

PROFESSIONAL ENGINEERING SERVICES CONTRACT

between

WAYNE COUNTY

And

ORCHARD, HILTZ & MCCLIMENT, INC.

for

**CONSTRUCTION ENGINEERING SERVICES FOR
E.N. HINES ROAD (OUTER DRIVE TO FORD RAMP)
IN THE CITY OF DEARBORN HEIGHTS**

CONTROL NO. 37-19-025B

Table of Contents

1. PURPOSE.....	2
2. ENGAGEMENT OF CONTRACTOR.....	2
3. SCOPE OF SERVICE.....	2
4. TERM OF CONTRACT.....	2
5. DATA TO BE FURNISHED TO CONTRACTOR.....	3
6. PERSONNEL.....	3
7. ADMINISTRATION.....	3
8. COMPENSATION.....	3
9. METHOD OF PAYMENT.....	3
10. RECORDS - ACCESS.....	4
11. RELATIONSHIP OF PARTIES.....	4
12. INSURANCE.....	5
13. INDEMNIFICATION.....	6
14. BANKRUPTCY OR INSOLVENCY.....	7
15. NOTICE OF MATERIAL CHANGES.....	8
16. TERMINATION.....	8
17. ETHICS IN CONTRACTING.....	9
18. NON-DISCRIMINATION PRACTICES.....	10
20. JURISDICTION AND LAW.....	12
21. CONFIDENTIAL INFORMATION.....	12
22. COMPLIANCE WITH LAWS.....	12
23. CHANGES IN SCOPE/SERVICE.....	12
24. DEBARMENT AND SUSPENSION.....	13
25. PROMPT PAYMENT.....	14
26. SUBCONTRACTING AND ASSIGNMENT.....	14
27. [INTENTIONALLY OMITTED].....	15
28. MISCELLANEOUS.....	15
29. AUTHORIZATION AND CAPABILITY.....	16
30. SIGNATURE.....	17
APPENDIX A: SCOPE OF SERVICES.....	18
APPENDIX B: COMPENSATION.....	26
APPENDIX C: LIST OF SUBCONTRACTORS.....	29

THIS CONTRACT is between the County of Wayne, Michigan, a body corporate and Charter county, acting through its Department of Public Services, (the "County") and Orchard, Hiltz & McCliment, Inc., a Michigan corporation (the "Contractor").

1. PURPOSE

1.01 The County requires professional engineering services for construction of 1.15 miles of hot mix asphalt cold milling and resurfacing, concrete pavement repair patching, joint repairs, sidewalk ramps upgrading, drainage structure adjustments, signing and pavement markings along E.N. Hines Road (Outer Drive to Ford Ramp) in the City of Dearborn Heights.

1.02 The Contractor desires to provide these services for the County in accordance with the terms and conditions described herein.

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 applicable industry and professional standards.

3. SCOPE OF SERVICE

3.01 The Contractor must perform the services described in **Appendix A** in a satisfactory manner, as determined within the discretion of the County. The Contractor warrants that the Contractor is authorized to do business under the laws of the State of Michigan and is qualified to perform the Services in this Contract.

3.02 If there is any dispute between the parties regarding the extent and character of the services to be performed, the interpretation and determination of the County governs.

3.03 The services include all conferences and consultation deemed necessary by the County to properly and fully perform the services.

3.04 All services are subject to review and approval of the County for completeness and fulfillment of the requirements of this Contract. Neither the County's review, approval, or payment for any of the services shall be construed to operate as a waiver of any rights under the Contract, and the Contractor shall be and remain liable in accordance with the applicable law for all damages to the County caused by the Contractor's negligent performance or nonperformance of any of the Services furnished under this Contract.

3.05 The Contractor shall comply with section 120-50 of the Wayne County Procurement Ordinance. As required by section 120-50, the Contractor shall not commence performance under this Contract or accept payment for services provided under this Contract until:

- A. If this is a contract that requires approval of the Wayne County Commission, this Contract is approved by the Wayne County Board of Commissioners and executed by the Chief Executive Officer; or
- B. If this is a contract that does not require approval of the Wayne County Commission, this Contract is executed by the Chief Executive Officer or a purchase order is issued.

The Contractor shall not rely on representations of any person who purports to authorize performance or payment contrary to section 120-50. If the Contractor provides performance or accepts payment prior to approval and execution as required by section 120-50, it does so at its own risk, and, to the extent provided by law, the Contractor shall indemnify, defend, and hold harmless the County against any and all expenses and liability of any kind the County may sustain, incur or be required to pay arising out of the Contractor's provision of Services or acceptance of payment in violation of section 120-50. In the event the Contractor provides Services in violation of section 120-50, the County may retain the funds that would have been owed to the Contractor as compensation for those Services but for the provision of those Services in violation of section 120-50. In the event the Contractor violates section 120-50, it shall be responsible for a municipal civil infraction punishable by a fine of up to \$500.00 and shall be liable for any and all expenses and liability of any kind, which the County may sustain, incur or be required to pay arising out of the Contractor's violation of section 120-50, and may be debarred from further County contracts.

4. TERM OF CONTRACT

4.01 **This Contract begins upon approval by the Wayne County Commission and ends three (3) years after, with an option for a one (1) year extension, which may be exercised at the discretion of the County upon Commission approval.** The Contractor must expediently perform the services to achieve the objectives of this Contract. Any work done prior to the beginning of this Contract shall be at the

Contractor's own risk.

5. DATA TO BE FURNISHED TO CONTRACTOR

5.01 Upon the request of the Contractor, without charge, the County must furnish copies of all information, data, reports, records, etc., that the County thinks is necessary to do the services. The Contractor is entitled to visit County offices and key facilities as approved by the County, during regular business hours to obtain the necessary data. The Contractor will schedule conferences at convenient times with key administrative personnel of the County to gather the information.

6. PERSONNEL

6.01 To induce the County to enter into the Contract, the Contractor represents and warrants that the Contractor is authorized to do business under the laws of the State of Michigan and is duly qualified to perform the services as set forth in the Contract. The execution of this Contract is within the Contractor's authorized powers, and is not in contravention of federal, state, or local law.

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 Each employee must devote the time and professional ability as is 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 an acceptable replacement as soon as possible and agrees not to substitute a lower classified employee to perform the services without obtaining prior County approval in writing.

