

CONTRACT

between

CHARTER COUNTY OF WAYNE BUILDING AUTHORITY

and

GIFFELS – WEBSTER ENGINEERS, INC.

THIS CONTRACT ("Contract") is entered this 20th day of February, 2013, by between the Charter County of Wayne Building Authority ("the County") and Giffels-Webster Engineers, Inc. A Michigan corporation (the "Contractor") for certain services herein designated in connection with a project known as the Wayne County Consolidated Jail Facility in Detroit, Michigan ("Project").

The County and Contractor agree as follows:

1. PURPOSE

1.01 The County is currently developing the Project, projected to be approximately 700,000 Building Gross Square Feet and consisting of a partial basement level with a tunnel connection to the Frank Murphy Justice Center, main support level, and three levels of housing. Approximate total capacity is 2,192 beds, and generally includes twelve 64 cell single cell units, eighteen 64 bed dormitory units consisting principally of eight 8-person mini-dorms, and other special housing. The facility is located on a 7.175 acre site directly east of the Frank Murphy Justice Center bordered by St. Antoine Street on the west, Gratiot St. on the north, the Chrysler Freeway on the east, and Macomb St. on the south.

1.02 In furtherance of the County's development of the Project, the County is in need of certain technical and professional services including Provide a Sketch and Legal Description of a Proposed Right of Way Encroachment Easement for a Subsurface Tunnel through St. Antoine Street and Assist the Project Team with Gaining Approval from the City of Detroit ("Services"). The Contractor represents it is experienced and qualified to perform the Services required by the County. Accordingly, the Contractor desires to provide the Services for the County's Project.

2. ENGAGEMENT OF CONTRACTOR

2.01 The County engages the Contractor and the Contractor agrees to faithfully and diligently perform the Services according to the terms and conditions contained in this Contract and consistent with the standards of practice in the community. The Contractor agrees to perform the Services in accordance with the highest standard of conduct applicable to members of the local community performing similar services on similar type projects.

3. SCOPE OF SERVICE

3.01 To complete the Services, to the satisfaction of the County, the Contractor agrees to complete the following tasks: See EXHIBIT A to the extent of any conflict between EXHIBIT A and the Contract, the Contract shall control in all respects as determined by the County.

3.02 The Contractor must perform the Services in a satisfactory manner, as determined within the sole and absolute discretion of the County. The Contractor warrants that the Contractor is authorized to do business under the laws of the State of Michigan, qualified in all respects to perform the Services required by this Contract and possesses all required licenses (Federal, State and Local) necessary to complete the Services.

3.03 If there are any disputes between the parties regarding the extent and character of the Services to be performed, the Contractor agrees the County is vested with the sole and absolute authority to determine the extent of the Services required by the Contractor, and the Contractor agrees it shall provide the Services consistent with the direction of the County.

3.04 The Services include any and all conferences and consultations deemed necessary by the County to properly and fully perform the Services, as well as any and all Materials required to properly document the Services. As used herein, the term "Materials" means all and any kind of written, printed, recorded or graphic matter, however produced or reproduced and related to or arising from the Services, including but not limited to: records, manuals, statements, minutes, letters, warranties, correspondence, memoranda, reports, lists, studies, surveys, directives, agreements, contracts, print-outs, telegrams, teletype, telexes, telefax, pamphlets, notes, messages, bulletins, diary and calendar entries, maps, charts, brochures, graphics, tabulations, invoices, bills, work sheets, trip reports, receipts returns, schedules, transcripts, statistics, test reports, records of meetings, conference records, telephone records, records of conversation or any other form of communication, sound or voice recordings and reproductions in any form, film impressions, photographs, negatives, slides, microfilms, microfiches, punch cards, tapes, discs, data, summaries, opinions, evaluations, journals, data processing input and output, all other records kept by electronic, photographic, mechanical, manual or other means, and things similar to any of the foregoing, however, denominated.

3.05 All Services are subject to review and approval of the County for completeness and fulfillment

of the requirements of the Contract. Neither the County's review, approval, or payment for any of the Services shall be construed to operate as a waiver of any of the County's rights under the Contract and/or applicable law.

4. TERM OF CONTRACT

4.01 The Parties agree time is of the essence, and the Contractor shall begin the Services on February 21, 2013 and complete the Services by April 12, 2013 to the satisfaction of the County.

5. MATERIALS TO BE FURNISHED CONTRACTOR

5.01 Upon request of the County, the Contractor shall furnish, as part of the Services and without any additional compensation, the Materials the County deems necessary to properly document the Services.

6. PERSONNEL

6.01 To induce the County to enter into the Contract, the Contractor represents and warrants the Contractor is authorized to do business under the laws of the State of Michigan and is duly qualified to perform the Services required by the Contract.

6.02 The Contractor warrants that all employees of the Contractor assigned to the performance of the services are qualified and authorized to perform the Services under the state and local laws and governing professional association rules where the employee is employed.

6.03 The Contractor warrants that each of its employees shall devote the time and professional ability necessary to most effectively and efficiently perform the Services according to professional standards.

