'
Scope of Services
Wayne County Jail

- n. Review design drawings, construction documents, final construction documents, and contract bid documents in order to assist the designer in providing compliance with Michigan Building Codes, industry standards, and other applicable ordinances, and regulatory requirements.
- p. Preparing cost estimates at each phase of design using industry standard formats.

6. Bid and Field Support Services

- a. Participating in construction workshops, and assist in the development of a marketing strategy and the marketing of bid packages to the contractors (including preparation of advertisements).
- b. Coordinate with the Authority the preparing and processing of bid packages, including the development of the amount of liquidated damages to be assessed, project milestones, and project specific Division 0 and 1 specification language.
- c. Preparing bid packages and addenda. Coordinate the production and distribution of bid documents.
- d. Conducting pre bid conferences and developing responses to contractor questions asked during the pre bid conferences and bid period.
- e. Preparing analyses of construction bids versus the Authority's estimates and identifying potential impacts of accepting bid on other project budgets.
- f. Participating in problem solving and interaction with design consultants, the construction manager at risk, contractors, and the Authority management during the construction process.
- g. Reviewing Requests for Information, selected submittals, substitutions, and Proposed Change Orders and maintain project files.
- h. Maintaining design continuity and integrity by providing technical assistance on design issues that arise during the construction phase.
- i. Processing and tracking the owner initiated changes.
- j. Perform regular contract compliance observations to verify delivered materials and installations are in compliance with the contract requirements.
- k. Verify the constructors are in continual compliance to their construction Quality Control and Quality Assurance Programs.
- l. Direct the removal and replacement of defective work.
- m. Arrange for and assist the Authority in the managing of an OCIP program, including the oversight of third party safety and loss prevention programs and broker services.
- n. Review Constructors requests for monthly progress payments and make recommendations to the Authority for approval.
- p. Monitor Constructors preparation of in-progress record drawings
- q. Coordinate the collection of operations and maintenance manuals
- r. Verify all documents and deliverables from the constructor are in conformance to the contract.

7. Post Substantial Completion Services:

- a. Witness the start up and testing of systems and observe the functional performance of the systems and recommend to the Authority the operational readiness of the facility.
- b. Provide final project data and financial reports.
- c. Assist in the resolution of operations and/or maintenance problems.
- d. Assist in the coordination of the replacement of defective work during the warranty period.
- e. Provide status reports on warranty activities.

Exhibit 'A'
Scope of Services
Wayne County Jail

- f. Assist in the coordination of the actual performance of warranty work.
- g. Assist the Authority in the enforcement of all warranty provisions of the contract documents
- h. Schedule and conduct an eleven (11) month warranty period inspection
- i. Develop warranty punch list and forward for corrective action
- j. Recommend Final Payments

C. MISCELLANEOUS SERVICES

Perform and assist the Authority by:

- a. Attending meetings at the request of the Authority.
- b. Preparing graphics and various displays (site plans, projections, etc.) for presentations.
- c. Support the preparation of technical reports and cost estimates for affiliated projects.
- d. The evaluation and defense of claims when requested by the Authority.
- e. The preparation and/or evaluation of facility assessment studies.
- f. Arranging for and manage third party testing and Cx Services.