6.05 Employees' daily working hours may be determined by the Contractor. When the employees are working in or about a County facility, Contractor agrees to adjust its employees' daily working hours to be the same as those worked by County employees working at the facility.

7. ADMINISTRATION

7.01 The Contractor must inform the County as soon as the following types of conditions become known:

- 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. The Contractor is not required to perform in a manner materially in conflict with requirements imposed by any applicable law including any statute, county charter, ordinance, resolution or executive order.

7.03 The Contractor shall have no authority in the name of the County to borrow money, commence or defend litigation, spend money, or enter into contracts except as otherwise provided in this Contract.

8. COMPENSATION

8.01 The County agrees to pay the Contractor at the rates in **Appendix B**, attached. The compensation includes all remuneration to which the Contractor may be entitled. The County will not pay the Contractor for overtime, holiday or other premium charges or other benefits in addition to those stated in **Appendix B**. Maximum compensation shall not exceed **One Hundred Fifty Nine Thousand Seven Hundred Fifty Two and 27/100 Dollars (\$159,752.27)**.

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. The County will compensate the Contractor under a separately negotiated agreement for any services rendered pursuant to this section.

9. METHOD OF PAYMENT

9.01 The County will pay for the proper performance of the services, commensurate with the progress of the work as evidenced by the timely performance of the services, and after it receives an invoice for payment. The 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 must describe the services rendered. 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 first direct invoices to the attention of the County's Accounts Payable Department located on the 14th Floor of 500 Griswold, Detroit, Michigan 48226 by mail or by e-mail at wcinvoices@waynecounty.com, with a copy 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 being 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 seven (7) years after the Contract's termination and completion. The Contractor must also maintain copies of all records, correspondence and documents, including electronically stored information, prepared in anticipation of this Contract, and for this Contract, for a period of seven (7) years after the Contract's termination and completion.

10.02 The County and the Legislator 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 must include a similar covenant allowing for audit by the County and the Legislative Auditor General in any contract it has with any subcontractor, 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 inspections may be made at any time during normal business hours of the Contractor. If, in the course of the inspections, the representatives of the County should note any deficiencies in the performance of the services of the Contractor, or any other mutually agreed upon performance deficiencies, the alleged deficiencies must be reported promptly to the Contractor, in writing. The Contractor agrees to promptly remedy and correct any reported deficiencies within ten (10) days of notification by the County, or within such other time frame as agreed upon by a duly authorized representatives of the County and the Contractor.

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.

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. The Contractor agrees to indemnify, defend, and hold the County harmless against any claim based in whole or in part on an allegation that the Contractor or any of its agents, employees or subcontractors qualify as employees of the County, and against any related costs or expenses, including but not limited to legal fees and defense costs.

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 Contractor shall procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the services by the Contractor, its agents, representatives, or employees.

12.02 Contractor shall maintain at least the following minimum coverage:

- A. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Contract or the general aggregate limit shall be twice the required occurrence limit.
- B. Umbrella or Excess Liability Policy in an amount not less than \$3,000,000. Umbrella or Excess policy wording shall be at least as broad as the primary or underlying policy(ies) and shall apply both to the Contractor's general liability and to its automobile liability insurance and shall be written on an occurrence basis. The County, officials, employees and others as may be specified in any "Special Conditions" shall be named as an additional insured under this policy.
- C. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limits no less than \$1,000,000 per accident for bodily injury and property damage.
- D. Workers' Compensation insurance as required by the State of Michigan, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
- E. Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limits no less than \$1,000,000 per occurrence or claim, \$3,000,000 aggregate.

If the Contractor maintains higher limits than the minimum insurance coverage required in Section 12.02, the Contractor shall maintain the coverage for the higher insurance limits for the duration of the Contract.

12.03 Additional Insured Status. The County, its officers, officials, employees, volunteers, and others as may be specified in any "Special Conditions" shall be additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

12.04 Primary Coverage. For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

12.05 Notice of Cancellation. Each insurance policy shall state that coverage shall not be canceled, except with notice to the County.

12.06 Waiver of Subrogation. Contractor grants to the County a waiver of any right to subrogation which any insurer of the Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

12.07 Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

12.08 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 policyholder's service rating no lower than A:VII as listed in A.M. Best's Key Rating guide, current edition or interim report.

12.09 Claims-made Policies. If any of the required policies provide coverage on a claims-made basis:

- A. The Retroactive Date must be shown and must be before the date of the Contract or the date the Contractor starts to perform the services.
- B. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Contract.
- C. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the Contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of Contract work.

12.10 Verification of Coverage. Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this Article. The County shall receive and approve all certificates and endorsements before the Contractor begins providing services. Failure to obtain the required documents prior to commencement of services shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by the Article, at any time.

12.11 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance satisfying all the stated requirements, and Contractor shall ensure that the County is an additional insured on insurance required from subcontractors.

12.12 Special Risks or Circumstances. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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

13. INDEMNIFICATION

13.01 Except for claims arising from the County's gross negligence, the Contractor agrees to indemnify, defend and 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 may not hold the County liable for any personal injury incurred by the employees, 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 indemnify, defend, and hold the County harmless from and against any such claim by the Contractor's employees.

13.04 Nothing in this article shall be deemed to relieve the Contractor of its duty to defend the County, as specified, pending a determination of the respective liabilities of the Contractor and the County, by legal proceeding or agreement. The County shall cooperate with the Contractor in the defense against the suit. In no event shall the Contractor make any admission of guilt or liability on behalf of the County without the County's prior, written consent.

13.05 For purposes of these provisions, the term "County" includes the County of Wayne and all other associated, affiliated, or subsidiary departments or divisions now existing or to be created, their agents

and employees.

13.06 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.

13.07 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.

13.08 The Contractor agrees to indemnify and save harmless the State of Michigan, the Michigan State Transportation Commission, the FHWA, and all officers, agents, and employees thereof:

- A. From any and all claims by persons, firms, or corporations for labor, materials, supplies, or services provided to the Contractor in connection with the Contractor's performance of the SERVICES; and
- B. From any and all costs or claims for additional compensation or damages, or injuries to or death of any and all persons, for loss of or damage to property, for environmental damage, degradation, response and cleanup cost, including attorney fees and related costs, caused by errors and/or omissions attributable to the Contractor's performance of the services under this Contract unless the Contractor proves that notwithstanding the error or omission, the Contractor met generally accepted standards of care. In addition to excusing consultants from liability for errors or omissions that the Contractor proves occurred despite its compliance with generally accepted standards of care, the Contractor will only be responsible for the percentage of the damages and costs that corresponds to the proportion of the total damages and costs caused by the errors and/or omissions attributable to the Contractor for which the Contractor is otherwise liable under this subparagraph.