6.04 Whenever an employee assigned to this Contract must be replaced for any reason, the Contractor must supply a replacement acceptable to the County and as soon as possible. The Contractor's replacement of any employee shall not delay the Services, and the Contractor agrees to work such overtime and/or additional time, at the Contractor's sole cost and expense, to recover any time lost due to the replacement of an employee of the Contractor. When replacing any employee with a new employee, the Contractor agrees not to substitute a lower classified employee to perform the Services.

6.05 The Contractor shall furnish in writing to the Owner the names of all Subcontractors, suppliers, consultants, or other vendors who will provide any labor, services, or materials to the Project. The Contractor shall identify the names of all Subcontractors, suppliers, consultants, or other vendors at

least ten (10) days prior to the commencement of the labor, services, or provision of materials by all Subcontractors, suppliers, consultants, or other vendors. The Contractor shall not contract with any Subcontractor, supplier, consultant, or other vendor to whom the Owner or Architect has made an objection. The Contract Sum and Contract Time shall not be increased or changed if the Owner objects to any Subcontractor.

7. ADMINISTRATION

7.01 The Contractor shall inform the County immediately upon the Contractor encountering any of the following types of conditions:

- A. Probable delays or adverse conditions which do or may materially prevent the meeting of the objectives of the Contract. The Contractor must accompany this disclosure with a statement of any remedial action taken or contemplated by it; and
- B. Favorable developments or events which enable meeting time schedules or goals sooner than anticipated.

7.02 The Contractor must regularly inform the County of its activities in connection with its duties and must keep the County informed of the status of any program.

7.03 The Contractor shall have no authority in the name of the County to borrow money or enter into any contracts related to the Project except as otherwise provided in this Contract.

8. COMPENSATION

8.01 In exchange for Contractor's full and complete performance of the Services, the County agrees to pay the Contractor Time and Material as set forth in EXHIBIT A ("Compensation"). The Compensation includes all remuneration to which the Contractor may be entitled. The maximum Compensation the Contractor is entitled to receive for the Contractor's performance of the Service shall not exceed \$5,500.00. Charges for the late payment of invoices are prohibited. Notwithstanding anything to the contrary herein, the Contractor waives any and all claims for additional compensation for which it did not receive the prior written approval of the County, it being expressly agreed the Contractor shall not exceed the Compensation amount set forth above without the prior written approval of the County.

8.02 The Contractor must, upon reasonable notice, be available to participate in any proceeding, whether legal, administrative or otherwise, or in any internal County preparatory meetings for the proceeding, in order to assist the County in any matter relating to the purpose or outcome of this Contract.

8.03 The Contractor shall not be entitled to any reimbursable expenses of any type, unless the Contractor receives the prior written approval of the County before incurring any costs related to the reimbursable expense. Any and all expenses incurred without the prior written approval of the County shall be borne solely by the Contractor.

9. METHOD OF PAYMENT

9.01 The County will pay for the proper performance of the Services, commensurate with the progress evidenced by the timely performance of the Services, and after the County receives an invoice for payment. Invoices for payment are due by the first day of each month. Each invoice must certify the total cost of the Services rendered to the Project to date and the cost of all Services for that billing period; and each shall describe in detail the Services rendered during the prior month. If the invoice also requests reimbursement or payment for reimbursable expenses, the appropriate receipts must be attached. The Contractor must sign the invoice and send it to the County for each calendar month. This section is limited by the provisions of Article 8 with regard to the amounts payable for performance.

9.02 The Contractor must direct invoices to the attention of the individual specified in the Notice provisions, Article 19.

9.03 The Contractor must submit as part of the invoices, monthly progress reports indicating the Contractor's activities during the month and be signed by an authorized officer of the Contractor.

10. RECORDS - ACCESS

10.01 The Contractor must maintain complete books, ledgers, journals, accounts, or records in which it keeps all entries reflecting its operation pursuant to this Contract. The Contractor must keep the records according to generally accepted accounting practices and for a minimum of 6 years after the Contract's termination and/or completion.

10.02 The County and the Legislative Auditor General have the right to examine and audit all books, records, documents and other supporting data as they deem necessary of the Contractor, or any

subcontractors, or agents rendering services under this Contract, whether direct or indirect, which will permit adequate evaluation of the services or the cost or pricing data submitted by the Contractor. The Contractor shall include a similar covenant allowing for audit by the County and the Legislative Auditor General in any contract it has with a consultant or agent whose services will be charged directly or indirectly to the County. The County may delay payment to the Contractor pending the results of any such audit without penalty or interest.

10.03 The Contractor agrees that representatives of the County are entitled to make periodic inspections to ascertain that the Contractor is properly performing the Services. The Contractor agrees to promptly remedy and correct any reported deficiencies within 10 days of notification by the County.

10.04 If, as a result of any audit conducted by or for a County, State of Michigan or Federal agency relating to the Contractor's performance under this Contract, a discrepancy should arise as to the amount of Compensation due the Contractor, the County may retain the amount of Compensation in question from any funds allocated to the Contractor but not yet disbursed under the Contract. Should a deficiency still exist, the County may offset such a deficiency against the compensation to be paid the Contractor in any successive or future Contracts between the parties, and/or the Contractor shall pay the County any compensation due within 7 days of the County's written demand.

10.05 Contractor shall maintain daily records covering manpower, work in progress, accidents, and field observations, as well as providing, upon request, any reporting required by applicable codes and regulations and ARRA requirements.