End of Exhibit A

EXHIBIT B

PROGRESS SCHEDULE

Wayne County Jail

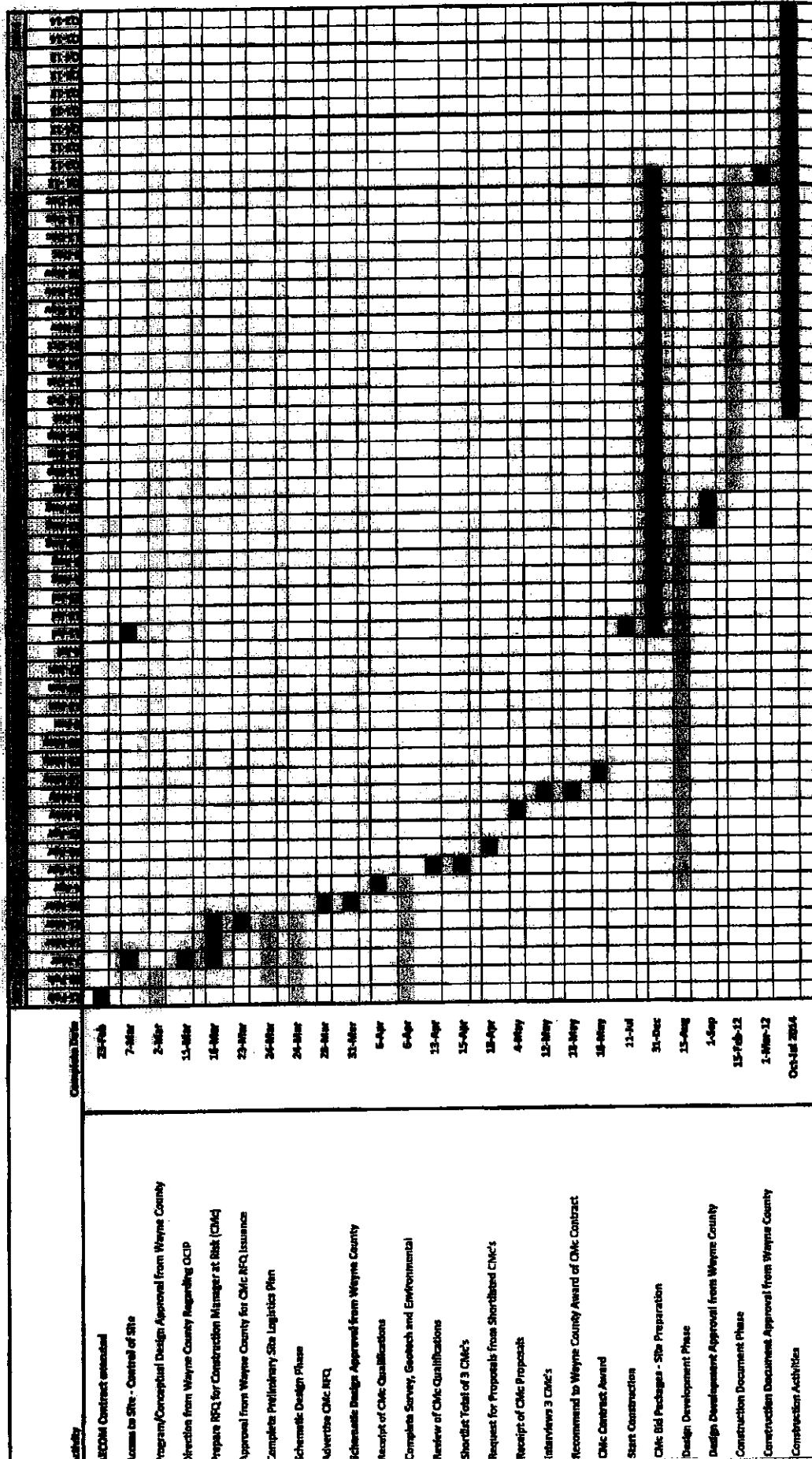


EXHIBIT C
PRICING SCHEDULE

Wayne County Detention Center

Fee Summary - Revised Program Management Proposal + Full A/E Design Including allowance for Owners Representative & IT Consultant

| | | | | | | | |
|---|--|----|-------------|-------|--------|----|-----------|
| 1 | Design Development | \$ | 203,000,000 | 6.75% | 20.00% | \$ | 2,790,500 |
| 2 | Construction Documents, Bidding, CA | \$ | 203,000,000 | 6.75% | 65.00% | \$ | 8,906,625 |
| 3 | PM Starting March 2010 - December 2012 | | | | | \$ | 8,584,717 |
| 4 | Carryover Allowance (Including Owner's Representative) | | | | | \$ | 2,587,500 |
| 5 | | | | | | | |
| 6 | | | | | | | |
| 7 | | | | | | | |
| 8 | | | | | | | |
| 9 | | | | | | | |

| | | | | | | | |
|----|--|----|--|--|--|----|------------|
| 10 | Comparison to Original Proposal | | | | | | |
| 11 | Current Proposal (less Carryover) | \$ | | | | \$ | 22,869,342 |
| 12 | Original Proposal Inc. Owner Rep & CO/CA | \$ | | | | \$ | 31,631,930 |
| 13 | | \$ | | | | \$ | 8,762,588 |