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
 - (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.
- H. Transfer, sell, assignment or delegation to an entity other than the Contractor, of ownership or administrative services.

16. TERMINATION

16.01 The County may terminate this Contract without cause at any time, without incurring any further liability, other than as stated in this Article by giving written notice to the Contractor of the termination. The notice must specify the effective date, at least thirty (30) days prior to the effective date of the termination, and this Contract will terminate as if the date were the date originally given for the expiration of this Contract. If the Contract is terminated, the County will pay the Contractor for the services rendered prior to termination, as soon as can be authorized. The County will compute the amount of the payment on the basis of the services rendered, and other means which, in the judgment of the County represents a fair value of the services provided, less the amount of any previous payments made. The final payment constitutes full payment. If the Contractor accepts the payment, the Contract is satisfied. The parties agree that no payments under this section will exceed the amount payable under Article 8.

16.02 Upon terminating the Contract, County shall not incur any further liability to Contractor, except as provided in this Article, which sets forth Contractor's exclusive remedies. The County may procure, upon such terms and in such manner as the County may deem appropriate, Services similar to those terminated, and the Contractor shall be liable to the County for any costs to obtain and transition similar services, provided the Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this Article. In addition to any legal remedies otherwise available to the County by law or equity, the Contractor shall be responsible for all additional costs, charges, and damages incurred by the County in connection with the completion of the Contract. Such expenses shall be deducted from any monies due or which may become due the Contractor under the Contract. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor shall pay, on demand, such excess amount to the County. Should a deficiency exist, the County may offset such a deficiency against the compensation to be paid the Contractor in any concurrent, successive or future contracts between the parties. All excess reprourement costs 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. The rights and remedies of the County are not exclusive and are in addition to any other rights and remedies provided by law, including the collection of liquidated damages. The Contractor shall be liable to the County for any damages the County sustains by virtue of the Contractor's breach or any reasonable costs the County might incur in enforcing or attempting to enforce this Contract. Such costs shall include costs to secure the deliverables from another contractor, reasonable fees and expenses for attorneys, expert witnesses and other consultants.

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 thirty (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 is not terminated;
- F. Terminate all orders and subcontracts to the extent that they relate to the portion of work so terminated;
- G. Submit within thirty (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 Records prepared by the Contractor under this Contract or in anticipation of this Contract shall, at the option of the County, become the County's exclusive property, whether or not said Records are in the possession of the Contractor. The Records shall be free from any claim or retention of rights on the part of the Contractor except as specifically provided in this Contract. The County shall return all property of the Contractor to the Contractor.

16.05 Any intentional failure or delay by the Contractor to deliver the Records to the County promptly upon termination of this Contract 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 five hundred dollars (\$500.00) per day as liquidated damages, and not as a penalty, until it delivers the Records to the County. The County may seek and obtain injunctive relief in a court of competent jurisdiction and compel delivery of the Records to which the Contractor hereby consents as well as all applicable damages and costs. The County shall have unrestricted use of the Records for the purpose of completing the services.

16.06 Access to the records 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 concurrence of the County. All the information must be confidential and handled in such a manner at all times as to preserve confidentiality. The Records as well as any related products and materials are proprietary to the County, having been developed for the County for its own and sole use.

16.07 In addition, each party will assist the other party in the orderly termination of this Contract and the transfer of all aspects, tangible or intangible, as may be necessary for the orderly, non-disrupted business continuance of each party.

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 contract price is in excess of twenty thousand dollars (\$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 120-225, 120-228, 120-229, 120-230 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 fifteen percent (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.

17.05 Upon a showing that a subcontractor has paid a surcharge to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it shall be conclusively presumed that the amount of the surcharge was included in the price of the subcontract or order and ultimately borne by the County and that the County shall have the right to recover the amount of the surcharge from the Contractor. The County may also recover the amount of the surcharge from the subcontractor that paid or is paying the surcharge. Recovery by the County of the surcharge from one offending party shall not preclude recovery from other offending parties. The Wayne County Prosecuting Attorney may initiate and prosecute any civil action needed to enforce this article, if the Wayne County Corporation Counsel declines to do so.

18. NON-DISCRIMINATION PRACTICES

18.01 The Contractor and its subcontractors 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 and its subcontractors 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, 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, 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, religion, familial status, height or weight.
- D. Except as permitted by rules and regulations promulgated pursuant to Article 11 of the Wayne County Code, headed "Equal Contracting Opportunity," or applicable state or federal law.
 - (i) Make or use a written or oral inquiry or form of application that solicits or attempts to elicit information concerning the race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height, or weight of prospective employees;
 - (ii) Make or keep a record of that information or disclose that information;
 - (iii) Make or use a written or oral inquiry or form of application that expresses a preference, limitation or specification based on race, color, creed, national origin, age, marital status, handicap, sex, religion, familial status, height or weight; or
 - (iv) Make, before or during the initial application process, background checks or oral or written inquiries as to prior criminal conviction or convictions.
- E. Absolutely bar or otherwise preclude possible employment based on prior criminal conviction or convictions, provided that the prior criminal conviction or convictions is or are not directly related to the position being sought.

18.03 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 religion, race, color, national origin, age, sex, height, weight, familial status, marital status, creed, prior criminal conviction(s) or handicap. This Section does not apply if it is determined by the Wayne County 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.

18.04 The Contractor agrees that its subcontractors shall be subject to and shall not violate the nondiscrimination provisions of section 120-192(a) of the Wayne County Procurement Ordinance in performing work on County contracts. The Contractor shall notify its subcontractors that they shall be subject to said nondiscrimination provisions, and shall include said nondiscrimination provisions in its subcontracts. The Contractor shall provide the County with a complete copy of any subcontractor agreement when requested.