11. RELATIONSHIP OF PARTIES

11.01 The relationship of the Contractor to the County 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 Contract. No relationship, other than that of independent contractor will be implied between the parties, or either party's agent, employee, or subcontractor.

11.02 For all purposes, County employees will remain employees of the County and the Contractor's

employees will remain employees of the Contractor. The Contractor is being retained by the County as an independent contractor to provide Services to the County, and is not being retained in any capacity as a joint enterprise or venturer with the County. The Contractor also covenants that none of its employees are or will be, during the period of this Contract, employees of the County.

12. INSURANCE

12.01 The Contractor, at its expense, must maintain during the term of this Contract the following insurance:

- A. Professional liability insurance with minimum limits of \$1 Million Dollars per occurrence and \$1 Million Dollars aggregate with a three (3) year tail.
- B. Workers' Compensation Insurance which meets Michigan statutory requirements.
- C. Comprehensive General Liability Insurance, endorsed to include Errors and Omissions and Contractual Liability, with minimum limits of bodily injury and property damage of \$1 Million Dollars per occurrence and \$2 Million Dollars aggregate with a three (3) year tail.
- D. Comprehensive Automobile Liability (including hired and non-owned vehicles) with minimum limits for bodily injury of \$1 Million Dollars per occurrence and with minimum limits for property damage of \$500,000 per occurrence.
- E. Umbrella or excess policy of no less than \$3 Million Dollars.

12.02 If, during the term of this Contract, changed conditions or other pertinent factors, should in the reasonable judgment of the county, render inadequate the insurance limits, the Contractor will furnish on demand such additional coverage as may reasonably be required and available under the circumstances. The insurance must be effected under valid and enforceable policies, issued by recognized, responsible Michigan insurers which are well-rated by national rating organizations.

12.03 The Comprehensive General Liability and Comprehensive Automobile Liability Insurance policies must name the County, the Charter County of Wayne, The Charter County of Wayne Building Authority, Ghafari Associates and AECOM as additional insureds and loss payees, and shall not be canceled or materially changed without at least 30 days prior notice from the Contractor to the County. The Contractor

must submit certificates evidencing the insurance to the Risk Management Division at the time the Contractor executes the Contract, and at least 15 days prior to the expiration dates of expiring policies.

13. INDEMNIFICATION

13.01 The Contractor agrees to save harmless the County against, and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants) which may be imposed upon, incurred by or asserted against the County because of any of the following occurring during the term of this Contract:

- A. Any negligent or tortious act, error, or omission held in a court of competent jurisdiction to be attributable, in whole or in part to the Contractor, or any of its personnel, employees, consultants, agents, or any entities associated, affiliated, (directly or indirectly) or subsidiary to the Contractor now existing, or to be created, their agents and employees for whose acts any of them might be liable.
- B. Any failure by the Contractor, or any of its employees to perform its obligations either implied or expressed under this Contract.

13.02 The Contractor agrees that it is its responsibility and not the responsibility of the County to safeguard the property and materials that the employees of the Contractor use in performing this Contract. The Contractor must hold the County harmless for costs and expenses resulting from any loss of the property and materials used by its employees pursuant to the performance of the Contractor under this Contract.

13.03 The Contractor cannot hold the County liable for any personal injury incurred by the employee(s), agents or consultants of the Contractor while working on this Contract which is not held in a court of competent jurisdiction to be directly attributable to the gross negligence of the County or any employee of the County acting within the scope of their employment. The Contractor agrees to hold the County harmless from any such claim by the Contractor's employees.

13.04 For purposes of these provisions, the term "County" includes the County, the Charter County of Wayne, Ghafari Associates and AECOM and all other associated, affiliated, or subsidiary departments, divisions or agencies now existing or to be created their agents and employees.

13.05 This indemnity applies without regards to whether the claim, damage, liability or expense is

based on breach of contract, breach of warranty, negligence, strict liability, or other tort. This indemnity survives delivery and acceptance of services.

13.06 This indemnity must not be construed as a waiver of any governmental immunity the County, its agencies, or employees, has as provided by statute or modified by court decisions.

14. BANKRUPTCY OR INSOLVENCY

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

- A. Contractor or any trustee must not assign any or all of its rights, title or interest, in or to this Contract, as this Contract is for the delivery of professional services and related services, as to which the County is entitled to insist upon performance solely by the Contractor.
- B. Contractor or any trustee may only assume this Contract if it provides adequate assurance of future performance. Adequate assurance of future performance means proof reasonably satisfactory to the County of:
 - (i) adequate financial capacity to employ or contract with sufficient personnel to perform the services assigned to the Contractor as provided in this Contract, and to pay for all services contracted for by the Contractor;
 - (ii) adequate financial capacity to own, operate, lease or obtain sufficient facilities and supplies to perform the services assigned to the Contractor as provided for in this Contract; and
 - (iii) adequate financial and professional capacity to maintain the professional standard provided in this Contract. The reasonable determination of the County as to the adequate professional capacity of the Contractor is determinative.
- C. Because of the unique nature of the services this Contract requires the Contractor to

provide, the Contractor agrees that any requests by the County that the trustee or it as debtor-in-possession assume or reject this Contract in a shorter time than provided for in 11 U.S.C. §365 is reasonable so long as the trustee or Contractor receives no less than 5 business days' notice.