| | | | | | | | |
|----|--|----|--|--|--|----|-----------|
| 14 | Additional Savings Related to Integrated A/E - PM vs. Retaining separate consultants | | | | | | |
| 15 | Estimated Savings of Integrated Design/PM Team | | | | | | |
| 16 | Design Savings | \$ | | | | \$ | 2,106,875 |
| 17 | PM Savings (Extended Schedule & Peer Reviews) | \$ | | | | \$ | 1,923,604 |
| 18 | | \$ | | | | \$ | 4,030,479 |
| 19 | | \$ | | | | \$ | 2,750,000 |
| 20 | | \$ | | | | \$ | 6,780,479 |

Wayne County Detention Center

Allowances included for Consultant Services

| | Allowance |
|-------------------------------|--------------|
| Owners Representative (.075%) | \$ 2,002,500 |
| IT Consultant | \$ 200,000 |
| Project Management (10 seats) | \$ 120,000 |
| Site Survey | \$ 35,000 |
| Traffic Studies | \$ 25,000 |
| Hazmat | |
| Phase I | \$ 15,000 |
| Phase II | \$ 100,000 |
| Geotech | \$ 90,000 |
| | |

**Wayne County Health Center
Program Management Labor Estimate**

[illegible]

EXHIBIT D

STANDARD FORM OF OWNER'S REPRESENTATIVE AGREEMENT

**AGREEMENT
FOR
SUBCONSULTING SERVICES
PARLOVECCHIO BUILDING, INC.**

This Agreement is made and entered into as of the 23rd day of February 2011, by and between **AECOM SERVICES OF MICHIGAN, INC.**, a Michigan Corporation, whose address is 500 Griswold Street, 24th Floor, Detroit, Michigan 48226 (hereinafter referred to as "AECOM") and **PARLOVECCHIO BUILDING, INC.**, a Michigan corporation with a principal office located at Griswold Street, 24th Floor, Detroit, Michigan 48226 (hereinafter referred to as "Subconsultant").

WITNESSETH:

WHEREAS, AECOM has entered into a Program Manager/Architect Agreement dated February 22, 2011, (the "Agreement") with the Charter County of Wayne Building Authority (the "Client") to provide professional services in connection with construction of a new jail facility (the "Project"); and

WHEREAS, AECOM and the Client have agreed that it is in the best interests of the Project that the Subconsultant should operate as an Owner's Representative, on behalf of the Client in order to ensure efficient delivery of services in connection with the Project (the "Services"); and

WHEREAS, Subconsultant represents that it is fully qualified and willing to perform the Services required hereunder in accordance with and subject to the applicable requirements of the Prime Contract,

NOW THEREFORE, for and in consideration of the covenants and conditions hereinafter set forth, the parties do mutually agree as follows:

I. STATEMENT OF WORK

- A. Subconsultant hereby agrees to satisfactorily perform the Services set forth in Exhibit "A", entitled, "Statement of Services", attached hereto and made a part hereof, in accordance with the terms and conditions expressed herein and in a sequence, time, and manner which will permit AECOM to comply with the requirements and applicable sections of the Agreement, incorporated herein by this reference and attached hereto as Exhibit "D".
- B. In addition to the Statement of Services described herein, Subconsultant agrees to be bound in the same manner and to the same extent that AECOM is bound by all applicable sections of the Agreement.
- C. It is understood that Subconsultant was recommended by Owner and agreed to by AECOM for the convenience of the Client. The Parties acknowledge that this arrangement is solely for the benefit of the Owner

and that AECOM has no responsibility or liability for the performance or nonperformance of Subconsultant's services, and conversely, Subconsultant will have no duty, obligation, or loyalty to AECOM except as indicated expressly in this Agreement. The Parties acknowledge that the Subconsultant has a duty and fiduciary responsibility to Client which is independent of his duty to receive payment for his services from Program Manager/Architect.

II. COMPENSATION

The Parties also agree that the fee allowance for the Subconsultant listed in the Agreement is at a rate and amount less than or equal to ordinary market rates. Payments due to the Subconsultant is an allowance agreed upon by Client and AECOM as identified in Exhibit C of the Agreement. For and in consideration of the services satisfactorily performed by Subconsultant hereunder, AECOM agrees to pay Subconsultant the sum or sums set forth under Exhibit "B", entitled, "Compensation and Payment", attached hereto and made a part hereof.