18.05 If the Contract price is in excess of twenty thousand dollars (\$20,000), the Contractor shall comply with the slavery era disclosure requirements of section 120-192(f) of the Wayne County Procurement Ordinance, as implemented by the Wayne County Slavery Era Disclosure Affidavit the Contractor will complete as part of the contract approval process. If it is subsequently determined by the Wayne County Division of Human Relations that the Contractor has not made a full disclosure in its affidavit of the information required by section 120-192, that failure shall constitute a substantial breach of the terms of this Contract, sufficient to warrant rescission of the Contract, the institution of liquidated damages as set forth in section 18.07, and debarment from any further business with the County.

18.06 Breach of any section 120-192 of the Wayne County Procurement Ordinance or of the covenants in this Article may be regarded as a material breach of this 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. Withholding of payments to the Contractor under this Contract until the Contractor attains compliance;
- B. Cancellation, termination or suspension of this Contract, in whole or in part;
- C. Disqualification from bidding on future contractors for a period of no more than three (3) years;
- D. Referral to Corporation Counsel for consideration of injunction, liquidated damages or other remedies; and/or
- E. Because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the County would sustain, the imposition of liquidated damages (not a penalty) in the amount of five hundred dollars (\$500.00) per day, for each day that the Contractor shall fail to comply with said requirements, as determined by the Wayne County Purchasing Director, in consultation with the Wayne County Director of Human Relations and Corporation Counsel. The liquidated damages shall first be setoff against the unpaid portion of the Contract price, and the balance shall be paid by the Contractor.

18.08 If the Contract is funded, in whole or in part, by federal funds and if the County has been authorized by the funding source to require an affirmative action commitment from contractors who are to be paid from those funds, 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.

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. **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 by first-class mail and addressed as follows:

If to the Contractor:

Craig Dashner
Construction Manager
Orchard, Hiltz & McCliment, Inc.

34000 Plymouth Road
Livonia, MI 48150
E-mail: craig.dashner@ohm-advisors.com

If to the County:

Michael VanAntwerp
Director of Engineering
WCDPS
400 Monroe, 3rd Floor
Detroit, MI 48226
Phone: 313-224-8142
E-mail: mvanantwerp@waynecounty.com

And

Director of Administration
WCDPS
400 Monroe, 3rd Floor
Detroit, MI 48226

19.02 All notices are deemed given on the day of mailing. 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.

19.03 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.

20. JURISDICTION AND LAW

20.01 This Contract, and all actions arising from it, must be governed by, subject to, and construed according to the law of the State of Michigan. The Contractor consents to the personal jurisdiction of any competent court in Wayne County, Michigan, for any action arising out of this Contract. Service of process at the address and in the manner specified in this Contract will be sufficient to put the Contractor on notice. The Contractor will not commence any action against the County because of any matter arising out of or relating to the validity, construction, interpretation and enforcement of this Contract, in any courts other than those in the County of Wayne, State of 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.

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.

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 Contract price 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;
- 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 Contract price 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 (3) 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 (3) 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. PROMPT PAYMENT

25.01 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 forty five (45) days after satisfaction of the subcontract and receipt of a complete invoice therefore. If an invoice is filled out incorrectly or contains a defect or impropriety, the Contractor shall notify the subcontractor of that fact within ten (10) days after receipt of the invoice. The forty five (45) day period shall be extended by each day over five (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 nine percent (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.

26. SUBCONTRACTING AND ASSIGNMENT

26.01 The Contractor may subcontract with the companies listed in **Appendix C**, List of Subcontractors. **Appendix C** shall identify each such subcontract by stating the name and address of the subcontractor, describing in a general manner the services that will be subcontracted, and stating the percentage of this Contract, by dollar value, that will be subcontracted. The Contractor shall not terminate any subcontractor, without the County's prior written approval. Such approval shall not in any way relieve the Contractor of full responsibility for the performance of the Contract. The Contractor shall provide the County with immediate notice when a Wayne County-based subcontractor is terminated or substantially displaced by a subcontractor who is not so qualified. The Contractor must also direct notices to the attention of the individual specified in the Notice provisions, Article 19. The Contractor must 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. Any unauthorized assignment or transfer will be considered a breach of this Contract and result in the

termination of the Contract at the County's discretion. If the Contract is not terminated, the assignment shall be deemed null and void.

27. [INTENTIONALLY OMITTED]

28. MISCELLANEOUS

28.01 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.

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

28.03 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.

28.04 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.

28.05 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.

28.06 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.

28.07 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.

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

28.09 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.

28.10 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.

28.11 The Contractor shall secure all permits necessary to perform the services and shall comply with all statutes, ordinance, and laws.

28.12 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.

28.13 The County or the Contractor may contract with other firms providing the same or similar services so long as the Contractor's obligations to the County contained in this Contract will not be affected in any manner.

28.14 If the division of Human Relations determines that the Contractor has not made a full disclosure in its affidavit regarding its investments in, support or profit in some manner from the institution of slavery, that failure shall constitute a substantial breach of this Contract, sufficient to warrant rescission of the Contract, the institution of liquidated damages, and debarment from any further business with the County.

28.15 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.

28.16 The terms and conditions of the prime contract (cost sharing agreement) between the Michigan Department of Transportation and the County related to this project (the "Prime Contract"), shall be incorporated by reference as part of the Contract to ensure that if any discrepancies occur between the Prime Contract and the Contract, the Prime Contract shall prevail.

29. AUTHORIZATION AND CAPABILITY

29.01 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.


29.02 This Contract is effective only upon review and approval by the Wayne County Commission.

[SIGNATURES ON FOLLOWING PAGE]

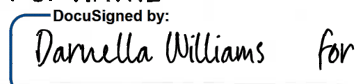
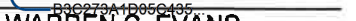
30. SIGNATURE

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

CONTRACTOR

By: 
Patrick G. Wingate, PE
Its: Principal

COUNTY OF WAYNE

DocuSigned by:
 for
By: 
WARREN C. EVANS
Its: COUNTY EXECUTIVE

#321125v.2 (5/17/2019)

APPENDIX A: SCOPE OF SERVICES

MDOT Construction Engineering: MDOT will conduct interim and final project office and field reviews for quality assurance on the construction of these projects which includes in part the following:

E.N. Hines Drive

- 1.15 miles of hot mix asphalt cold milling and resurfacing
- Concrete pavement repairs
- Sidewalk ramp upgrading
- Drainage structure adjustments
- Signing and pavement markings

1.1 The Construction Engineering Services included in this Scope of Work are as follows:

Inspection and administration of individual projects as required by Wayne County, MDOT and Federal Highway Administration (FHWA) in order to meet applicable county, federal and state procedures; project meeting coordination and attendance, measurement, computation, and documentation of quantities; reporting and record keeping; processing progress pay estimates; and finalizing all project documentation. Other duties include constructability reviews of engineering plans, claim reviews, analysis and preparation of independent project cost estimates by Wayne County. Project assignments may be overlapping and may involve night work, weekends, under heavy traffic and adverse weather conditions.