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

14.02 Although neither party has the right to terminate the Contract 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 Contract during the period of any proceedings under the Bankruptcy Code.

15. NOTICE OF MATERIAL CHANGES

15.01 The Contractor must immediately inform the County of material changes in its operation, ownership or financial condition. Material changes include, but are not limited to:

- A. Reduction or change in staffing assigned to the Contract;
- B. Decrease in, or cancellation of, insurance coverage;
- C. Delinquent payment, or nonpayment, of tax obligations;
- D. Delinquent payment, or nonpayment, of payroll obligations;
- E. Delinquent funding, or nonfunding, of pension or profit sharing plans;
- F. Delinquent payment, or nonpayment, of subcontractors;
- G. Termination of, or changes in, subcontracts; and/or
- H. Transfer, sale, assignment or delegation to an entity other than the Contractor, of ownership or administrative services.

16. TERMINATION

16.01 When the Contractor has not performed or has unsatisfactorily performed the Contract, Compensation shall be withheld at the discretion of the County. Failure on the part of the Contractor to fulfill contractual obligations shall be considered just cause for termination of the Contractor and the Contractor is not entitled to recover any and all costs incurred by the Contractor following termination, and Contractor waives any and all claims for costs (including but not limited to lost profits and consequential damages).

16.02 The County may terminate this Contract, in whole or in part, without showing cause upon written notice to the Contractor specifying the extent and the effective date of the termination. In connection with such termination, the County shall pay Contractor as Contractor's sole and exclusive remedy a termination payment comprised of any amounts due for Services the County accepted prior to the termination date and Contractor's reasonable and necessary direct costs resulting from the termination which are substantiated by evidence satisfactory to the County. In no event shall the Contractor be entitled to any payment or profit for any Services not accepted by the County (including but not limited to any consequential damages).

16.03 After receipt of a Notice of Termination and except as otherwise directed by the County, the Contractor must:

- A. Stop work under the Contract on the date and to the extent specified in the Notice of Termination.
- B. Obligate no additional contract funds for payroll costs and other costs beyond the date as the County specifies.
- C. As of the date the termination is effective, present all Contract records and submit to the County the records, data, notes, reports, discs, and documents ("Records") as the County specifies, all pertinent keys to files, and carry out such directives as the County may issue concerning the safeguarding or disposition of files and property.
- D. Submit within 30 days a final report of receipts and expenditures of funds relating to this Contract.
- E. Place no further orders on subcontracts for materials, services, or facilities, except

as may be necessary for completion of such portion of the work under this Contract as if not terminated;

- F. Terminate all orders and subcontracts to the extent that they relate to the portion of work so terminated;
- G. Submit within 30 days a listing of all creditors, subcontractors, lessors, and other parties with which the Contractor has incurred financial obligations pursuant to the Contract.

16.04 Upon termination of this Contract, all Materials prepared by the Contractor under this Contract or in anticipation of this Contract must, at the option of the County, become its exclusive property, whether or not in the possession of the Contractor. The Contractor warrants the Materials are free from any claim or retention of rights on the part of the Contractor.

16.05 Any intentional failure or delay by the Contractor to deliver the Materials to the County will cause irreparable injury to the County not adequately compensable in damages and for which the County has no adequate remedy at law. The Contractor shall pay the County \$500.00 per day as damages, and not as a penalty, until it delivers the Materials to the County. The County may seek and obtain injunctive relief in a court of competent jurisdiction and compel delivery of the Materials which the Contractor consents to as well as all applicable damages and costs. The County has unrestricted use of the Materials for the purpose of completing the services.

16.06 Access to the Materials prior to delivery must be restricted to authorized representatives of the County and the Contractor. The Contractor has no right to disclose or use any information gathered in the course of its work without obtaining the written approval of the County. All the information must be confidential and handled in such a manner at all times as to preserve confidentiality.

17. ETHICS IN CONTRACTING

17.01 The Contractor must comply with Article 12 of Chapter 120 of the Wayne County code governing "Ethics in Public Contracting."

17.02 Contractor's material misrepresentation or delinquency in the disclosures required by section 120-225 of the Wayne County Code constitutes a material breach of this Contract, sufficient to warrant

immediate termination and the imposition of liquidated damages (not a penalty) of fifteen percent (15%) of the consideration made or due under the Contract as of the date of termination.

17.03 If the County determines that the Contractor has made a material misrepresentation or is willfully delinquent or knowingly evasive in the disclosures required by section 120-225, the Contractor and any other business which has substantially the same principal beneficiaries (as defined in section 120-238 of the Wayne County Code), may be debarred by the Purchasing Director, pursuant to Article 6 of Chapter 120 of the Wayne County Code, from competing for any further County contracts for up to three (3) years.

17.04 If the Compensation is in excess of \$20,000, or the terms thereof require the approval of the Wayne County Commission, and the Contractor knowingly collaborate in or induces a violation of any of the ethical standards that are set forth in sections 120-223, 120-224, 120-225, 120-228, 120-229, 120-231 or 120-233 of the Wayne County Code, the County has the right to impose any one or more of the following sanctions:

- A. Immediately terminate the Contract and require the Contractor to pay the County liquidated damages, and not a penalty, of 15% of the total Contract compensation;
- B. Debar or suspend the Contractor from consideration from competing for further County contracts; or
- C. Recover the value transferred or received in breach of the ethical standards by a County employee or other person.