III. TERMS AND CONDITIONS

In addition to applicable provisions of the Prime Contract, Subconsultant agrees to be bound by Exhibit "C", entitled "General Provisions for Subconsultant Agreement", attached hereto and made a part hereof.

IN WITNESS WHEREOF, the authorized representatives of the parties hereto have executed this Agreement effective on the date first above written.

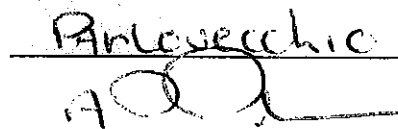
AECOM Technical Services, Inc.


(Signature)

By: Andrew M. Cupples, AIA
(Printed Name)

Title: Principal/Vice-President

Date: February 24, 2011


(Signature)

By: ANTHONY P. PARLOVECCHIO
(Printed Name)

Title: PRESIDENT

Date: 2-23-11

Project Management Services for New Wayne County Justice Center

1. Oversee and manage the architectural and engineering services as required.
2. Oversee, manage, review, and approve the architectural and engineering process from schematic design through to the construction documentation oversee and manage the construction trade procurement process including development of bid specifications (consistent with any applicable requirements), as well as assembly, dissemination and review of all bids, through to trade selection and procurement.
3. Lead value-engineering exercises with architects, general contractor and all subcontractor trades to create the best quality for the lowest cost to Wayne County.
4. Together architect, establish program requirements, specifications, and total budget for the Project.
5. Review and approve Schedule of Values for general contractor and all subcontractors.
6. Review and oversee compliance general contractor and subcontractor.
7. Review and approve change-order process and change under submittals.
8. Review on-site day-to-day construction management of general contractor.
9. Attend all necessary construction meetings and conduct daily site visits to monitor adherence to project schedule and construction documents.
10. Review and work with architect and general contractor for punch list close out and commissioning of space.
11. Review all reports including but not limited to all warranties from general contractor and sub-contractors; and sworn statements, and ongoing support to Owner as necessary to ensure compliance with and documentation requirements throughout construction process.
12. Specifically oversee and provide the following:
 - a. Perform Inspections as the Owner's representative for construction draws; quality of workmanship; and scheduling
 - b. Review and approve construction draws using AIA documentation, Sworn Statements and Lien Waive architect general contractor and review and approve.
 - c. Review and approve payment process to pay subcontractors; provide all required documentation for each sub contractor paid; present to Owner complete documentation for each fully executed construction draw after all subs have been paid. (Sub contractors to be paid within at least 30 days or sooner of receipt of requested draw funds.)
 - d. Review and approve all Closeout of Contracts and all paperwork.

EXHIBIT "B"

COMPENSATION AND PAYMENT

1. For and in consideration of the satisfactory performance and completion of the Services hereunder, AECOM agrees to pay Subconsultant a percentage of the Project Costs. The Subconsultant shall receive a fee based on the following formula:

.75% x Project Costs.

The Subconsultant agrees to be paid in equal monthly installments. It is currently estimated that the Price sum of this contract shall be \$2,002,500 Dollars. This shall be paid in equal payments over a 40 month period, or \$50,062.50. The Parties also agree and acknowledge that the Project Costs is an estimated amount. If for any reason the estimated Project Costs listed in this paragraph is reasonably determined by AECOM, in its sole discretion, to change, then the total agreed upon compensation of the Subconsultant shall be changed based on the agreed upon formula. It is agreed and understood that fee allowance listed in the Agreement with the Client is \$2,002,500. Under no circumstances shall the Subconsultants' Price Sum exceed this amount.