1.2 Start and Finish Dates

E.N Hines Dr (Outer Dr-Ford Ramp)

ANTICIPATED START DATE: July 15, 2019

ANTICIPATED COMPLETION DATE: October 15, 2019

1.3 PRIMARY PREQUALIFICATION CLASSIFICATION:

THE CONSULTANT MUST BE PREQUALIFIED BY MDOT IN THE FOLLOWING:

Construction Engineering: Roadway

SECONDARY PREQUALIFICATION CLASSIFICATION: N.A.

ESTIMATED CONSTRUCTION COST:

E.N Hines Dr (Outer Dr-Ford Ramp) **\$1.50 M**

WAYNE COUNTY PROJECT MANAGER:

Primary Contact: Christopher Onolemhemen, P.E
Project Manager/ Consultant Coordinator

Supervising Engineer-Wayne County Field Engineering Office:

Address: 33809 Michigan Ave

Wayne, Michigan 48184

Phone (313) 452 0983

(734) 595 1563

Email conolemhemen@waynecounty.com

Secondary Contact: Elizabeth Taylor, P.E.

Department Administrator 4-Engineering Division

Wayne County-DPS

33809 Michigan Ave

Wayne, Michigan 48184

Phone (313) 421-8590

Email etaylor@waynecounty.com

The Consultant **must** contact the primary Project Manager prior to beginning any work on this Project.

1.4 GENERAL INFORMATION:

The Consultant must furnish all services and labor necessary to conduct and complete the Construction Engineering Services described herein. The Consultant must also furnish all materials, equipment, supplies, and incidentals necessary to perform the Services (other than those designated in writing to be furnished by the County), and check and/or test the materials, equipment, supplies, and incidentals as necessary in carrying out this work. The Services must be performed to the satisfaction of the County consistent with MDOT, FHWA and applicable professional standards.

A. The Consultant's principal contact with the County must be through the designated Project Manager.

B. The Services described herein are financed with public funds. The Consultant must comply with all applicable county, federal and state laws, rules, and regulations.

C. The Consultant agrees to demonstrate knowledge of, and performance in compliance with, the standard construction practices of the County; the Project construction contract, proposal, and plans; the Standard Specifications for Construction and all applicable publications referenced within; the Michigan Construction Manual; the Materials Source Guide; the Materials Quality Assurance Procedures Manual; the Documentation Guide; the Density Testing and Inspection Manual; the Soil erosion and Sedimentation Control Manual; and all other references, guidelines, and procedures manuals necessary to carry out the work described herein in an appropriate and acceptable manner. All relevant and applicable County Standard Plans should be included as part of the contract document submittals.

1.5 Roles & Responsibilities

CONSULTANT RESPONSIBILITIES:

A. Safety: The Consultant must perform field operations in accordance with the County's Personal Protective Equipment (PPE) Policy. The Consultant must perform field operations in accordance with MIOSHA regulations and accepted safety practices.

B. Project Engineer: Perform as the Project Engineer for the Project consistent with the County's practice and in accordance with the Specifications, Plans, Proposal, the MDOT Construction Manual, the Materials Source Guide, and any and all other applicable references, guidelines, and/or procedures manuals. Assign the Project Engineer as liaison between the Consultant and County-designated Project Manager.

C. Inspectors: Perform as the Inspector for the Project consistent with the County's practice and in accordance with the Specifications, Plans, Proposal, the MDOT Construction Manual, the Materials Source Guide, and any and all other applicable references, guidelines, and/or procedures manuals. The consultant must assign a sufficient number of qualified and experienced inspectors to this Project to perform the services in a quality manner to avoid any delay to the Construction Contractor. Personnel performing inspection and testing on hot mix asphalt, concrete, aggregate or for density must have the appropriate certification and level for the inspection and testing that is being performed. Inspectors Daily Reports (IDRs) are to be documented and provided to the PM, their designee, applicable field office or the Project Engineer electronically on a daily basis unless approved otherwise by the PM. All relevant and applicable County Standard Plans should be included in this section as part of the contract document submittals.

D. Office Support and Equipment: Provide an experienced and qualified office technician knowledgeable about all aspects of the Field Manager system, and procedures regarding project record documentation. Provide administrative support. Office technician must also have knowledge and working experience with e-construction. Provide all computer and related equipment necessary to run the Field Manager system. Provide construction administration, field implementation and record keeping per the most current Special Provision for Construction Document Management and County procedures.

E. Meetings: At the request of the County PM or designated representative conduct conferences and meetings required for carrying out the services or as may be required by the Project Manager. Prepare and distribute minutes of all meetings except the preconstruction meeting unless requested otherwise by the Project Manager.

F. Coordination: Provide appropriate coordination and contact, public relations, and cooperation with all affected local, state, and/or federal agencies including the Federal Highway Administration; other Consultants and other Contractors; the general public; utilities and railroad companies; and local police, fire, and emergency services which may be affected by the Project and which are deemed to be the responsibility of the Consultant by the County.

G. Progress: Keep daily diaries, sketches, logs, and records consistent with County practice as may be needed to record the Contractor's progress. Notify the Project Manager of any anticipated Contractor's requests for extensions of time. Notify the Project Manager upon receipt of any Contractor's requests for extensions of time.

H. Changes/Extras/Adjustments: Notify the Project Manager immediately of any unanticipated Project conditions and any changes, extras, or adjustments to the contract before processing a Work Order and/or Contract Modification.

I. Contentious Issues: At the request of the County PM or designated representative to resolve any problems, issues, discrepancies, or other items brought to the attention of the Consultant by the Contractor. Provide documented resolution of such issues. Keep the County Project Manager informed of all such issues.