18. NON-DISCRIMINATION PRACTICES

18.01 The Contractor must comply with:

- 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. Article XI of Chapter 120 of the Wayne County Code governing Equal Contracting Opportunity.
- G. Any other appropriate affirmative action provisions as may be required from time to time by the Director of Human Relations of the County. Contractor shall promptly give notice of any such provisions to County during the term of the Contract.

18.02 The Contractor 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, gender 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, gender 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 Contractor indicating a preference, limitation, specification, or discrimination based upon race, color, creed, national origin, age, marital status, handicap, gender or sexual orientation, religion, familial status, height or weight.
- D. Except as permitted by rules and regulations promulgated pursuant to section 120-191 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, gender or sexual orientation, religion, familial status, height or weight, of prospective employees. Contractor 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, gender, or sexual orientation.

18.03 The Contractor must notify any subcontractor of the obligations relative to non-discrimination under this Contract when soliciting the subcontractor. The Contractor will include the provisions of this Article in any subcontract, as well as provide the County with a copy of any subcontract agreement.

18.04 The Contractor and its subcontractors must not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Contract, 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, gender or sexual orientation, religion, familial status, height or weight. This Section does not apply if it is determined by the Division of Human Relations that the requirements are bona fide occupational qualifications reasonably necessary to perform the duties required for employment. The burden of proof that the occupational qualifications are bona fide is upon the Contractor.

18.05 Breach of any of the covenants in this Article may be regarded as a material breach of this Contract.

18.06 Contractor acknowledges the right of the Director of Human Relations to sue to enforce the provisions in this Article of the Contract.

18.07 If the Contractor does not comply with the non-discrimination and affirmative action provisions of this Contract, the County may impose sanctions, as it determines to be appropriate, including but not limited to:

- A. The withholding of payments to the Contractor under this Contract until the Contractor attains compliance;
- B. Cancellation, termination or rescission of this Contract, in whole or in part;

- C. Disqualification from bidding on future contracts for a period of no more than 3 years; and/or
- D. Referral to Corporation Counsel for consideration of injunction, liquidated damages or other remedies.

18.08 If the Contract is funded, in whole or in part, by federal funds:

- A. Contractor's breach of the affirmative action commitments set forth in this Article constitutes a material breach of the Contract sufficient to warrant termination and the imposition of liquidated damages as set forth above, based upon the decision of the Director of Human Relations;
- B. Contractor must provide immediate notice to the County's Chief Executive Officer, the Director of Human Relations, and the Wayne County Commission when a subcontractor who was part of the Contractor's affirmative action commitment is terminated or substantially displaced by a subcontractor who does not qualify as a disadvantaged business enterprise, as that term is defined in section 120-251 (21) of the Wayne County Code; and
- C. Contractor must establish and implement a good faith plan and goal to eliminate the continuing effects of past discrimination, which is determined by the Division of Human Relations to be appropriate for that purpose, provided the County has been authorized by the funding source to require such an affirmative action commitment from the Contractor.

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

19. NOTICES

19.01 All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Contract must be given in writing and mailed via certified mail/return receipt requested and addressed as follows:

For the County

WAYNE COUNTY BUILDING AUTHORITY

Attention: Robert Newton
500 Griswold
Suite 3100
Detroit, Michigan 48226

With a Copy to:

Jeffrey M. Sangster
KOTZ, SANGSTER, WYSOCKI AND BERG, P.C.
400 Renaissance Center, Suite 3400
Detroit, Michigan 48243

For the Contractor:

Giffels – Webster Engineers, Inc.
Attention: John Redash
28 W. Adams, Suite 1200
Detroit, Michigan 48202

19.02 All notices are deemed given on the day received. Either party to this Contract 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.

20. DISPUTE RESOLUTION

20.01 This Contract, and all actions arising from it, shall be governed by, subject to, and construed according to the law of the State of Michigan. All disputes arising out of or related to this Contract shall be resolved solely in Wayne County Circuit Court, except as provided herein, it being agreed Contractor does business in Wayne County Circuit Court and is subject to jurisdiction of the Wayne County Circuit Court. Notwithstanding the foregoing, at County's sole and exclusive option, any disputes between the parties shall be resolved by arbitration before the American Arbitration Association in accordance with the then current Construction Rules or Commercial Rules, as the case may be of the American Arbitration Association, and any judgment or award issued by the arbitrators shall be final and may be entered in any court having jurisdiction thereof.

21. CONFIDENTIAL INFORMATION

21.01 If the County discloses confidential information to the Contractor's employees pertaining to the County's past, present and future activities, the Contractor must instruct its employees to regard all information gained by each person as a result of the services to be performed as information which is confidential and not to be disclosed to any organization or individual without the prior written consent of the County.

21.02 The Contractor agrees to take appropriate action with respect to its employees to insure that the obligations of nonuse and non-disclosure of confidential information concerning this Contract can be fully satisfied.