2. The Parties agree and acknowledge that the Client has represented that AECOM and its Sub consultant may be entitled to an incentive program based on a reduction in estimated project costs and escalation of performance and completion. If this incentive program is created and approved, Sub consultant shall be entitled to additional compensation in excess of the number indicated in paragraph 1 of this Exhibit B.
3. Once each month, Subconsultant shall submit a statement or invoice for Services rendered during the previous month. The Parties agree that based on the scope of services provided by the Subconsultant that the Subconsultant shall directly invoice the Client. A copy of such invoice and receipt of such payment shall be provided to AECOM.
4. AECOM shall not be responsible for payment or reimbursement of monies for services performed without the prior written approval of AECOM.
5. Subconsultant hereby agrees to indemnify AECOM against any payments made by AECOM to Subconsultant which are subsequently disallowed by the Client, and agrees to promptly reimburse AECOM for any such amounts that AECOM may be required to pay back to the Client on behalf of Subconsultant.
6. For AECOM Accounting purposes only:

| Charge Number(s) | Phase/Title | Amount | Payment Basis (T&M/NTE or Fixed Price) |
|------------------|-------------|--------|--|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| TOTAL | | \$ | |

CON-Subcontractors

)

)

)

EXHIBIT "C"

GENERAL PROVISIONS FOR SUBCONSULTANT AGREEMENT

1. Responsibility

The Subconsultant shall be solely responsible for the professional quality and technical accuracy of the Services to be provided in Exhibit A. Neither a review, approval or acceptance of, nor payment for, any of the Services required hereunder shall be construed as a waiver of any rights under this Agreement by AECOM or of any cause of action arising out of the performance of this Agreement, and Subconsultant shall be liable for all damages caused by or arising out of Subconsultant's performance of any Services provided or required hereunder.

2. Changes

AECOM, through the Client, may at any time by written authorization, make changes in the Scope of Services to be provided hereunder. If such changes result in an increase or a decrease in Services, the time required for performance thereof or the compensation therefore, this Agreement shall be modified accordingly in writing in order for such changes to be valid. Under no circumstances shall Subconsultant provide additional Services or incur expenses for which additional compensation is to be charged without the express written authorization of AECOM.

3. Termination

- a. Performance of the Services hereunder may be terminated by AECOM only with approval of the Client. This may occur at any time, in whole or in part. Whenever AECOM or the Client determines that Subconsultant is in default of its obligations hereunder or fails to make progress in the prosecution of the Services, thereby endangering such performance, and shall fail to cure such default within ten (10) days after receipt of notice specifying the default; or
- b. Termination shall be effected by delivery to Subconsultant of a Notice of Termination, specifying whether said termination is for default of Subconsultant or for the convenience of AECOM, the extent to which performance of the Services is terminated; and the date upon which the termination is to become effective. If, after Notice of Termination for default, it is determined that Subconsultant was not in default, or that Subconsultant's failure to fulfill its obligations was due to causes beyond its control and without its fault or negligence, the Notice of Termination shall be deemed to have been issued for the convenience of AECOM.

- c. Following receipt of Notice of Termination, Subconsultant shall discontinue performance on the date and to the extent specified therein, and deliver to AECOM the completed or partially completed plans, information, data, reports, estimates, summaries, materials, or other documents which, if performance had been completed, would be furnished to AECOM. Subconsultant shall continue performance of such part of the work and Services which are not terminated by the Notice of Termination. Subconsultant shall prepare and submit a termination claim for Services satisfactorily performed, which shall include costs and expenses reimbursable in accordance with the Terms of this Agreement, not previously paid to Subconsultant, incurred prior to the effective date specified in the Notice of Termination, and AECOM may agree upon the whole or any part of the amount(s) claimed by Subconsultant on account of the termination or partial termination.
- d. In the event of termination for default, AECOM shall be entitled to complete the Services hereunder or engage others to do so, and in addition to whatever remedies AECOM may have at law, if the expense of completing said Services is greater than the amount Subconsultant was to receive as compensation therefore, AECOM shall be entitled to recover the difference from Subconsultant.

4. Suspension

- a. Subconsultant shall, upon written notice from AECOM, suspend, delay or interrupt all or part of the Subconsultant's Services for such period of time as AECOM deems necessary. In such an event, Subconsultant shall resume the Services upon written notice from AECOM.
- b. Except as directed by AECOM in writing, Subconsultant shall not suspend its Services under this Agreement, or otherwise act or fail to act in such a way as may impact the timely performance of AECOM under the Prime Contract.