J. Contractor Claims: At the request of the County PM or designated representative represent the County as the Project Engineer on any and all claims and denied extensions of time requests filed on behalf of the Construction Contractor and/or Subcontractor on the Project against the County. These claims must be represented by the Consultant in accordance with Section 104.10 of the most current Standard Specifications for Construction and/or the County's documented Claim or Dispute Review Board Procedures in effect at the time the Construction Contractor files the claim.

K. Staff Reductions: Withdraw any personnel or halt any services no longer required, at the request of the County, or within a reasonable time after the lack of need becomes apparent to the Consultant or the Project Manager. The consultant will not be reimbursed for the cost of personnel charged to a project that the Project Manager has determined was unnecessary.

L. Consultant Deliverables: Collect, properly label or identify, and electronically (where applicable) provide or deliver to the County all original diaries, logs, notebooks, accounts, records, reports, other documents, and Project files prepared by the Consultant in the performance of the Agreement, upon completion or termination of the Agreement. Return, upon completion or termination of the Agreement, all Specifications, Manuals, guides, documented instructions, construction contracts and plans, unused forms, and all other documents and materials furnished by the County. The Consultant may be responsible for replacing lost documents or materials at a fair and reasonable price.

M. Soil Erosion and Sedimentation Control (SESC): The Consultant must have a comprehensive knowledge of Part 91, Soil Erosion and Sedimentation Control, of Public Act 451 of 1994, Natural Resources and Environmental Protection Act, MDOT's current Soil Erosion and Sedimentation Control Manual, and the County's obligation as an Authorized Public Agency (APA). The Consultant must assign a Construction Storm Water Operator (CSWO), who possesses a current Construction Storm Water Operator Certification (CSWOC), to perform site inspections to determine compliance with the Soil Erosion and Sedimentation Control Plan and report any deficiencies on Form 1126, National Pollutant Discharge Elimination System (NPDES) and Soil Erosion Sedimentation Control (SESC) Inspection Report.

N. Storm Water Management: Perform inspection of the construction site to ensure that the Contractor's operation is following pollution prevention and good housekeeping best management practices conforming to the County's Storm Water Management Plan. Notify the Project Manager or designee immediately of the occurrence of, or potential for, release of polluting material to the ground, groundwater, surface water, or storm water drainage system including open ditches, culverts, and enclosed storm sewers.

O. Environmental Permits: Have a thorough working knowledge of the construction requirements of all project specific environmental permits issued to the County from MDOT, the MDEQ Land and Water Management Division, U.S. Army Corp of Engineers, or other permitting agency. Inspect project areas covered by these permits and assure that the Contractor complies with the permit requirements. Report

to the Project Manager or designee any potential for or occurrence of violation of these permits. Fully document all site conditions and actions taken regarding potential or actual violations of the permit requirements.

P. Other Environmental Issues: Have a thorough working knowledge of the County's specifications regarding any hazardous materials. Ensure that the Contractor complies with these specifications, and maintain proper documentation.

Q. Inspection Reports: Complete inspection reports, including but not limited to, Inspector's Daily Report (IDR) and NPDES/SESC Inspection Report (Form 1126), as necessary to fully document all site conditions and any corrective action required and completed related to environmental issues. Provide digital photos as necessary to document conditions and all corrective actions.

1.6 Delivery Acceptance Criteria

PROJECT INSPECTION

A. Ongoing Inspection: Provide inspection of all Contractor field construction work, perform quality assurance sampling and/or testing, and confirm substantial conformance with the Specifications, Plans, and Proposal. Arrange for noncompliance work to be made whole by the Contractor or to find the noncompliance work acceptable to the Consultant and, where necessary, to the MDOT Project Manager. Inform the Project Manager of non-compliance work and trends toward borderline compliance.

B. Final Inspection: At the request of the County PM or designated representative complete a final inspection of all work included in the Project, or such portions thereof eligible for acceptance, after notification by the Contractor that the work is completed or after the Consultant's records show the work is completed. The final inspection must include documented communication notifying the Contractor of particular defects to be remedied if work is not acceptable to the Consultant.

C. Final Acceptance: Ascertain that every part of the Project has been completed in accordance with the plans and specifications, or such modifications thereof as may have been approved. Invite the Project Manager and other County personnel, as directed by current County policy, to participate in the final acceptance review.

MEASUREMENT, COMPUTATION AND DOCUMENTATION OF QUANTITIES

A. Documentation: Measure and compute quantities, and provide appropriate documentation of all materials incorporated in the work and items of work completed, and maintain an item record account using Field Manager software. Documentation is to be maintained in electronic format per the most current documentation guidance issued by MDOT. ProjectWise is preferred by MDOT and Wayne County. How do you plan on maintaining your documentation?

The Consultant must obtain and be able to use the most current FieldManager suite of software for this project. Contact Info Tech, Inc. at (352) 381-4400 or fax (888) 971-3916 or (www.fieldmanager.com) to obtain software and information on training. As this software is used on all MDOT projects, the cost of this software cannot be charged as a direct expense for this project. Consultants must maintain the most current version of the

software used by MDOT to administer construction contracts. All County projects are required to utilize FieldManager and ProjectWise.

B. Insufficient Tested Materials: Track insufficient material documentation and notify the Contractor on a bi-weekly basis.

REPORTING AND RECORD KEEPING

A. Consultant Reports: Prepare such periodic, intermediate and final reports and records as may be required by the County to meet federal and state requirements, and as applicable to the Project, which may include, but are not limited to:

- a. Inspector's Daily Reports**
- b. Work Orders**
- c. Construction Item and Tested Material Records**
- d. Transfer of Tested Materials**
- e. Shipment of Tested Stock (Form 1922)**
- f. Moisture and Density Determination Reports (Form 582B)**
- g. Inspector's Report of Concrete Placed (Form 1174R or S)**
- h. National Pollutant Discharge Elimination System (NPDES) and Soil Erosion and Sedimentation Control (SESC) Inspection Report (Form 1126)**
- i. Labor Compliance, such as the Weekly Employment and OJT Report (Form 1199)**
- j. Final Acceptance/Certification Report (Form 1120)**
- k. Weekly Statement of Work Days Charged**
- l. Force Accounts**
- m. Contract Modifications**
- n. Extension of Time and Liquidated Damages**
- o. Contractor Evaluation (Form 1182)**
- p. Commercial Useful Function (Form 4109)**
- q. Post Certification of Subcontract Compliance (Form 1386)**
- r. Complete Post Construction Review including Form 285-2, if required by the Project Manager.**
- s. Other records and/or reports as required for the individual Project by the Project Manager and/or as required by Specifications, Plans, Proposal, the Michigan Construction Manual, the Materials Sampling Guide, and any and all other applicable references, guidelines, and/or procedures manuals.**