22. COMPLIANCE WITH LAWS

22.01 The Contractor must comply with and must require its employees to comply with all applicable laws and regulations.

22.02 The Contractor must hold the County harmless with respect to any damages arising from any violations of this Article by it or its employees.

22.03 Owner may, but is not obligated to, audit certified payroll records, Buy American certifications and/or any other documents provided or maintained by Contractor and its Subcontractor(s). If Contractor or its Subcontractor(s) is found to have failed to comply with the requirements of the Buy American requirements, or any other applicable contract provision, code, statute, or regulation, the Owner may withhold payment to Contractor.

23. CHANGES IN SCOPE/SERVICE

23.01 County may request changes to the scope of Services to be furnished or performed by the Contractor under the Contract, as well as changes in the time of performance of the Contract. All such changes shall be authorized by either Change Order or Contract Modification.

23.02 If any such change request increases or decreases the Contractor's cost of, or the time required for, performance of any part of the Services under this Contract, an adjustment may be made and the Contract modified in writing accordingly.

23.03 Contractor shall provide County with a written proposal to County's change request within five (5) business days of receipt of any such request. Contractor's proposal shall describe in reasonable detail the

basis for any proposed price or time adjustment. All cost estimates shall include all completed Services, and cover all costs, expenses, overhead and profit of subcontractors, if any.

23.04 Contractor acknowledges that any change in the Compensation 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.

23.05 If the County does not accept the Contractor's proposal, the County may:

- A. Withdraw its change request and hire another contractor;
- B. Modify its change request, in which case the procedures set forth above will apply to the modified change request; or
- C. Issue a Change Order.

23.06 Any adjustment in the Compensation shall be computed in the manner as the parties may agree. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract as changed, provided the County promptly and duly makes provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the required Services under protest, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

23.07 No action, conduct, omission, prior failure or course of dealing by the County shall act to waive, modify, change or alter the requirement that Contract Modifications must be in writing and signed by the County and the Contractor. Contractor further acknowledges that Change Orders and Contract Modifications are the exclusive method for effecting any change to the Contract.

23.08 No change to this Contract is effective unless it is in writing and references this Contract. If the change is a Contract Modification, it must be signed and acknowledged by duly authorized representatives of both parties. If the change is a Change Order, it must be signed by an authorized representative of the County.

24. DEBARMENT AND SUSPENSION

24.01 The Contractor certifies to the best of its knowledge and belief, that:

- A. The Contractor and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal agency;
- B. The Contractor and its principals have not, within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connections with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under public transaction; violation of Federal or State antitrust statutes, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. The Contractor and its principals are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in 24.01 B above; and;
- D. The Contractor and its principals have not, within a three-year period preceding this contract, had one or more public transactions (Federal, State or local) terminated for cause or default.

24.02 The certification in this clause is a material representation of fact upon which reliance was placed. When the County determines that the Contractor knowingly rendered an erroneous certification, in addition to other remedies available to the County, the County may terminate this Contract for cause or default.

24.03 The Contractor shall provide immediate written notice to the County if, at any time, Contractor learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

24.04 The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "Grantee", "person", "primary covered transaction", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meaning set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549: 45 CFR Part 76.

24.05 The Contractor agrees that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the County.

24.06 The Contractor further agrees that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction", provided by the County, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

24.07 A Contractor may rely upon a certification of a participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A Contractor may decide the method and frequency by which it determines the eligibility of its principals. Each Contractor may, but is not required to, check the Non-procurement List (of excluded parties).

24.08 Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a Contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

24.09 If a Contractor is in a covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the County, the County may terminate this transaction for cause or default.

25. **PAYMENT OF PREVAILING WAGES**

25.01 The Davis-Bacon Act 40 U.S.C. §§ 276a-276a-7 ("Davis-Bacon"), and Related Acts, shall govern the Work. The Contractor, and all subcontractors and sub-subcontractors, shall comply with Davis-Bacon, pay prevailing wages as required by Davis-Bacon, and submit any and all reports required in order to substantiate compliance with the Davis-Bacon Act. All rulings and interpretations of the Davis-Bacon and Related Acts, including but not limited to those rulings and interpretations contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

25.02 The rates of wages and fringe benefits to be paid to each class of construction laborers and mechanics by the Contractor and any Subcontractor shall not be less than the wage and fringe benefit rates determined by the United States Department of Labor, which are set forth at www.wdol.gov. Contractor and all Subcontractors shall have the responsibility to identify and pay applicable prevailing wage and fringe benefit rates.

25.03 Apprentices and trainees may be employed at less than the predetermined rates. Apprentices must be employed pursuant to an apprenticeship program registered with the Department of Labor or with a State of Michigan apprenticeship agency recognized by the Department of Labor. Trainees must be employed pursuant to a training program certified by the Department of Labor.

25.04 Contractors and Subcontractors are also required, pursuant to the Contract Work Hours and Safety Standards Act, to pay employees one and one half (1 ½) times their basic rate of pay for all hours worked on covered Contract Work over forty (40) hours in one work week.

25.05 If the auditor determines that the Contractor has violated the Davis-Bacon and Related Acts, the County may withhold payment and/or immediately terminate the Contract and debar the Contractor from bidding on or entering into any contract with the County or from receiving any financial assistance from the County for a period of five years.