5. Confidentiality

Subconsultant hereby agrees that all information provided by AECOM pursuant to the Services hereunder shall be considered confidential, and shall not be reproduced, transmitted, used or disclosed by Subconsultant without the written consent of AECOM, except as may be necessary for Subconsultant to fulfill its obligations hereunder; provided, that the limitation shall not apply to any information, or portion thereof, which is (i) is already known to Subconsultant at time of its disclosure; (ii) is or becomes publicly known through no wrongful act of Subconsultant; (iii) is communicated to a third party with express written consent of the Owner of the information; (iv) is independently developed by Subconsultant; or, (v) is required by law to be disclosed to any governmental agency (provided that before making such disclosure, the receiving party shall immediately give the owner of the information written notice and an opportunity to object to the disclosure or take action to assure confidential handling of the information). The requirements of this provision shall survive the termination of this Agreement. In the event that any Confidentiality provisions in the Prime Contract are more restrictive than this provision, the more restrictive terms will prevail.

6. **Ownership and Reuse of Documents**

- a. All non-proprietary data, information, reports, drawings, renderings, or other documents or materials, regardless of format, prepared by Subconsultant hereunder shall become the property of AECOM, or its Client if imposed by the Prime Contract, whether or not the Services covered thereby are executed; provided, that Subconsultant may retain a record copy for its file. The Subconsultant shall deliver same, whether wholly or partially completed, to AECOM upon written demand.
- b. Subconsultant shall ensure that all of the data, information, drawings, renderings, reports, documents, plans, specifications, memoranda, or other information provided to AECOM under this Agreement or created pursuant to this Agreement are the works of independent authorship of the Subconsultant, and do not infringe upon or otherwise violate the rights of intellectual property of any other entity or individual.
- c. The requirements of this provision shall survive the termination of this Agreement.

7. **Relationship**

The legal relationship of Subconsultant to AECOM hereunder shall be that of an independent contractor and not that of an agent, employee or joint venturer. At no time shall the employees furnished by the Subconsultant to perform the Services be considered employees of AECOM and such employees shall be paid by the Subconsultant for all Services in connection with this Agreement. The Subconsultant shall be responsible for all payments, obligations and reports covering Social Security, Unemployment Insurance, Workmen's Compensation, Income Tax and other reports and deductions required by any applicable State, local or Federal law.

Nothing contained in this Agreement shall create a contractual relationship with or duties, obligations or causes of action in favor of any third party.

8. **Examination of Records**

If the Services performed by Subconsultant hereunder are in support of any government contract or program, or under a cost-reimbursement type agreement, or for any authorized additional service or reimbursable expense, Subconsultant shall maintain such books and records under generally recognized accounting methods and shall permit inspection by AECOM or its Client or the authorized representatives of either of them at mutually convenient times, or by the Comptroller General of the United States or any of his authorized representatives, until the expiration of six (6) years after final payment hereunder or any longer period if required by the Prime Contract or by applicable law.

9. **Compliance with Laws**

- a. Subconsultant shall comply with all applicable federal, state, and local laws, ordinances, rules, regulations, and orders in effect throughout the term of this Agreement, including, but not limited to Executive Order No. 11246 of September 24, 1965, as amended (regarding Equal Employment Opportunity), and the orders of the Secretary of Labor pursuant thereto.

- b. No Party to this agreement shall, directly or indirectly, undertake nor cause nor permit to be undertaken any activity which is 1) illegal under any applicable laws or regulations, or 2) would have the effect of causing AECOM or its subsidiaries or affiliates to be in violation of the U.S. Foreign Corrupt Practices Act.
- c. In connection with this agreement, no party shall give, offer, promise, or authorize, directly or indirectly, anything of value to 1) an official or employee of any government, state-owned enterprise, international organization or any subdivisions, agents or advisors thereto, whether paid or unpaid (any such person referred to collectively as "Official"), including the government(s) of the territories in which work will be performed hereunder; or 2) any person(s) or party(s) while knowing or having reason to know that such thing of value is to be given, offered or promised to an Official in order to:
- i. influence any official act or decision, or;
 - ii. induce an Official to use his or her influence to affect a decision of any government or international organization, or;
 - iii. assist the Parties hereto in obtaining or retaining business, or in directing business to any person, or;
 - iv. to obtain an unfair advantage for the Parties in any respect.
- d. In connection with this Agreement, no Party shall make a contribution to any political party or candidate for office on behalf of or associated with the Parties or in connection with the purpose of this agreement.
- e. Subconsultant shall not retain or engage a third party to carry out sales or marketing obligations in connection with the scope of this Agreement without obtaining AECOM's prior written consent. AECOM reserves the right in its sole discretion to reject a request to engage or retain any such third party.
- f. Subconsultant hereby covenants that no officer, director, owners, principal shareholder, family members thereof, agent, representative or employee of Subconsultant is an Official and that Subconsultant shall not employ any Official during the term of this Agreement. Subconsultant further covenants that no Official is deriving any benefit, directly or indirectly, from this Agreement.
- g. In no case shall AECOM be obligated to take any action or make any payment to Subconsultant that would cause AECOM to suffer a penalty or contravene applicable laws or regulations, including but not limited to the laws of the territories in which work will be performed and those of the United States.
- h. If Subconsultant breaches any of the covenants contained in this section, AECOM shall have the right to immediately terminate this Agreement without

penalty or further payment of any sums due and owing or claimed by Subconsultant hereunder. In such instance, Subconsultant shall indemnify AECOM for any penalties, losses and expenses resulting from such breach of the provisions of this section.

10. Insurance

- a. Without limiting Subconsultant's indemnification obligations hereunder, Subconsultant shall provide, pay for, and maintain insurance in force at all times during the performance of the Services to protect itself, AECOM and the Client against claims arising under Workmen's (Worker's) Compensation; and, from claims for damages resulting from injury to or destruction of property, including loss of use thereof; and, from claims arising out of the performance of professional services, or as a consequence thereof, caused by the error, omission, or negligent act for which Subconsultant, its employees, agents, subcontractors, and material suppliers, or the invitees of any of them, may be responsible.
- b. Subconsultant shall provide, pay for, and maintain insurance in force at all times during the performance of the services **in compliance with the insurance requirements of the Prime Contract**. In the event the Prime Contract does not contain any insurance requirements, or to the extent such insurance requirements contained in the Prime Contract are less than the following insurance requirements, Subcontractor shall provide, pay for, and maintain the following insurance:
 - i. Workers' Compensation Insurance as may be required by all state and federal workers' compensation acts and such other acts as may be applicable to the Subconsultant's Services performed hereunder.
 - ii. Employers' Liability Insurance with amounts required by law or \$1,000,000 whichever is greater.
 - iii. General Liability Insurance covering liabilities for death and personal injury and liabilities for loss of or damage to property with a minimum of \$1,000,000 per occurrence/aggregate.
 - iv. Automobile Liability Insurance with a combined single limit of \$1,000,000 per accident for bodily injury and property damage.
 - v. Professional Liability Insurance with limits of liability not less than \$3,000,000 per claim/aggregate, or the amount required under the Prime Contract, whichever is greater.
- c. Prior to commencing performance of the Services hereunder, and at the time of renewal of any policy required hereunder, Subconsultant shall furnish certificates of insurance to AECOM, addressed as set forth below, evidencing compliance with the requirements of this provision.
- d. Except with respect to Worker's Compensation and Professional Liability (E & O) insurance, certificates shall be accompanied by the appropriate endorsement

AECOM Technical Services, Inc.
999 Town and Country Road
Orange, CA 92868
Attention: Laura Lamden

forms naming AECOM and the Client as additional insured's.

- e. All certificates shall provide that the policy or policies shall not be canceled or reduced in coverage's or amounts without giving AECOM thirty (30) days prior written notice.
- f. With respect to the Services provided by Subconsultant, all such policies shall be primary to any and all other insurance of AECOM or Client and shall waive subrogation against AECOM and the Client.
- g. All such coverage shall be in form and with insurers acceptable to AECOM.
- h. Subconsultant shall also require its subconsultants, if any, who will perform work on the Project to procure and maintain the insurance specified above, naming AECOM and the Client as additional insured's and will furnish AECOM proof thereof.
- i. The insurance coverage limits required herein are minimum limits and are not to be construed as a limitation of Subconsultant's liability under this Agreement.

11. Indemnification

Notwithstanding any provision of this Agreement to the contrary, Subconsultant agrees to indemnify, hold harmless, and defend AECOM and the Client from and against all claims, demands, damages, losses, costs, expenses (including attorneys' fees), fines, or penalties arising out of, related to, or as a consequence of, or alleged to arise out of, relate to, or be a consequence of any act, error, or omission to act on the part of the Subconsultant or its employees, agents, or independent contractors, or the invitees of any of them. The requirements of this provision shall survive the termination of this Agreement.

12. Remedies

The rights and remedies set forth herein shall be in addition to any other remedies provided by law, and waiver by AECOM of any provision hereunder or of a breach thereof by Subconsultant, shall not be deemed a waiver of future compliance thereof and such provision shall continue in full force and effect.

13. Severability and Construction

In the event that any term or provision of this Agreement is held to be illegal, invalid, or unenforceable under the laws, regulations, or ordinances of any federal, state, or other government to which this Agreement is subject, such term or provision shall be deemed severed from this Agreement and the remaining terms and provisions shall remain unaffected thereby and continue in full force.

The parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each party. This Agreement shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Agreement.

14. Notices

All notices required or permitted under this Agreement shall be considered as duly given to any party for all purposes hereof only if given in writing and hand delivered; or sent by registered or certified mail, postage prepaid and return receipt requested; or sent by telex, telegram, fax or cable and also confirmed by registered mail, postage prepaid and return receipt requested, addressed as set forth below, or to such other address as may be designated by notice given as provided above. All notices shall be effective upon first receipt, unless otherwise specified herein.

AECOM AECOM Technical Services, Inc.
999 Town and Country Road
Orange, California 92868
Attention:

With a copy to:

AECOM AECOM Technical Services, Inc.
150 Chestnut Street
San Francisco, CA 94111
Attention: Bill Garrett, Chief Counsel, PDD

Subconsultant **PARLOVECCHIO BUILDING, INC,**
500 Griswold Street, 24th Floor
Detroit, Michigan 48226
Attention: Anthony Parlovecchio
Phone: 313-962-8260
FAX: 313-962-8264

15. Modification

This Agreement may only be modified by a written amendment hereto, duly executed by both parties.

16. Successors and Assignment

Subconsultant binds itself, its successors, assigns, and legal representatives to AECOM with respect to all of the covenants of this Agreement and further agrees that it shall not sell, assign, transfer, mortgage, pledge or in any manner encumber its interests in this Agreement, (including, but not limited to the assignment of any claims) or interest in any proceeds from this Agreement without the prior written consent of AECOM. In the event that Subconsultant violates the foregoing prohibition, or in the event that Subconsultant without the prior written consent of AECOM, which consent shall not be unreasonably withheld, sells, assigns, transfers, mortgages, pledges or in any manner encumbers, except as security for credit agreements, all or substantially all of its corporate assets, or directly or indirectly undergoes a change in control of its ownership, AECOM shall be entitled, at its sole option:

1. To require the Subconsultant's successor to continue to perform under this Agreement and to continue to satisfactorily fulfill Subconsultant's obligations under this Agreement;

or

2. To terminate this Agreement. In such case Subconsultant shall be responsible for any and all liabilities arising from such termination. In the event that AECOM replaces Subconsultant with another consultant after such termination, Subconsultant shall be responsible for any and all costs, expenses and liabilities arising from such substitution. In any event, Subconsultant shall remain liable for any and all work product or services provided by it prior to the termination.

17. Professional Registration

If the Subconsultant's Services under this Agreement are required by law to be performed by a registered professional, Subconsultant warrants that it has such qualified person assigned to this Project who is registered in the State of Michigan. Subconsultant shall indemnify and hold harmless AECOM and Client from any penalties, fees or other charges levied because of the failure of Subconsultant to conform to this provision.

18. Publicity

Subconsultant shall not make any public information release that refers to the Project, the Services performed under this Agreement, or AECOM without the prior written approval of AECOM.

19. Governing Law

This Agreement shall be governed by and construed in accordance with the law of the State of California.

20. Extent of Agreement

This Agreement, including any Attachments and Exhibits hereto, contains all of the promises, representations, and understandings of the parties hereto, supersedes any previous understandings, commitments, proposals, or agreements pertaining to the subject matter hereof whether oral or written and may only be modified as provided above.

EXHIBIT "D"

PRIME CONTRACT