B. Reports-Contractor Generated: Review, process, and/or approve Construction Contractor submittal of records and reports required by the Department as applicable to the Project which may include, but not limited to:

- a. Working and Shop Drawings,**
- b. Weekly Employment Reports, Certified Payrolls**
- c. Contractor's claims for additional compensation and extension(s) of time, and**
- d. Other reports and records as required for the individual Project by the Project Manager.**

C. Project Files: Maintain project files in accordance with the most current documentation guidance as issued by MDOT and Wayne County and the most current version of the Special Provision for Construction Document Management. All vendors are required to upload files directly into ProjectWise.

CLOSING ALL PROJECT DOCUMENTATION

A. Final Measure and Summarize: Final field measure applicable items of work. Prepare final summaries for applicable items of work.

B. Project Review/Certification: Participate in and resolve items determined to be insufficient during the Department's review(s) of project records and/or during the Project Engineer Certification Process prior to submitting the Final Estimate. Within 90 calendar days of the actual project completion date, the project records must be ready for the Final Records Review.

C. Final Documents: Prepare and submit the Final Estimate, Final Quantity Sheets, Final Marked As-Constructed Plans, and the Design/Construction Package Evaluation (Form 285-2). The Final Estimate Package must be submitted to the Project Manager within 30 days of the Final Records Review.

WAYNE COUNTY RESPONSIBILITIES:

A. The Project Manager will furnish to the Consultant all Project-specific construction contracts, proposals, plans, plan revisions, documented instructions, and other information and/or data as deemed necessary by the Project Manager for the Services required herein.

B. The Project Manager will determine that the work performed to date by the Consultant for Services rendered is reasonable and appropriate before approving the Consultant's requests for progress payments.

C. The County Project Manager or their designee will arrange and conduct the preconstruction meeting as well as prepare and distribute the meeting minutes unless otherwise directed.

1.7 Consultant Payment

Actual Cost Plus Fixed Fee

Compensation for this project shall be on an **actual cost plus fixed fee** basis. This basis of payment typically includes an estimate of labor hours by classification or employee, hourly labor rates, applied overhead, other direct costs, sub-consultant costs, and applied fixed fee.

All billings for services must be directed to the County and follow current County guidelines. Payment may be delayed or decreased if the instructions are not followed. Payment to the Consultant for services rendered shall not exceed the maximum amount unless an increase is approved in accordance with the contract with the Consultant. Typically, billings must be submitted within 60 days after the completion of services for the current billing. The final billing must be received within 60 days of the completion of services. Refer to your contract for your specific contract terms.

Direct expenses, if applicable, will be paid in accordance with current County procedures. Supporting

documentation must be submitted with the billing for all eligible expenses on the in accordance with County guidelines. The only hours that will be considered allowable charges for this contract are those that are directly attributable to the activities of the project. The County will reimburse the Consultant for vehicle mileage and overtime expenses attributed to project work in accordance with current County procedures.

APPENDIX B: COMPENSATION

Michigan Department of Transportation 5101A-1 (01.03.15)		SUMMARY OF TOTAL PROJECT COSTS BY JOB NUMBER						EXHIBIT A - 1		
All Prime and Subconsultant Costs for ALL JOB NUMBERS (including phases). For amendment or revision, complete this form showing all job numbers for all services provided. Report Tier 2 Subconsultant costs with Tier 1 Subconsultants. For use with all Priced Proposals. Use additional pages as necessary.										
MDOT CONTROL SECTION(S) - JOB NUMBER(S):						CONTRACT / AUTHORIZATION NUMBER:				
CS N/A - JN 39-19-025 - Hines										
PRIME CONSULTANT NAME:					DBE Goal:	PROJECT DESCRIPTION:				
Orchard, Hiltz & McCliment, Inc.						CE for Inkster and Hines Drive				
Consultant	Firm Role	Contracted to:	Payment Method	Job Number	Job Number 39-19-025 - Hines	Job Number	Job Number	DBE (Y/N)	Total	% of Contract
HOURS										
Orchard, Hiltz & McCliment, Inc.	P	MDOT	ACFF	-	1,500	-	-		1,500	
Somat Engineering Inc	T1	SD	ACFF	-	1,244	-	-		1,244	
				-	256	-	-		256	
LABOR										
Orchard, Hiltz & McCliment, Inc.	P	MDOT	ACFF	\$ -	\$ 50,444.78	\$ -	\$ -		\$ 50,444.78	
Somat Engineering Inc	T1	SD	ACFF	\$ -	\$ 45,945.28	\$ -	\$ -		\$ 45,945.28	
				\$ -	\$ 4,499.50	\$ -	\$ -		\$ 4,499.50	
OVERHEAD										
Orchard, Hiltz & McCliment, Inc.	P	MDOT	ACFF	\$ -	\$ 91,202.09	\$ -	\$ -		\$ 91,202.09	
Somat Engineering Inc	T1	SD	ACFF	\$ -	\$ 82,490.16	\$ -	\$ -		\$ 82,490.16	
				\$ -	\$ 8,711.93	\$ -	\$ -		\$ 8,711.93	
F.C.C.M.										
Orchard, Hiltz & McCliment, Inc.	P	MDOT	ACFF	\$ -	\$ 322.60	\$ -	\$ -		\$ 322.60	
Somat Engineering Inc	T1	SD	ACFF	\$ -	\$ 307.63	\$ -	\$ -		\$ 307.63	
				\$ -	\$ 14.65	\$ -	\$ -		\$ 14.65	
OTHER DIRECT EXPENSES										
Somat Engineering Inc	T1	SD	ACFF	\$ -	\$ 2,201.56	\$ -	\$ -		\$ 2,201.56	
FIXED FEE										
Orchard, Hiltz & McCliment, Inc.	P	MDOT	ACFF	\$ -	\$ 15,581.16	\$ -	\$ -		\$ 15,581.16	
Somat Engineering Inc	T1	SD	ACFF	\$ -	\$ 14,127.90	\$ -	\$ -		\$ 14,127.90	
				\$ -	\$ 1,453.25	\$ -	\$ -		\$ 1,453.25	
TOTAL COSTS SUMMARY										
Consultant Totals	Firm Role	Contracted to:	Payment Method	Job Number	Job Number 39-19-025 - Hines	Job Number	Job Number	DBE (Y/N)	Total	% of Contract
Orchard, Hiltz & McCliment, Inc.	P	MDOT	ACFF	\$ -	\$ 142,571.17	\$ -	\$ -	M	\$ 142,571.17	89.4%
Somat Engineering Inc	T1	SD	ACFF	\$ -	\$ 16,881.10	\$ -	\$ -	Y	\$ 16,881.10	10.6%
Firm Role Key: P = Prime Firm, T1 = Tier 1 Sub, T2 = Tier 2 Sub										
TOTAL COSTS				\$ -	\$ 159,752.27	\$ -	\$ -		\$ 159,752.27	100.0%

Michigan Department of Transportation S101B (01.06.19)		DERIVATION OF PRIME CONSULTANT COSTS				Exhibit B	
Summary of all Prime Costs for ALL JOB NUMBERS (including phases) for all services provided. Use additional pages as necessary.							
MDOT CONTROL SECTION(S) - JOB NUMBER(S):				CONTRACT / AUTHORIZATION #:		FIRM ROLE:	
CS N/A - JN 39-19-025 - Hines						Prime Firm	
PRIME CONSULTANT NAME:				PROJECT DESCRIPTION:			
Orchard, Hiltz & McCliment, Inc.				CE for Inkster and Hines Drive			
PRIME LABOR:							
CLASSIFICATION	CODE	HOURS	*	RATE/HR	=	LABOR COST	
Associate	13	180	x	\$ 62.32	=	\$ 9,417.60	
Grad Eng/Arch I/I	37	180	x	\$ 35.05	=	\$ 6,309.00	
Technician III	47	844	x	\$ 30.96	=	\$ 19,951.12	
Technician III OT	47OT	180	x	\$ 46.47	=	\$ 8,364.60	
Prof Surveyor II	72	12	x	\$ 38.06	=	\$ 456.72	
Surveyor I/I	63	48	x	\$ 30.13	=	\$ 1,446.24	
		Total Hours:	1244				Total Labor \$ 45,945.28
PRIME OVERHEAD: (Total Labor x Overhead Rate)							
		Overhead Rate:	179.54%				Total Overhead \$ 82,490.16
PRIME FACILITIES CAPITAL COST OF MONEY (F.C.C.M.): (Total Labor x F.C.C.M. Rate)							
		F.C.C.M. Rate:	0.67%				Total F.C.C.M. \$ 307.83
PRIME FIXED FEE FOR PROFIT: ((Total Labor + Total Overhead) x 11%)							
		Fixed Fee Rate:	11%				Total Fixed Fee \$ 14,127.90
						TOTAL PRIME FIRM COSTS \$ 142,871.17	
Firm Role: Prime Firm				Note: Payment Method = ACFF			

Montana Department of Transportation 5101C (01.06.13)		DERIVATION OF SUBCONSULTANT COSTS				Exhibit C	
Summary of all Sub Costs for <u>ALL JOB NUMBERS</u> (including phases) for all services provided. Use additional pages as necessary.							
MODT CONTROL SECTION(S) - JOB NUMBER(S):				CONTRACT / AUTHORIZATION #:		FIRM ROLE:	
CS N/A - JN 39-19-025 - Hines						Tier 1 Sub	
SUBCONSULTANT NAME:				PROJECT DESCRIPTION:			
Somat Engineering Inc				CE for Inkster and Hines Drive			
SUB LABOR:							
CLASSIFICATION	CODE	HOURS	x	RATE/HR	=	LABOR COST	
Senior Project Consultant	SPC	1	x	\$ 67.40	=	\$	67.40
Project Manager	PM	4	x	\$ 40.50	=	\$	162.00
Project Engineer	PE	9	x	\$ 27.00	=	\$	243.00
Field Supervisor	FS	4	x	\$ 31.00	=	\$	124.00
Field Engineering Technician 1	FT1	90	x	\$ 15.00	=	\$	1,350.00
Field Engineering Technician 2	FT2	90	x	\$ 12.00	=	\$	1,080.00
Lab Technician	LT	45	x	\$ 26.00	=	\$	1,170.00
Project Scheduler	PS	11	x	\$ 23.50	=	\$	255.50
Clerical	C	2	x	\$ 22.30	=	\$	44.60
Total Hours:		256			Total Labor		\$ 4,499.50
SUB OVERHEAD: (Total Labor x Overhead Rate)							
Overhead Rate:		193.62%			Total Overhead		\$ 8,711.93
SUB FACILITIES CAPITAL COST OF MONEY (F.C.C.M.): (Total Labor x F.C.C.M. Rate)							
F.C.C.M. Rate:		0.33%			Total F.C.C.M.		\$ 14.85
SUB OTHER DIRECT EXPENSES: (List each item once at Actual Cost - NO MARKUP)							
Items	Quantity	@	Unit Price	Unit	=	Item Price	
Mileage	182.00	@	\$ 0.580	Mile	=	\$	105.56
Nuclear Density Gauge	22.00	@	\$ 68.000	Day	=	\$	1,486.00
Lab Rental	4.00	@	\$ 150.000	Day	=	\$	600.00
Total Other Direct Expenses						\$	2,201.56
SUB FIXED FEE FOR PROFIT: ((Total Labor + Total Overhead) x 11%)							
Fixed Fee Rate:		11%			Total Fixed Fee		\$ 1,453.26
TOTAL SUBCONSULTANT COSTS							
						\$	16,881.10
Firm Role: Tier 1 Sub to SD				Note: Payment Method = ACFF			

APPENDIX C: LIST OF SUBCONTRACTORS

Somat Engineering, Inc.
3030 W. Grand Blvd., Suite 228
Detroit, MI 48202
Phone: 313-963-2721
Fax: 734-946-1147
Contact Person: G. Ramanujam, PE

Work to be performed: Material Sampling & Testing