25.06 The Contractor shall permit access to job sites and relevant payroll records for authorized County, State of Michigan, or Federal Government representatives for the purpose of monitoring compliance, investigating employee complaints of non-compliance, and evaluating the operation and effects of the ordinance. In addition to any other sanctions set forth herein, a Contractor who fails to submit documents, declarations or information required to demonstrate compliance shall be deemed by the auditor to be noncompliant or non-responsive and shall have Contract payments denied or suspended until compliance is demonstrated.

26. PROMPT PAYMENT

26.01 If the Contractor should subcontract a part of the obligations under this Contract to a business which has been certified by the County's Division of Human Relations as a small or disadvantaged business enterprise, the Contractor shall make prompt payments to each such subcontractor as the subcontract is

performed which are at least equal to the prompt payments which are due to the Contractor under the provisions of this Contract. Unless alternate terms which have a similar purpose and effect are otherwise agreed upon in writing, the Contractor shall make payment within 45 days after delivery or satisfaction of the subcontract, or receipt of a complete invoice therefore, whichever is later. If an invoice is filled out incorrectly or contains a defect or impropriety, the Contractor shall notify the subcontractor of that fact within 10 days after receipt of the invoice. The 45 day period shall be extended by each day over 5 days which the subcontractor takes to make a correction. If a payment is past due, the Contractor shall pay to the subcontractor an additional amount to be calculated on a daily basis which is equal to an annual rate of interest of 9% (amount overdue X number of days overdue X .000246575). Interest shall not be due if payment is delayed because of a good faith disagreement between the Contractor and the subcontractor regarding contract performance and the dispute is resolved in favor of the Contractor. This provision is expressly intended to create a third-party right which is legally enforceable by a subcontractor. This provision does not, however, create a duty on the part of the County to seek enforcement of a default of this provision or to make payment to the subcontractor on behalf of the Contractor.

27. SEVERABILITY OF PROVISIONS

27.01 If any provision of this Contract or the application to any person or circumstance is, to any extent, judicially determined to be invalid or unenforceable, the remainder of the Contract, 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.

28. MERGER CLAUSE

28.01 This document, including the Appendices, contains the entire agreement between the parties and all prior negotiations and agreements are merged in this document. Neither party has made any representations except those expressly set forth. No rights or remedies are, or will be acquired by either party by implication or otherwise unless set forth.

29. ASSIGNMENT

29.01 The Contractor shall not assign this Contract, nor any part, or subcontract any of the work or services to be performed without the County's prior written approval.

30. NONEXCLUSIVE CONTRACT

30.01 At any time and at the County's sole and exclusive option, the County may contract with other firms providing the same or similar services as the Contractor.

31. MISCELLANEOUS

31.01 The Contractor covenants that it is not, and will not become, in arrears to the County upon any contract, debt, or any other obligation to the County, including real property and personal property taxes.

31.02 Articles 12, 13, 19, and 21 survive termination of the Contract.

31.03 All the provisions of this Contract are "covenants" and "conditions" as though the words specifically expressing or imparting covenants and conditions are used in each provision.

31.04 If any Affiliate of the Contractor takes any action which, if done by the Contractor, would constitute a breach of this Contract, the action is deemed a breach by the Contractor. "Affiliate" is a "parent", subsidiary or other company controlling, controlled by or in common control with the Contractor.

31.05 Neither party is responsible for force majeure events. If there is a dispute between the parties with regard to what constitutes a force majeure event, the County's reasonable determination is controlling.

31.06 Unless the context otherwise requires, the words, "herein", "hereof" and "hereunder", and other words of similar import, refer to this Contract as a whole and not to any particular article, section, or other subdivision.

31.07 The headings of the articles in this Contract are for convenience only and must not be used to construe or interpret the scope or intent of this Contract or in any way affect the Contract.

31.08 As used, the singular includes the plural, the plural includes the singular, and the use of any gender is applicable to all genders.

31.09 The Contractor warrants that any products sold or processes used in the performance of this Contract 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 the County, the County must promptly notify the Contractor. The Contractor must defend the claim in the name of the County, at the Contractor's expense. The Contractor must indemnify the County against any loss, cost, expense or liability arising out of the claim, whether or not the claim is successful.

31.10 No failure by a party to insist upon the strict performance of any term of this Contract or to exercise any term after a breach, constitutes a waiver of any breach of term. No waiver of any breach affects or alters this Contract, but every term of this Contract remains effective with respect to any other then existing or subsequent breach.

31.11 Contractor agrees that it will only employ, hire, or subcontract with Subcontractors, suppliers, or other vendors that are registered with Owner's Outreach Firm, Dan Teak, LLC. If Contractor employs, hires or subcontracts with any Subcontractor, supplier, or other vendor that is not registered with Dan Teak, LLC, Owner may withhold payment to Contractor for the work, services, or materials provided by the unregistered Subcontractor, supplier, or other vendors. The requirements of this provision apply to all tiers of Subcontractors, suppliers, or other vendors,

32. AUTHORIZATION AND CAPABILITY

32.01 The Contractor warrants to the County that it has taken all corporate actions necessary for the authorization, execution, delivery and performance of this Contract. It is ready to perform its obligations. The Contractor further warrants that the person signing this Contract is authorized to do so on behalf of the Contractor and is empowered to bind the Contractor to this Contract.

32.02 This Contract is effective only upon review and approval by the Charter County of Wayne Building Authority.

33. SIGNATURE

33.01 The County and the Contractor, by their authorized officers and representatives have executed this Contract.

CONTRACTOR JOHN N. REDASH CHARTER COUNTY OF WAYNE BUILDING AUTHORITY

By: [Signature]
Its: TREASURER

By: [Signature]
Its: _____

APPROVED AS TO FORM

By: _____
DEPT OF CORPORATION COUNSEL

Exhibit A

SHORT FORM AGREEMENT

Project Number 18085.13

This Agreement is made this 12 th day of February 2013, by and between Giffels-Webster Engineers, Inc. whose principal place of business is located at 28 W. Adams, Suite 1200, Detroit, Michigan 48226 ("Giffels-Webster") and the following person or entity ("Client"):

Client Name and Address: **Ghafari Associates, LLC**
17101 Michigan Avenue
Dearborn, Michigan 48126

Principal Client Contact: **Ronald M. Moran**
313-436-8607

The Client and Giffels-Webster enter into this Agreement concerning certain surveying and related services to be provided by Giffels-Webster in relation to the project known as "**Wayne County Justice Center - "**" being approximately 7 acres located at the southwest corner of I-375 and Gratiot Avenue, Detroit, Michigan. Scope of service to be defined as:

OPTION A -

Provide a sketch and legal description of a proposed right of way encroachment easement for a subsurface tunnel through St. Antoine Street. Client to provide proposed design files of both plan and profile views of the proposed tunnel. Surveyor will address all available utility information and include calls to depths required for subsurface easement.

T&M not to exceed

\$ 2,500.00

OPTION B -

In addition to the survey services we can facilitate the process of petitioning the Detroit City Council requesting the City to investigate installing and maintaining an encroachment within St. Antoine Street, 50 feet wide, between Clinton and Gratiot in order to accommodate the installation of a proposed underground tunnel.

Due to the fact that the City Engineers Office has many petitions to process, under normal circumstances it would be a minimum of four (4) months before the process is completed and the appropriate resolution is delivered to the City Council for consideration. However, we have staff that the City Engineers office, all involved City Departments as well as, public and private utility companies recognize as having the experience, knowledge and complete understanding of the process. Thus allowing our clients to reduce this process significantly.

We will ...

- Check Location, observe rights-of-way to be encumbered, review/research previous City Council actions that may affect request, study proposed changes, identify current right-of-way uses (Traffic patterns, pedestrian traffic, signage, parking, sidewalks, encroachments).
- Prepare petition letter, attach supporting documents and hand deliver to the City Clerk's Office.
- Prepare drawing reflecting the requested right-of-way changes, package drawing with all associated information, attached to the City of Detroit form "Notice of Proposed Change in

Property" and distribute to all involved City departments, public and private utilities and any other agency identified to be involved.

- Monitor/Facilitate the progress of the utility and city department petition responses by tracking petition responses and issues and address concerns as they arise. Keep in contact City Engineering Division/DPW as replies come in.
- Final review of all documents.
- Preparation of the resolution and report to City Council.
- Once the resolution has been signed we will assist the City Engineering Division/DPW in the preparation of the resolution package and insure delivery to the City Clerk's Office and any other City agencies that should be notified prior to a Council session.
- Represent the client up to three meetings, hearings or sessions.

T&M not to exceed

\$ 3,000.00

If provided, a time and material estimate is an informational estimate only, and the Client recognizes that the actual charges may exceed the estimate. Any other services provided by Giffels-Webster will be performed on a time and materials basis, according to the Schedule of Fees that follows.

Schedule of Fees:

Survey Manager	\$.....	110.00 per hour
Survey Technician.....	\$.....	95.00 per hour
Survey Crew.....	\$.....	135.00 per hour

The assignment of personnel is solely the responsibility of the officers of this firm.

The rates above include all charges for CADD time, travel, and electronic survey equipment.

Outside services used for this project will be billed at invoice amount plus 15% for handling and are not included in the lump sum fees or estimate.

INVOICES

Progress invoices will be submitted to the client bi-weekly and a final bill will be submitted upon completion of the services. A detailed separation of charges and back-up data will be provided at client's request, but each invoice is due on presentation and is past due thirty (30) days from invoice date. Client agrees to pay a finance charge of one and one-half percent (1-1/2%) per month on past due accounts.

We reserve the right to suspend or terminate work under our agreement upon failure of the client to pay invoices as due.

ACCEPTANCE AND AUTHORIZATION TO PROCEED

The Client certifies that the person executing this Agreement is authorized to sign on behalf of the Client's organization. The Client also certifies that, if it is a business entity, it is registered with the State of Michigan and authorized to conduct business in Michigan. If Client agrees with the terms of this Agreement, Client should sign and date both copies of the Agreement and return one copy to Giffels-

Webster. Giffels-Webster thereafter will proceed on this Project upon receipt of this written authorization to proceed.

Giffels-Webster Engineers, Inc.

Ghafari Associates

A handwritten signature in black ink, appearing to read "John N. Redash", written in a cursive style.

BY: John N. Redash, PS
Partner

BY: