

Ontario School District 8C



**Issues the Following**

**REQUEST FOR PROPOSALS (RFP)**

**RFP Number 2010-3**

**Civil Engineering Services**

**Date of Issuance:** September 22, 2010

**Proposals Due Date:** October 8, 2010

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## Section 1: Purpose and General Information

### 1.1 Introduction

#### **1.1.1 Overview, Objectives, and Background.**

The Ontario School District (District) requests proposals from qualified firms for civil engineering services of new bus loops and parking lot work. The district recently passed a bond measure in the May 2010 election for \$18.5 million. The bond will be used for new construction and remodel projects at the Ontario Middle School (OMS) and the Ontario High School (OHS) and upgrades to five elementary schools. This proposal is for civil engineering services, lighting, and landscaping work associated with the addition of bus loops at May Roberts and Aiken Elementary and Paving the Parking Lot at Cairo Elementary. This RFP is for a single contract for civil engineering services. The school district has contracted with CM Company, Inc., to act as Construction Manager throughout the duration of the Preconstruction, Construction and Post Construction phases on the Projects. The construction may be contracted through several smaller contracts to encourage local business to submit bids. Emphasis will be made for sustainable energy efficient design with the potential for LEED certification.

#### **1.1.2 Contract Term.**

The Contract is anticipated to start in November 2010. The initial Contract term shall be for 2 years. The parties may agree to extend the term of the Contract up to a maximum of 3 years.

#### **1.1.3 Method of Compensation.**

The contract payment method shall be negotiated.

### 1.2 Schedule

<b>Event</b>	<b>Due Date</b>
RFP Release – Date of Issuance	September 22, 2010 MST
Written Questions	September 29, 2010 by 3:00 pm MDT
Answers to Proposal Questions (approx.)	October 1, 2010
Pre-Proposal Conference	October 1, 2010 at 2:00pm MDT
RFP Protests Ends	October 4, 2010 by 3:00 pm MDT
RFP Closing	October 8, 2010 by 3:00 pm MDT
Opening of Proposals	October 8, 2010 at 3:15 pm MDT
Presentations, Demonstrations, and/or Interviews	October 19, 2010
Evaluation (approx.)	October 19, 2010 – October 20, 2010
Issuance of Notice of Intent to Award (approx.)	October 21, 2010
Negotiations (approx.)	October 21, 2010
Award Protests End (approx.)	October 28, 2010 by 3:00 pm MST
Contract Award (approx.)	October 29, 2010
Contract Start	November 1, 2010

### 1.3 Definitions

For general definitions, see OAR 137-046-0110, which are incorporated by reference herein.

1.3.1 “**Agency**” means Ontario School District 8C (District).

1.3.2 “**RFP**” means this Request for Proposals.

1.3.3 “**Scope of Work**” means the general character of the Supplies and Services, the work’s purpose and objectives, and Agency’s expectations. Examples of expectations include, if applicable, a description of the purchase, specifications, tasks (obligations), deliverables, delivery or performance schedule, and acceptance requirements. The Scope of Work helps the prospective Proposers develop the Proposals.

1.3.4 “**Statement of Work**” means the specific provision in the final Contract which sets forth and defines in detail the agreed-upon objectives, expectations, performance standards, and other obligations.

### 1.4 Scope of Work

The civil engineering services are for the benefit of the District and its component schools. Basic services may include assisting in programming of projects, preliminary design drawings, meetings with district staff and/or constituents, general specifications, and other services related to preliminary design, consultation, presentations, and related services. Construction costs are roughly estimated to be \$400,000 depending on project selection criteria. The District anticipates project completion, including construction, within a 24 month period beginning at the design phase.

May Roberts Elementary: Complete civil, electrical, and landscape design services for construction of new student drop-off and pick-up area. This contract is to include contract administration services. Any electrical work for lighting, landscape design or fencing design would be under this RFP.

- Demolition of existing temporary classroom building would be a part of this work only if required to accommodate construction of new student drop-off and pick-up area.

Aiken Elementary: Complete civil, electrical, and landscape design services for construction of new student drop-off and pick-up area. This contract is to include contract administration services. Any electrical work for lighting, landscape design or fencing design would be under this RFP.

- Paving of north parking is not a part of this project.

Cairo Elementary: Complete civil design services for paving of existing west gravel parking lot that is currently gravel. This contract is to include any structures required to receive storm water run off from expanded or existing asphalt parking lots or drives. This contract is to include any landscape modification and contract administration services.

## Consultant Service Requirements

Design Phase - The Consultant will work with the District to develop an appropriate civil engineering design that will meet the needs of the individual school programs based on the bond document. During this phase, the Consultant will prepare detailed facility designs as approved, prepare construction bid documents, and oversee acquisition of construction contractors.

Construction Administration Phase - The Consultant will oversee the project construction from inception to completion. Once construction contracts have been awarded, the Consultant will oversee the project construction. The Consultant will apply the approved facility design to the construction project based on budget, quality control, and time constraints.

Close Out - The Consultant will oversee the processing of close out items identified at substantial completion detailed on the punch list. The Consultant will resolve outstanding construction, and engineering issues related to the project. All deliverables to the District from the construction contractor, and engineering contractors, and other project related, undischarged parties will be resolved by the Consultant. Close out includes, but is not limited to, the Consultant securing correct “as-built” documents, operation and maintenance documentation, and ensuring that all requirements with other jurisdictional agencies have been completed and satisfied. At the completion of all projects the district will require electronic copies of all discipline as-built drawings in AutoCad.

The Ontario School District shall retain all rights to the Final Design Drawings.

Agency and the successful Proposer may negotiate a Statement of Work for the Contract.

The parties may agree to amend or modify the awarded Contract in accordance with OAR 137-048-0320.

### **1.5 Single Point of Contact (SPC)**

All questions, whether about the technical requirements of the RFP, contractual requirements, the procurement process, or any other aspect of the project or needed services, shall be directed only to the person listed on the first page of the RFP. The RFP document may be reviewed upon request at the address listed on the first page of the RFP.

## **1.6 Pre-Proposal Conference**

Agency shall hold a Pre-Proposal Conference to answer general questions and to clarify any program issues. Questions will be recorded by Agency and will be answered as set forth in Section 3.3. Verbal comments made by Agency at the Pre-Proposal Conference are not binding.

### **Pre-Proposal Conference**

**Date: October 1, 2010**

**Time: 2:00 pm MDT**

**Place: 195 SW 3<sup>rd</sup> Avenue, Ontario, OR**

Attendance at the Pre-Proposal Conference is mandatory. Attendance shall be recorded, and only those attending shall be eligible to submit a Proposal. An explanation of the solicitation shall be given. Attendees shall have the opportunity to ask questions of Agency program staff which may clarify Agency expectations.

The Pre-Proposal Conference is a forum in which potential Proposers may request in writing a change to the requirements contained in the RFP. Agency shall take all written requests to change requirements under advisement. Changes to the RFP, if any, shall be in the form of a written Addendum to the RFP. Verbal comments made by Agency at the Pre-Proposal Conference are not binding.

## **Section 2: Proposal Requirements**

### **2.1 Administrative Proposal Requirements**

#### **2.1.1 Proposal Cover Sheet.**

The Proposer shall sign and submit the Proposal Cover Sheet (see Attachment A). Proposals shall address the proposal and submission requirements set forth in the RFP and shall describe how the Services shall be provided. Proposals that merely offer to provide Services as stated in the RFP shall be considered non-responsive and shall not be further considered.

All Proposals shall follow the format described in this Section. Proposals shall respond to all elements of information requested, without exception. Proposal sections and pages shall be appropriately numbered. Proposals shall not be greater than 10 pages in length when using a Times New Roman 12 pt font, this does not include cover sheets, resume, financial statements, or any other supporting documentation to your proposal. Evaluation of technical proposals as outlined in Section 4.3 shall contribute to the page count with the exception of the price proposal and reference checks. All Supporting documentation including brochures, project photos, and other illustrative information shall be submitted as an appendix to the proposal.

#### **2.1.2 Copies.**

Submissions in response to the RFP shall contain 1 original, 2 copies of the proposal and all required supporting information and documents plus 1 CD containing a PDF version of the signed Proposal. The originals and all copies of the Proposal shall be submitted in a sealed envelope or box, labeled "Proposal to RFP 03-OSD" and delivered to the SPC.

### **2.1.3 Financial Statement/Fiscal Stability.**

Briefly describe Proposer's experience with, and current strategies for, ensuring that the Proposer conducts business in a fiscally responsible manner and remains financially solvent through the proposed Contract term. Identify the individuals who have fiscal responsibilities. Any Proposer that has generated financial statements shall submit copies for the most recent period. If financial statements have not been generated, then Proposer may submit an audit or fiscal review by a certified public accountant, or if the Proposer is a "new" business, a copy of a business plan completed within the last year.

## **2.2 Minimum Proposal Requirements**

A Proposal shall meet the minimum proposal requirements described in the Proposal Cover Sheet, Attachment A.

## **2.3 Technical Proposal Requirements**

The Proposal shall describe how the Proposer shall meet each of the technical requirements described in the Scope of Work in Section 1.4, including identification of key persons who shall perform the work and their background and expertise. This Proposal shall be evaluated as described in Section 4.

### **2.3.1 References.**

In Attachment A, Proposers shall provide the names, addresses, telephone numbers, and contact information for three (3) customers for whom Proposer has provided within the last 5 years Services equivalent to those described in the RFP. Agency may use references provided as part of the proposal evaluation process as described in Section 4.

## **2.4 Price Proposal Requirements**

Describe your proposed hourly fees, escalation rates, and expense structure. The unit rates provided shall be the basis for fee negotiations with the successful firm.

Outline separately, in not more than two (2) pages, a general budget for the Design Phase Activities. The budget is intended to be an outline of anticipated services and the number of hours expected to complete those services and not a specific fee proposal.

Price Proposal s shall be addressed to the SPC and clearly referenced as "Price Proposal" to Request for Proposal RFP 03-OSD. Proposer shall submit 1 original and two (2) copies of the Price Proposal plus 1 CD containing a pdf version of the signed Proposal.

Price Proposals shall be firm for a period of 120 days from the deadline for proposal submission.

## **Section 3: Solicitation Process**

### **3.1 Procurement Authority and Method**

Agency is conducting the RFP pursuant to its authority under ORS 279A.050. Agency intends to initially conduct a formal selection procedure pursuant to OAR 137-048-0220. See reservations of rights in Section 3.10

### **3.2 ORPIN**

The RFP, including all Addenda and Attachments, shall be posted on the Oregon Procurement Information Network System (ORPIN). Agency is not required to mail the RFP, its Addenda or Attachments. Notification of any substantive clarifications provided in response to any question will be provided and published at the ORPIN web site below. For complete RFP documentation please go to the ORPIN web site:

<http://orpin.oregon.gov/open.dll/welcome> and view **Agency Opportunity** number **P23063-2010-3-10**. Proposers without electronic access to ORPIN may obtain access to ORPIN and download copies at the location listed on the front page of the RFP. Proposers may also order hard copies from the SPC for a fee.

#### **3.2.1 Documents Outside of ORPIN.**

Documents can be obtained from the District Office at the address indicated on the cover sheet of this RFP or electronically from the District web site at:  
<http://www.ontario.k12.or.us/index.php?id=3059>

#### **3.2.2 Addenda on ORPIN.**

Addenda are incorporated within the RFP and may be viewed and downloaded on ORPIN by registered suppliers. Proposers should consult ORPIN regularly until Closing to ensure that they have not missed any Addenda announcements.

Any oral communications shall be considered unofficial and non-binding. Proposers shall rely only on written statements issued by the SPC.

#### **3.2.3 ORPIN Usage.**

Proposers unfamiliar with ORPIN may contact the State Procurement Office (SPO) at the Department of Administrative Services, 1225 Ferry St. SE - U140, Salem, OR 97301-4285; telephone (503) 378-4642. Proposers may also look for updates about ORPIN on the SPO website: <http://procurement.oregon.gov/>.

#### **3.2.4 ORPIN Registration.**

Proposers are responsible for ensuring that their registration information is current and correct. SPO accepts no responsibility for missing or incorrect information contained in the supplier's registration information in ORPIN.



### **3.3 Questions, Modifications, and Protests relating to the RFP, Contract Provisions or Specifications**

Protest procedures shall follow those set forth in OAR 137-048-0240.

#### **3.3.1 Submittal of Questions and Requests.**

Questions, including requests for explanations of the meaning or interpretation of provisions of the RFP, shall be submitted in writing, arrive by the date and time specified in Section 1.2, and be addressed to the attention of the SPC. Faxes (including Proposer's fax number) and emails are acceptable. Send emails to the SPC email address indicated on the cover page with the following subject "RFP #01-OSD RFP".

**Note: with the exception of Negotiations of those terms permitted under Section 4.7, this is the Proposer's only opportunity to request any change or protest any requirement of the RFP, including but not limited to the solicitation process, proposal requirements or terms and conditions. Proposals that take exception to the requirements of the RFP, including but not limited to the solicitation process, proposal requirements or terms and conditions shall be deemed non-responsive and shall be rejected at the sole discretion of Agency.**

#### **3.3.1 Methods of Seeking Modifications to RFP, Contractual Provisions or Specifications.**

##### **3.3.1.1 Procedure.**

The appropriate means of seeking modifications to provisions of the RFP are through a written (a) request for clarification; (b) formal submittal of requests for changes to the RFP, contractual terms or specifications; or (c) formal submittal of protests of the RFP, contractual terms or specifications.

##### **3.3.1.2 Request for Clarification.**

Any Proposer requiring clarification of any provision of the RFP, contractual terms or specifications may submit to the SPC a written request for clarification. To be considered, the request for clarification shall be received by the SPC by the deadline specified in Section 1.2 or any extension made by subsequent Addenda.

##### **3.3.1.3 Request for Changes to RFP, Contractual Terms or Specifications.**

Any Proposer may submit to the SPC a written request for changes to the RFP, contractual terms or specifications. To be considered, the request for changes shall be received by the SPC by the deadline specified in Section 1.2 or any extension made by subsequent Addenda. The request shall include the reason for requested changes, supported by factual documentation, any proposed changes and shall contain all other information required by ORS 279B.405 and OAR 137-048-0240.

##### **3.3.1.4 Protest of RFP, Contractual Terms or Specifications.**

Proposers may submit to the SPC a written protest of RFP, contractual terms or specifications. To be considered, Protests shall:

**3.3.1.4.1** Identify the Proposer's name and reference the RFP number;

**3.3.1.4.2** Contain evidence that supports the grounds on which the protest is based and specify the relief sought, including a statement of the proposed changes to the process or RFP provisions, requirements or terms and conditions that the Proposer believes shall remedy the conditions upon which the protest is based;

**3.3.1.4.3** Be signed by the Proposer's authorized representative;

**3.3.1.4.4** Be submitted to the SPC by the Solicitation Protest due date specified in Section 1.2; and

**3.3.1.4.5** Be delivered or faxed to the SPC at the address specified on the first page of the RFP.

Agency shall not consider solicitation protests that do not meet the requirements of this Section. Agency shall resolve all solicitation protests in accordance with OAR 137-048-0240. Agency is not responsible for the successful transmission of faxed protests. Unless this specific due date is extended by Addenda to the RFP, Agency shall not consider solicitation protests to the originally-issued RFP submitted after the Solicitation Protest due date specified in Section 1.2. *Please note: Late or electronically transmitted (emailed) protests will not be accepted.*

### **3.4 Submission of Proposals**

**Proposals shall be received by the SPC no later than the closing date and time specified on the front page of the RFP.** Proposals may be delivered via U.S. Mail or courier, or hand-delivered. Proposals shall be sent to the attention of the SPC's name. **Late, faxed or electronically transmitted Proposals shall not be accepted.**

### **3.5 Withdrawal of Proposals**

If a Proposer wishes to withdraw a submitted Proposal, it shall do so prior to the Closing date and time. The Proposer shall submit a written request to withdraw, signed by the Proposer, on the Proposer's letterhead, to the SPC at the address listed on the front page of the RFP.

### **3.6 Opening of Proposals**

Proposals shall be opened and the names of all Proposers shall be read at the date and time listed in the Schedule, Section 1.2. Proposals will not be read aloud. Proposals shall be opened at the following location:

OSD District Office Board Room  
195 SW 3<sup>rd</sup> Avenue  
Ontario, OR 97914

### **3.7 Evaluation and Award**

The evaluation and award process is described in Section 4.

### 3.8 Public Information, Confidentiality, and Trade Secrets

All Proposals are public information after the Proposals have been opened, and all protests are public information after the protest period ends. Proposals shall be opened by the SPC at the date and time listed in the Schedule, Section 1.2. Copies of Proposals, however, shall not be provided until the evaluation process has been completely closed and an award letter has been issued/a Notice of Intent to Award has been issued. Copies of public information may be requested by any person. Proposers shall label any information that it wishes to protect from disclosure to third parties as a trade secret under ORS 192.501(2) with the following: **"This material constitutes a trade secret under ORS 192.501(2) and is not to be disclosed except as required by law."** Agency shall take reasonable measures to hold in confidence all such labeled information, but the District shall not be liable for release of any information when required by law or court order to do so, whether pursuant to the Oregon Public Records Law or otherwise and shall also be immune from liability for disclosure or release of information under the circumstances set out in ORS 646.473(3).

### 3.9 Cost of Preparing Proposals

All costs incurred in preparing and submitting a Proposal in response to the RFP are the responsibility of the Proposer and shall not be reimbursed by Agency.

### 3.10 Reservation of Agency Rights

Agency reserves all rights regarding the RFP, including, without limitation, the right to:

- a. Amend, delay or cancel the RFP without liability if Agency finds it is in the best interest of the Agency to do so;
- b. Reject any or all Proposals received upon finding that it is in the best interest of the Agency to do so;
- c. Waive any minor informality or non-conformance with the provisions or procedures of the RFP, and seek clarification of any Proposal, if required;
- d. Reject any Proposal that fails substantially to comply with all prescribed RFP procedures and requirements;
- e. Negotiate a Statement of Work based on the Scope of Work described in Section 1.4 and to negotiate separately in any manner necessary to serve the best interest of the public;
- f. Amend any Contracts that are a result of the RFP;
- g. Engage consultants by selection or procurement independent of the RFP process or any Contracts or agreements under it to perform the same or similar services; and
- h. To extend any Contracts that result from the RFP without an additional RFP process for up to a total of 1 year, pursuant to OAR 137-048-0310.

Although price is a consideration in determining the apparent successful Proposer, the intent of the RFP is to identify a Proposal from a Proposer that has a level of specialized skill, knowledge and resources to perform the work described in the RFP. Qualifications, performance history, expertise, knowledge and the ability to exercise sound professional judgment are primary considerations in the selection process. Due to the highly technical nature of some of these tasks, the Proposer with the lowest Price Proposal may not necessarily be awarded a Contract. Agency reserves the sole right to determine the best Proposal.

### **3.11 Contract Form**

The District intends to utilize the *Consensus Doc 803 Standard agreement Between Owner and Architect/Engineer* standard contract form as a basis from which to secure the contract between the District and the Proposer. The contract may be subject to modifications as determined to be mutually agreeable. A sample will be supplied during the negotiation period with the selected candidate.

### **3.12 No Contractual Obligation**

Agency is not obligated as a result of the submission of a Proposal to enter into a Contract with any Proposer, and has no financial obligation to any Proposer arising from the RFP.

## **Section 4: Evaluation and Award**

### **4.1 Evaluation Process**

#### **4.1.1 Evaluation Overview.**

Agency shall conduct an evaluation of the Proposals received in response to the RFP.

Agency shall evaluate and score all Proposals on the completeness, quality, and applicability of their content in accordance with the following Sections:

- 4.2: Evaluation of Minimum Requirements (Pass/Fail)
- 4.3: Evaluation of Technical Proposal (Scored)
  - 4.3.1: Evaluation of Presentations, Demonstrations and Interviews (Scored)
- 4.4: Evaluation, Scoring, and Ranking of Price Proposal
- 4.5: Reference Checks for the Proposer's Company
- 4.6: Ranking of Proposals

Each Section is explained in more detail below.

#### **4.1.2 Evaluation Committee.**

Agency shall establish a selection committee. The Selection committee shall consist of:

- One Board member
- Superintendent
- Director of Operations
- Director of Finance
- One Ontario Middle School Administrator
- One Ontario High School Administrator
- CM Company Representative (advisory capacity only)
- Other persons as deemed necessary by the Superintendent

#### **4.1.3 Disqualification.**

Any attempt by a Proposer to improperly influence a member of the evaluation committee during the proposal review and evaluation process shall result in proposal rejection.

## **4.2 Evaluation of Minimum Requirements (Pass/Fail)**

The evaluation committee shall review all Proposals on a pass/fail basis and determine if each Proposal meets the minimum proposal requirements described in Section 2.2 of the RFP. Proposer's failure to comply with the instructions or to submit a complete Proposal may result in the Proposal being deemed non-responsive. Only those Proposals determined to responsive to the Minimum Requirements shall be considered for further evaluation in Section 4.3. See the Reservation of Agency Rights in Section 3.10.

## **4.3 Evaluation of Technical Proposal (Scored)**

The evaluation committee shall score all Proposals using the quantity and quality of information described in this Section. Points assigned by each evaluation committee member shall be added together and divided by the total number of evaluation committee members to compute an average score for the evaluation questions. Price proposal information shall not be available to the evaluation committee during this evaluation of technical proposals be scored after the completion of scoring for remaining categories. Price Proposal information must be submitted in a separate sealed envelope.

The evaluation committee may request additional clarification from Proposers for any portion of the Proposals. If a Proposal is unclear, Proposer may be asked to provide clarification. No new information or documentation may be submitted, however, and clarifications may not be used to rehabilitate a non-responsive Proposal. Proposers shall remain available during the evaluation period to respond to requests for additional clarification. Proposers shall submit written signed clarification(s) within 24 hours of request (Monday-Friday) following receipt of the request. Failure to provide clarification may result in a lower score. The evaluation committee shall assign points to its evaluation of each Proposal as follows:

Resources (25 Points) - Identify the organizational resources available that would be applied to accomplishing the project as described in Section 1.4. Name any associate firms or sub-consultants that will be working on the project and the length of time you have worked in association with these firms. Describe the time and effort that your team will dedicate to the project and the frequency of your on-site scheduling. Elaborate on your expectations for your staff and sub-consultants concerning time management, quality control, and budget. Define any required resources or equipment that you anticipate the District may provide. Provide information regarding your ability to service the unique locale and climate conditions of the project and describe your familiarity with the area.

Design (25 Points) - Describe and illustrate your unique ability to design educational facility projects as outlined in Section 1.4. Provide examples of similar projects that you have completed and develop your reasons for the choices of design that you will also illustrate in the oral presentation.

Project Approach (15 Points) - Considering your experience, describe the sequence and methods that you employ to sustain successful building projects. Describe your proposed management techniques including but not limited to quality and cost control. Outline each major project phase and explain how you would manage building design and construction administration to meet the dates outlined within the preliminary project schedule. Exhibit any new or unique factors that you have discovered for implementing projects. Describe any requisites or expectations that you may require from the District. Describe any claims, disputes, litigation, and arbitrations with civil engineering contracts within the last (5) years and the parties involved and resolution.”

Compensation Schedule (15 Points) - Provide (in a separate sealed envelope) an expected compensation schedule that tracks the projects as outlined in Section 1.4. Outline your methods for managing addendums, change orders, and soft costs that are project related, and their expansive impact on project cost. Define budgeted costs, original contract costs, and completed project costs in terms of attainable goals.

Reference Checks (20 points) - Proposer shall provide References that can rate Proposer's performance in these categories:

- a. Customer service (up to 5 points)
- b. Responsiveness (up to 5 points)
- c. Experience (up to 5 points)
- d. Problem solving (up to 5 points)

Agency reserves the right to request references in addition to those provided by the Proposer (References), to investigate any references whether or not furnished by the Proposer, and to investigate the past performance of any Proposer. Agency may investigate the qualifications of a Proposer, including but not limited to: successful performance of similar services; compliance with specifications and contractual obligations; its completion or delivery of services on schedule; and its lawful payment of suppliers, subcontractors, and workers. Agency may postpone the award or execution of the Contract after the announcement of the apparent successful Proposer in order to complete its investigation. See other Reservation of Agency's Rights in Section 3.10.

A minimum of 2 committee members may evaluate the References using a scale of 1 to 5, with 5 being the highest score. Each Proposer may receive a maximum of 20 points from evaluation of the References Points assigned by each evaluation committee member. Each average individual Reference score will then be added together and divided by the total number of References to determine the Proposer's total Reference score.

The committee members may attempt to contact two sources for each reference given, for a maximum of 3 References. The committee may make up to three attempts to contact each of the reference sources. These attempts shall be made during normal business hours. If the three attempts are unsuccessful, the Proposer shall receive zero points for that Reference source.

Each reference that is contacted and questioned shall be asked questions from the categories above.

#### **4.3.2 Evaluation of Presentations, Demonstrations and Interviews.**

Agency may conduct and score presentations, demonstrations or interviews (collectively called "events") at the discretion of Agency. If any events are conducted, the following procedures shall apply. Agency reserves the right to provide further procedures, or change any of the following procedures, and if it does so, Agency shall notify the Proposer of such further procedures or changes when it notifies the Proposer of the time and date of the event.

The three (3) highest-scoring Proposers shall be invited to provide an event to the evaluation committee. Non-selected Proposers may submit a written protest within (5) business days after issuance of the interviewee selection notice. Protests shall be in accordance with OAR 137-047-0720. All costs associated with the event are the responsibility of the Proposer. If applicable, Proposer shall provide all audio/visual equipment necessary for the event. Agency shall provide a room equipped with a network connection; Agency is not responsible, however, if this connection fails for any reason. Agency suggests that Proposer have a back-up event (visual aids, handouts) prepared in the event of connection failure. Agency reserves the right to not reschedule any event due to technical difficulties absent extraordinary conditions.

Each Proposer shall be given a maximum of 30 minutes for its event. Following the event, the Proposer shall allow a maximum of 30 minutes for the evaluation committee to ask questions. We encourage each one of the presenters to speak and participate in the event. Questions and topics to be covered in the event shall include, but need not be limited to:

(Each response should take no longer than 5 minutes)

Question 1: Explain your availability and capability to perform the services described in the RFP.

Question 2: Describe the members of your team who will work on this project, each person's responsibilities, and the experience each member would bring to this project.

Question 3: Describe your current workload and projects your firm is working on.

Question 4: The amount of our bond issue and the projects to be completed have already been determined. Describe how you would work with the Ontario School District and their construction manager to develop designs that would meet the budget parameters. Describe the role of your firm, the engineering firms, the District and if you would recommend other consultants be engaged for assistance.

Question 5: Describe your experience and strategy to sustainable design, give specific examples of past work.

Question 6: Describe a project you have worked on in the past five years that is similar to the scope of work described in the RFP. Explain any issues that came up during construction and how they were resolved.

Each member of the evaluation committee shall award points based on his or her assessment of how well the event covered each subject area (1-25). Price proposal information shall not be available to the evaluation committee during the event evaluation.

**SCORING:**

Evaluation points provided by each evaluation committee member shall be added together and divided by the total number of evaluation committee members to compute an average score for the demonstration. This average score shall be combined with all other scores to arrive at a total cumulative score.

**4.4 Evaluation, Scoring, and Ranking of Price Proposal Methodology**

The lowest Price proposal price or rate shall be awarded the maximum number of Price Points available under the RFP. Price Proposals with higher prices or rates shall be awarded a percentage of the maximum Price Points awarded based on the following formula:

$$(L/X)*Y = A$$

where:

X = Price Proposal being scored

L = Lowest Price Proposal among all Proposals

A = Awarded points

Y = Total Points Possible

If Agency requests clarification of any pricing information included in Proposer's Price Proposal, Proposer shall provide the clarification within 1 business day (Monday through Friday, state-observed holidays excluded) or the Proposal may be rejected as non-responsive at the sole discretion of Agency.

**4.4.1 Resident Preference.**

Agency shall give preference to goods and services that have been manufactured or produced in the state if price, fitness, availability and quality are otherwise equal; and add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which bidders resides.

**4.5 Ranking of Proposals**

The evaluation committee shall add together the points awarded to determine the total score and ranking of each Proposal.

**4.5.1 Preference for Oregon Supplies and Services.**

If Agency receives Proposals identical in price, fitness, availability and quality and chooses to award a Contract, Agency shall award the Contract in accordance with the procedures outlined in OAR 137-048-0230(2).



## **4.5.2 Responsive and Responsible Determinations.**

### **4.5.2.1 Responsive.**

To be considered responsive, the Offer shall substantially comply with all requirements of the RFP and all prescribed public solicitation procedures. In making such evaluation, Agency may waive minor informalities and irregularities. Prior to award of a Contract, Agency intends to evaluate whether the apparent successful Proposer meets the applicable standards of responsibility identified in OAR 137-047-0500. In doing so, Agency may investigate Proposer and request information in addition to that already required in the RFP, when Agency, in its sole discretion, considers it necessary or advisable.

### **4.5.2.2 Responsible.**

Agency reserves the right, pursuant to OAR 137-047-0500, to investigate and evaluate, at any time prior to award and execution of the Contract, the apparent successful Proposer's responsibility to perform the Contract. Submission of a signed Proposal shall constitute approval for Agency to obtain any information Agency deems necessary to conduct the evaluation. Agency shall notify the apparent successful Proposer in writing of any other documentation required, which may include but is not limited to: recent profit-and-loss history; current balance statements; assets-to-liabilities ratio, including number and amount of secured versus unsecured creditor claims; availability of short and long-term financing; bonding capacity; credit information; material; equipment; facility and personnel information; performance record of Contract performance; etc. Failure to promptly provide this information shall result in proposal rejection.

Agency may postpone the award of the Contract after announcement of the apparent successful Proposer in order to complete its investigation and evaluation. Failure of the apparent successful Proposer to demonstrate Responsibility, as required under OAR 137-047-0500, shall render the Proposer non-responsible and constitute grounds for offer rejection, as required under ORS 297B.100.

## **4.6 Award Notification and Process**

### **4.6.1 Award Consideration.**

The Contract shall be determined by Agency in its sole and absolute discretion to be in the best interest of the District. Agency reserves the right to withdraw any and/or all items from award consideration.

### **4.6.2 Intent-to-Award Notice.**

Agency reserves the right to announce its intent to award prior to Contract award by posting the tabulation sheet of Proposal results and Intent to Award Letter on ORPIN or by letter or fax ("Intent-to-Award Notice") and on the District website. The Intent-to-Award Notice shall serve as notice to all Proposers that Agency intends to negotiate and to make an award.

### **4.6.3 Review of Proposal Files.**

Proposers may have five (5) calendar days from the date of the Intent-to-Award Announcement within which to view the proposal files (by appointment).

#### **4.6.4 Protest of Intent to Award.**

Adversely affected or aggrieved Proposers shall have seven (7) calendar days from the date of the Intent-to-Award Notice within which to file a written protest. Protests submitted after that date shall not be accepted. Protests shall specify the grounds upon which the protest is based.

#### **4.6.5 Response to Intent-to-Award Protests.**

Agency intends to respond in writing to properly-filed intent-to-award protests submitted by adversely affected or aggrieved Proposers. Any response provided by Agency, however, is not intended to, and may not in and of itself constitute, confirmation that the Proposer is in fact adversely affected or aggrieved and therefore entitled to protest an intent to award.

#### **4.6.6 Insurance Certification.**

The apparent successful Proposer shall provide all required proofs of insurance to Agency within seven (7) calendar days of request from the District. Failure to present the required documents within the seven (7) calendar-day period may result in proposal rejection. Proposers are encouraged to consult their insurance agent(s) about insurance requirements.

#### **4.6.7 Negotiation.**

In addition to negotiation of the RFP, Agency may commence serial negotiations with the highest ranked Proposer, as provided in OAR 137-047-0262(3), including the following terms and conditions:

**4.6.7.1** Method of Payments

**4.6.7.2** Term of Contract

**4.6.7.3** Prices

**4.6.7.4** Insurance

If necessary, Contract negotiations shall take place within 2 days of the award notification. In the event that mutually agreeable terms cannot be reached within a reasonable time period as judged by Agency, Agency reserves the right to cancel the award with the Proposer, and to proceed to negotiate with the second ranked and then the third ranked Proposer.

#### **4.6.8 Award.**

After expiration of the seven (7) calendar-day intent-to-award protest period and resolution of all protests, Agency intends to proceed with the final award. Agency reserves the right to award a Contract to the responsible Proposer that has met the minimum proposal requirements (Section 2.2) and has received the highest total score for the technical proposal requirements and pricing (Sections 2.3 and 2.4) in accordance with OAR 125-247-[0260/261].

## **Section 5: Attachments**

Attachment A – Proposal Cover Sheet

Attachment B – Sample form of Contract [23 pages]

Attachment C – Preliminary Design Schedule [2 pages]

All Attachments are incorporated by reference herein.

# Attachment A - Proposal Cover Sheet

## Proposer Information

Organization Name: \_\_\_\_\_

Primary Contact Person: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Name and title of the person(s) authorized to represent the Proposer in any negotiations and sign any Purchase Orders that may result:

Name: \_\_\_\_\_ Title: \_\_\_\_\_

---

### **Minimum Proposal Requirements: This Proposal:**

- Includes current resumes for each of the Proposers Key Persons.
- Meets all Minimum Proposal Requirements described in Section 2.2;
- Addresses all Technical Proposal Requirements described in Section 2.3, including but not limited to Section 1.4, Scope of Work; and
- Includes a Price Proposal described in Section 2.4 (separate from the rest of the Proposal).

**Regarding Section 2.3.1, References, provide at least three (3) customer references with telephone numbers (please verify numbers) for the organization.** Customer references shall be able to describe and verify the quality of your Services and customer service.

Reference 1:

Contact Person (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

Fax Number: (\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_

Reference 2:

Contact Person (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

Fax Number: (\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_

Reference 3:

Contact Person (Print): \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Telephone Number: (\_\_\_\_) \_\_\_\_\_

Fax Number: (\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_

**Representations, Attestations, and Certifications:** The undersigned further acknowledges, attests and certifies individually and on behalf of the Proposer that:

1. No attempt has been made or shall be made by the Proposer to induce any other person or organization to submit or not submit a Proposal.
2. Information and prices included in this Proposal shall remain valid for one hundred and twenty (120) days after the proposal due date or until a Contract is approved, whichever comes first.
3. The undersigned recognizes that this is a public document and open to public inspection.
4. The Proposer acknowledges receipt of all Addenda issued under the RFP.
5. Proposer does not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation or national origin, nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.
6. **Affirmative Action Program:** Agency is an equal-employment-opportunity employer and value diversity in its work force. Agency requires its Contractors to have an operating policy as an equal

employment opportunity employer. Firms of 50 people or less do not need to have a formal equal employment opportunity program, but shall have an operating policy supporting equal employment opportunity. \_\_\_\_\_ (Name of Firm) has an operating policy supporting equal employment opportunity. Firms of 50 people or more shall also have a formal equal employment opportunity program.

Yes  No Does your firm have 50 or more employees?

Yes  No Does your firm have a formal equal employment opportunity program?

Yes  No This Proposal has been printed on recycled paper.

7. The Proposer, acting through its authorized representative, has read and understands all RFP instructions, specifications, and terms and conditions contained within the RFP and all Addenda, if any;
8. The Proposer agrees to and shall comply with, all requirements, specifications and terms and conditions contained within the RFP, including all Addenda, if any;
9. The Proposal submitted is in response to the specific language contained in the RFP, and Proposer has made no assumptions based upon either (a) verbal or written statements not contained in the RFP, or (b) any previously-issued RFP, if any.
10. The Proposer agrees that if awarded the Contract, Proposer shall be authorized to do business in the State of Oregon at the time of the award;
11. Agency shall not be liable for any claims or be subject to any defenses asserted by Proposer based upon, resulting from, or related to, Proposer's failure to comprehend all requirements of the RFP.
12. The Agency shall not be liable for any expenses incurred by Proposer in either preparing and submitting its Proposal, or in participating in the proposal evaluation/selection or Contract negotiation process, if any.

**13. Recycled Products Certification**

Vendors must use recyclable products to the maximum extent economically feasible in the performance of the Contract work set forth in this document.

Authorized Agencies must use, or require persons with whom they Contract with to use in the performance of the Contract work, to the maximum extent economically feasible, recycled paper products as well as other recycled plastic resin products.

“Recycled paper” means a paper product with not less than fifty percent of its fiber weight consisting of secondary waste materials; or twenty-five percent of its fiber weight consisting of post-consumer waste. (ORS 279A.010(1)(g)).

ORS 279A.010 (1) (ii) states: "'Recycled product' means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of total weight consisting of post-consumer waste. 'Recycled product' also includes any product that could have been disposed of as a solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form."

ORS 279A.010(1)(u) states: "'Post-consumer waste' means a finished material which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. 'Post-consumer waste' does not include manufacturing waste."

I, the undersigned duly authorized representative of the Proposer, hereby certify that the products, if any, offered in this Proposal contain the following minimum percentages:

- a) \_\_\_\_ % (recycled product as defined in ORS 279A.010 (1)(ii))
- b) \_\_\_\_ % (post-consumer waste as defined in ORS 279A.010 (1)(u))

It is the Proposer's responsibility to provide additional signed copies of the Certification of Compliance for each item which contains a different percentage of recycled materials than listed above.

- 14. Office of Foreign Assets Control and US Department of State:** Proposer and Proposer's employees and agents are not included on:
- a) the list entitled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>; or
  - b) the list entitled "Current List of Designated Foreign Terrorist Organizations of the US Department of State" and currently found at <http://www.state.gov/s/ct/rls/fs/37191.htm>.
- 15.** The signatory of this Proposal Cover Sheet is a duly authorized representative of the Proposer, has been authorized by Proposer to make all representations, attestations, and certifications contained in this Proposal document and all Addenda, if any, issued, and to execute this Proposal document on behalf of Proposer.
- 16.** By signature below, the undersigned Authorized Representative hereby certifies on behalf of Proposer that all contents of this Proposal Cover Sheet and the submitted Proposal are truthful, complete and accurate. Failure to provide information required by the RFP may ultimately result in rejection of the Proposal.

THIS OFFER SHALL BE SIGNED IN BLUE INK BY AN AUTHORIZED REPRESENTATIVE OF THE PROPOSER; ANY ALTERATIONS OR ERASURES TO THE OFFER SHALL BE INITIALED IN INK BY THE UNDERSIGNED AUTHORIZED REPRESENTATIVE.

SIGNATURE OF PROPOSER'S DULY AUTHORIZED REPRESENTATIVE FOR ALL SECTIONS:

Authorized Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Contact Person (Type or Print): \_\_\_\_\_

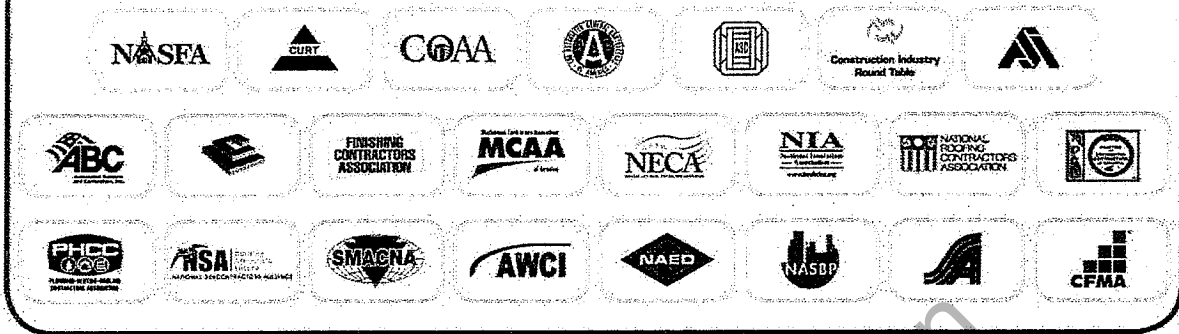
Telephone Number: (\_\_\_\_) \_\_\_\_\_

Fax Number: (\_\_\_\_) \_\_\_\_\_



**ConsensusDOCS™**

ConsensusDOCS is proudly endorsed by the following:



## CONSENSUSDOCS 803

# STANDARD AGREEMENT BETWEEN OWNER AND ARCHITECT/ENGINEER

(Where a Construction Manager Acting As an Agent Has Been Retained by the Owner)

This document was developed through a collaborative effort of entities representing a wide cross-section of the construction industry. The organizations endorsing this document believe it represents a fair and reasonable consensus among the collaborating parties of allocation of risk and responsibilities in an effort to appropriately balance the critical interests and concerns of all project participants.

These endorsing organizations recognize and understand that users of this document must review and adapt this document to meet their particular needs, the specific requirements of the project, and applicable laws. Users are encouraged to consult legal, insurance and surety advisors before modifying or completing this document. Further information on this document and the perspectives of endorsing organizations is available in the ConsensusDOCS Guidebook.

### TABLE OF ARTICLES

1. AGREEMENT
2. GENERAL PROVISIONS
3. ARCHITECT/ENGINEER'S RESPONSIBILITIES
4. OWNER'S RESPONSIBILITIES
5. TIME
6. COMPENSATION AND PAYMENTS

**IMPORTANT:** A vertical line in the margin indicates a change has been made to the original text. Prior to signing, recipients may wish to request from the party producing the document a "redlined" version indicating changes to the original text. Consultation with legal and insurance counsel and careful review of the entire document are strongly encouraged.

ConsensusDOCS 803 • STANDARD AGREEMENT BETWEEN OWNER AND ARCHITECT/ENGINEER (Where a Construction Manager Acting As an Agent Has Been Retained by the Owner) Copyright © 2007, ConsensusDOCS LLC; revised May 2009. YOU ARE ALLOWED TO USE THIS DOCUMENT FOR ONE CONTRACT ONLY. YOU MAY MAKE 9 COPIES OF THE COMPLETED DOCUMENT FOR DISTRIBUTION TO THE CONTRACT'S PARTIES. ANY OTHER USES, INCLUDING COPYING THE FORM DOCUMENT, ARE STRICTLY PROHIBITED.

- 7. INDEMNITY, INSURANCE AND WAIVER OF SUBROGATION
- 8. TERMINATION
- 9. DISPUTE MITIGATION AND RESOLUTION
- 10. MISCELLANEOUS PROVISIONS
- 11. SCHEDULE OF EXHIBITS

This Agreement has important legal and insurance consequences. Consultations with an attorney and with insurance and surety consultants are encouraged with respect to its completion or modification. Notes indicate where information is to be inserted to complete this Agreement.

## ARTICLE 1 AGREEMENT

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_, by and between the

**OWNER**

(Name and Address)

and the

**ARCHITECT, ARCHITECT/ENGINEER or ENGINEER** (hereinafter Architect/Engineer)

(Name and Address)

for Services in connection with the following

**PROJECT**

(Description of Project)

The **CONSTRUCTION MANAGER** for the Project is

(Name and Address)

Notice to the above Parties shall be given at the above addresses.

## ARTICLE 2 GENERAL PROVISIONS

2.1 The Architect/Engineer shall furnish or provide the architectural and engineering Services necessary to design the Project in accordance with the Owner's requirements, as outlined in the Owner's Program and other relevant data defining the Project, which is attached as Exhibit A. The architectural and

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**IMPORTANT:** A vertical line in the margin indicates a change has been made to the original text. Prior to signing, recipients may wish to request from the party producing the document a "redlined" version indicating changes to the original text. Consultation with legal and insurance counsel and careful review of the entire document are strongly encouraged.

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engineering Services shall include Basic Services plus Additional Services as may be authorized by the Owner.

**2.2 RELATIONSHIP OF THE PARTIES** The Architect/Engineer accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner and the Construction Manager and exercise the Architect/Engineer's skill and judgment in furthering the interests of the Owner. The Architect/Engineer represents that it possesses the requisite skill, expertise, and licensing to perform the required Services. The Owner and Architect/Engineer agree to work together on the basis of mutual trust, good faith and fair dealing, and shall take actions reasonably necessary to enable each other to perform this Agreement in a timely, efficient and economical manner. The Owner and Architect/Engineer shall endeavor to promote harmony and cooperation among all Project participants.

**2.3** Neither the Architect/Engineer nor any of its agents or employees shall act on behalf of or in the name of the Owner except as provided in this Agreement or unless authorized in writing by the Owner.

**2.4** The Owner and the Architect/Engineer shall perform their obligations with integrity, including but not limited to:

2.4.1 conflicts of interest shall be avoided or disclosed promptly to the other Party; and

2.4.2 The Architect/Engineer and the Owner warrant that they have not and shall not pay nor receive any contingent fees or gratuities to or from the other Party, including their agents, officers and employees, subconsultants or others for whom they may be liable, to secure preferential treatment.

**2.5 CONSTRUCTION MANAGER** The Owner shall retain or employ a Construction Manager to be the Owner's agent and to furnish construction administrative and management Services for the Project. The Architect/Engineer shall coordinate its scope of Services with that of the Construction Manager so as to avoid any duplication of Services. The Architect/Engineer shall provide those Services reasonably requested by the Owner and the Construction Manager and included within the Architect/Engineer's scope of Services under this Agreement. Such Services shall be provided promptly and in accordance with time schedules agreed upon by the Owner, Construction Manager and Architect/Engineer. The Owner shall cause the Construction Manager to provide those Services reasonably requested by the Architect/Engineer. Such Services shall be provided promptly and in accordance with time schedules agreed upon by the Owner, Architect/Engineer and Construction Manager. Upon request of the Architect/Engineer, the Owner shall furnish to the Architect/Engineer a copy of the Owner's Agreement with the Construction Manager, from which compensation provisions may be deleted. The Agreement between the Owner and the Construction Manager shall not be modified without written notification to the Architect/Engineer.

**2.6 EXTENT OF AGREEMENT** This Agreement represents the entire and integrated agreement between the Owner and the Architect/Engineer and supersedes all prior negotiations, representations and agreements, either written or oral. This Agreement and each and every provision is for the exclusive benefit of the Owner and Architect/Engineer and not for the benefit of any third party except to the extent expressly provided in this Agreement.

## **2.7 DEFINITIONS**

2.7.1 Agreement means this ConsensusDOCS 803, Standard Form of Agreement Between Owner and Architect/Engineer (Where a Construction Manager Acting as an Agent has Been Retained by the Owner) as modified by the Parties, and Exhibits and Attachments made part of this Agreement upon its execution.

2.7.2 Architect/Engineer means the person or entity identified in Article 1 and includes the Architect/Engineer's representative. The use of the term Architect/Engineer in this Agreement is for convenience and is not intended to imply or infer that the individual or entity named in Article 1 will provide design professional Services in a discipline in which it is not licensed.

2.7.3 Construction Budget means the budget prepared by the Construction Manager for review by the Architect/Engineer and approval by the Owner. It is prepared when the Owner and the Construction Manager agree that the Construction Documents are sufficiently complete, and includes the sum of the estimated cost of the Work, the clarifications and assumptions upon which it is based, allowances, reasonable contingencies and the Construction Manager's compensation.

2.7.4 Construction Manager means the person or entity identified in Article 1 responsible for furnishing construction administrative and management Services for the Project.

2.7.5 The Construction Schedule is the document initially prepared by and updated by the Construction Manager and approved by the Owner that indicates proposed activity sequences, durations, or milestone dates for such activities as receipt and approval of pertinent information, issuance of the Construction Documents, the preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements and estimated date of Substantial Completion of the Project.

2.7.6 The term Cost of Construction shall mean the Owner's total cost of Project components. In the event the Project is not completed, Cost of Construction shall mean the final approved estimated cost of Project components.

2.7.7 Others means other contractors, material suppliers and persons at the Worksite who are not employed by the Contractor or Subcontractors. The term Others does not include the Construction Manager or the Architect/Engineer.

2.7.8 Owner is the person or entity identified in Article 1 and includes the Owner's representative.

2.7.9 The Owner's Program is an initial description of the Owner's objectives that shall include budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

2.7.10 The Project, as identified in Article 1, is the building, facility or other improvements for which the Contractor is to perform Work under the agreement between the Owner and Contractor. It may also include construction by the Owner or Others.

2.7.11 Services means the Services provided by the Architect/Engineer or by consultants retained by the Architect/Engineer for the Project. Such Services may constitute the whole or a portion of the Project.

2.7.12 A Subcontractor is a party or entity retained by the Contractor as an independent contractor to provide the labor, materials, equipment or Services necessary to complete a specific portion of the Work. The term Subcontractor does not include the Architect/Engineer or Others.

2.7.13 A Sub-subcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's Work.

2.7.14 The Trade Contractor is the person or entity identified in Article 1 and includes the Trade Contractor's Representative.

2.7.15 The term Work means the construction and Services necessary or incidental to fulfill the

Trade Contractor's obligations for the Project in conformance with the agreement between the Owner and Trade Contractor.

2.7.16 Worksite means the location of the Project as identified in Article 1 where the Work is to be performed.

## ARTICLE 3

### ARCHITECT/ENGINEER'S RESPONSIBILITIES

#### 3.1 GENERAL RESPONSIBILITIES

3.1.1 PROJECT REQUIREMENTS The Architect/Engineer, in order to determine the requirements of the Services, shall conduct a preliminary evaluation of the information set forth in Exhibit A. The Architect/Engineer shall confirm its understanding of such requirements with the Owner and the Construction Manager and shall assist the Owner to refine or make clarifications to the Owner's Program for the Project.

3.1.2 The Architect/Engineer shall not proceed with the development of successive design documents until receiving written approval from the Owner. The Architect/Engineer shall promptly revise without additional compensation:

3.1.2.1 those documents which have not been previously approved by the Owner and to which the Owner has reasonable objections,

3.1.2.2 those documents identified by the Construction Manager as presenting constructibility problems, and

3.1.2.3 those documents needing revisions to reflect clarifications and assumptions and allowances on which a guaranteed maximum price is based.

To the extent that any design documents approved by the Owner deviate from the requirements of the Owner's Program, the approved design documents shall govern.

3.1.3 The Architect/Engineer shall have reasonable access to the Worksite at all times.

3.1.4 Except as provided in this Agreement or unless otherwise directed by the Owner, the Architect/Engineer shall communicate with the Trade Contractor and Subcontractors only through the Construction Manager.

3.1.5 The Architect/Engineer shall assist the Owner and the Construction Manager with filing required documents with governmental authorities having jurisdiction over the Project, including permits necessary for construction of the Project.

3.1.6 The Architect/Engineer shall not be responsible for the acts or omissions of the Owner, the Trade Contractor and Subcontractors, and their respective agents or employees, or any other persons or entities performing work on the Project who are not under the direct control or authority of the Architect/Engineer.

3.1.7 Services to be provided by the Architect/Engineer shall be rendered promptly so as not to delay the Owner, Construction Manager, Trade Contractor, Subcontractors or Others.

3.2 BASIC SERVICES The Architect/Engineer's Basic Services consist of any Services provided pursuant to Paragraphs 3.1 and 3.2. The Architect/Engineer shall identify here or in a separate attached exhibit: (1) other Services included in Basic Services, (2) the specific design disciplines included in Basic

Services, and (3) those portions of the Project design to be furnished by the Owner, Trade Contractor or Others:

If professional design Services are to be furnished by the Owner, Trade Contractor or Others, the Architect/Engineer shall indicate all performance and design criteria to be satisfied in accordance with the Owner's Program, and the Owner, Trade Contractor or Others shall not be responsible for the adequacy of such performance and design criteria. Design Services furnished by parties other than the Architect/Engineer shall be obtained from licensed design professionals, who shall affix their signature and seal on all drawings, specifications, calculations and submittals prepared by them, and the Architect/Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of such design Services.

3.2.1 BUDGETS The Architect/Engineer promptly shall review and make recommendations to the Owner about the budgets prepared by the Construction Manager for the Project. The Architect/Engineer shall provide its Services in conformance with the budgets approved by the Owner.

3.2.2 CONSTRUCTION SCHEDULE The Architect/Engineer promptly shall review and make recommendations to the Construction Manager and Owner about the preliminary and updated Construction Schedule prepared by the Construction Manager. To facilitate the preparation of the Construction Schedule by the Construction Manager, the Architect/Engineer shall submit for the Construction Manager's review and the Owner's approval a schedule of the Architect/Engineer's Services. The Architect/Engineer shall provide its Services within the times given for such Services in the Construction Schedule approved by the Owner.

3.2.3 SCHEMATIC DESIGN DOCUMENTS Based upon the Owner's Program, including any approved refinements or clarifications, the Architect/Engineer shall prepare, for the Construction Manager's review and the Owner's approval, Schematic Design Documents consisting of drawings, outline specifications and other documents illustrating the Project's basic elements, scale, and their relationship to the Worksite. Schematic Design Documents shall include, as applicable, conceptual plans of the site and structures; preliminary sections and elevations; approximate areas, volumes and dimensions; and preliminary selections of materials and systems. Two printed sets and one reproducible set of Schematic Design Documents shall be provided to the Owner for its review and for distribution to the Construction Manager. When the Architect/Engineer submits the Schematic Design Documents, the Architect/Engineer shall identify in writing for the Construction Manager's review and the Owner's approval all material changes and deviations that have taken place from the Architect/Engineer's approved preliminary estimate of the Cost of Construction and Project Schedule.

3.2.4 DESIGN DEVELOPMENT DOCUMENTS Based on the approved Schematic Design Documents and the updated estimate of the Cost of Construction and Project Schedule, the Architect/Engineer shall prepare, for the Construction Manager's review and the Owner's approval, Design Development Documents. The Design Development Documents shall further define the Project, including drawings and outline specifications fixing and describing the Project size, character and site relationships, and other appropriate elements describing the structural, architectural, mechanical and electrical systems. Design Development Documents shall include, as applicable, plans, sections and elevations; criteria and sizing of major components; equipment sizes and capacities and approximate layouts, including required spaces and clearances; typical details; materials selections and general quality levels. When the Architect/Engineer submits the Design Development Documents, the Architect/Engineer shall identify in writing all material changes and

deviations for the Owner's approval that have taken place from the Schematic Design Documents and the previously approved estimate of the Cost of Construction and Project Schedule. Two printed sets and one reproducible set of Design Development Documents shall be provided to the Owner for its review and for distribution to the Construction Manager.

**3.2.5 CONSTRUCTION DOCUMENTS** Based on the approved Design Development Documents and updated estimate of the Cost of Construction and Project Schedule, the Architect/Engineer shall prepare, for the Construction Manager's review and the Owner's approval and the approval of governmental authorities, including any revisions necessary to secure such approvals, Construction Documents setting forth in detail the quality levels of and the requirements for construction of the Project, and consisting of drawings and specifications that comply with applicable codes, laws and regulations enacted at the time of their preparation at the location of the Project. When the Architect/Engineer submits the Construction Documents, the Architect/Engineer shall identify in writing all material changes and deviations for the Owner's approval that have taken place from the Design Development Documents and the previously approved estimate of the Cost of Construction and Project Schedule. The Construction Documents shall completely describe all work necessary to bid and construct the Project. Two printed sets and one reproducible set of the Construction Documents shall be provided to the Owner for its review and for distribution to the Construction Manager.

**3.2.6 DESIGN COORDINATION** The Architect/Engineer shall coordinate the Services of all design consultants for the Project, including those retained by the Owner, who are or will be (List here or in a separate attached exhibit the names or disciplines of design consultants retained or to be retained by the Owner):

**3.2.7 LONG-LEAD ITEMS** The Architect/Engineer shall assist the Owner to evaluate a schedule prepared by the Construction Manager for procurement of long-lead-time items which shall constitute part of the Work as required to meet the Construction Schedule.

**3.2.8 BIDDING OR NEGOTIATION ASSISTANCE** The Architect/Engineer shall assist the Owner in evaluating the Construction Manager's recommendations regarding the division of the Work into Trade Contractor Bid packages or proposals. The Architect/Engineer shall assist the Construction Manager and the Owner in obtaining bids or negotiated proposals from contractors by providing up to six (6) sets of drawings, specifications and any addenda, attending pre-bid or pre-award meetings, clarifying the scope and intent of the Construction Documents and, if appropriate, evaluating proposed subcontractors and material suppliers for portions of the Work. The Architect/Engineer shall issue any addenda or clarifications promptly in writing.

**3.2.8.1** If the lowest bona fide bid or negotiated proposal exceeds the final approved estimate of the Cost of Construction by \_\_\_\_\_ percent (\_\_\_\_\_% ) or more, and the Owner, in its sole discretion, elects not to accept such bid or proposal or to rebid or renegotiate the Project, the Architect/Engineer, without additional compensation, shall work with the Construction Manager and the Owner to make the necessary modifications to the Construction Documents to reduce the Cost of Construction to an amount less than or equal to the sum of the final approved estimate of the Cost of Construction plus the percentage stated above. This Clause shall not apply if estimates are prepared by or are the responsibility of the Trade Contractor or Others.

**3.2.9 CONSTRUCTION PHASE SERVICES** The Construction Phase will commence upon the earlier of (1) the first award of or authorization for Construction Manager to award a Trade Contract

or (2) such other date as the Parties agree. Such award or authorizations by Owner shall be issued with contemporaneous notification to the Architect/Engineer. If requested by the Owner, the Architect/Engineer shall assist the Construction Manager to review the schedule of values submitted by the Trade Contractors for the Work. The Architect/Engineer shall furnish upon request to the Owner and to the Construction Manager interpretations and clarifications of the drawings and specifications, by means of additional drawings, addenda or otherwise, as are necessary for the proper execution and progress of the Work. All such interpretations and clarifications shall be consistent with the intent of the Construction Documents and reasonably inferable from them.

3.2.9.1 SUBMITTALS The Architect/Engineer shall collaborate with the Construction Manager to establish and implement procedures for expediting the processing and approval of shop drawings and samples. The Architect/Engineer shall review the Trade Contractors' submittals and make approvals of or recommendations about such submittals to the Construction Manager and the Owner within ten (10) Days of receiving the submittals from the Construction Manager. The Architect/Engineer shall check the Trade Contractors' submittals for conformance with the design and scope of the Project and for compliance with the Construction Documents. The Architect/Engineer shall be entitled to rely on the accuracy and completeness of any professional certifications required by the Construction Documents of Trade Contractors concerning the performance criteria of systems, equipment or materials, including all calculations relating thereto and any governing performance requirements. The Architect/Engineer's review of submittals shall not extend to the Trade Contractors' means, methods, techniques, sequences or procedures, unless such means, methods, techniques, sequences or procedures have been specified by the Architect/Engineer.

3.2.9.2 Upon request of the Owner, the Architect/Engineer shall assist the Construction Manager and the Owner in the evaluation and processing of requests for changes in the Work.

3.2.9.3 WORKSITE VISITS The Architect/Engineer shall visit the Worksite at appropriate intervals, but not less than \_\_\_\_\_ (\_\_\_\_\_) times, or pursuant to such schedule as the Parties may establish by attachment of Exhibit F to this Agreement, to become generally familiar with the quality of the Work and to determine in general if the Work is proceeding in accordance with the Construction Document. After each Worksite visit, the Architect/Engineer shall promptly provide the Owner with a written report. If the Architect/Engineer becomes aware of any defects or deficiencies in the Work, the Architect/Engineer shall provide prompt notice, followed by written confirmation, to the Owner. If, in the Architect/Engineer's opinion, special testing or inspection of the Work is needed, the Architect/Engineer shall recommend such testing or inspection procedures and appropriate consultants to the Construction Manager. The Architect/Engineer shall not be responsible for construction means, methods, techniques, sequences and procedures, unless they are specified by the Architect/Engineer, or for ensuring that the Work is in accordance with the Construction Documents.

3.2.9.4 SAFETY The Architect/Engineer shall not be responsible for the Trade Contractor's safety precautions and programs. However, if the Architect/Engineer has actual knowledge of safety violations, the Architect/Engineer shall give prompt written notice to the Owner. While at the Worksite, the Architect/Engineer shall comply with the safety programs of the Construction Manager and the Trade Contractors.

3.2.9.5 Upon request of the Owner, the Architect/Engineer shall assist the Construction Manager in processing the Trade Contractor's applications for payment.

3.2.9.6 The Architect/Engineer shall participate in regular meetings with the Owner and the

Construction Manager upon reasonable request of the Owner or the Construction Manager.

3.2.9.7 The Architect/Engineer shall assist the Owner and Construction Manager in conducting up to \_\_\_\_\_ (\_\_\_\_\_) inspections to determine the date or dates of Trade Contractor's Substantial Completion of the Work. Such assistance shall include compiling a list of items to be completed or corrected so that the Owner may occupy or utilize the Work or a designated portion for its intended use.

3.2.9.8 The Architect/Engineer shall assist the Owner and Construction Manager in conducting up to \_\_\_\_\_ (\_\_\_\_\_) inspections to determine Trade Contractor's Final Completion of the Work.

3.2.9.9 If requested by the Owner, the Architect/Engineer shall make up to two (2) visits to the Worksite during the Trade Contractor's one-year correction period to assist the Owner in evaluating the need for any corrective measures.

3.2.10 HAZARDOUS MATERIAL A Hazardous Material is any substance or material identified as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirement governing handling, disposal or clean-up. To the extent not identified in this Agreement, if a Hazardous Material is discovered at the Worksite, the Architect/Engineer shall not be required to perform Services relating to or in the area of the Hazardous Material without written mutual agreement.

3.2.10.1 INDEMNIFICATION To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Architect/Engineer, Construction Manager, Trade Contractors and their subcontractors and suppliers, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, fines, penalties, costs and expenses, whether direct, indirect or consequential, including but not limited to attorneys' fees, costs and expenses incurred in connection with litigation or arbitration arising out of or relating to the performance of Services in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the indemnitee.

3.3 ADDITIONAL SERVICES The following Services shall be provided by the Architect/Engineer and paid for as Additional Services, if they are authorized in advance by the Owner in writing and are not included in Basic Services as set forth in Paragraphs 3.1 and 3.2:

3.3.1 Investigation of sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.

3.3.2 Consultations, negotiations, and documentation supporting the procurement of Project financing.

3.3.3 Surveys, site evaluations, legal descriptions and aerial photographs.

3.3.4 Appraisals of existing equipment, existing facilities, new equipment and developed properties.

3.3.5 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.

3.3.6 Document reproduction exceeding the limits provided for under Paragraph 3.2.

3.3.7 Investigating or making measured drawings of existing conditions or the verification of

Owner-provided drawings and information.

3.3.8 Artistic renderings, models and mockups of the Project or any part of the Project.

3.3.9 Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Project.

3.3.10 Interior design and related Services, including procurement and placement of furniture, furnishings, artwork and decorations.

3.3.11 Making revisions to the Schematic Design, Design Development, or Construction Documents after they have been approved by the Owner, and which are due to causes beyond the control of the Architect/Engineer.

3.3.12 Design, coordination, management, expediting and other Services supporting the procurement of materials to be obtained or work to be performed by the Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of this Agreement.

3.3.13 Estimates, proposals, appraisals, consultations, negotiations and Services in connection with the repair or replacement of an insured loss.

3.3.14 The premium portion of overtime work ordered by the Owner, including productivity impact costs, other than that required by the Architect/Engineer to maintain the Construction Schedule for causes that are the responsibility of the Architect/Engineer.

3.3.15 Obtaining service contractors and training maintenance personnel; assisting and consulting in the use of systems and equipment after the initial startup.

3.3.16 Services for tenant or rental spaces not a part of this Agreement.

3.3.17 Serving or preparing to serve as an expert witness in connection with any proceeding, legal or otherwise, regarding the Project in which the Architect/Engineer is not a party.

3.3.18 Preparing reproducible record drawings from marked-up prints, drawings or other documents that incorporate significant changes made during the Construction Phase.

3.3.19 Worksite visits in excess of the number of visits provided for in Clauses 3.2.8.3, 3.2.8.8, 3.2.8.9 and 3.2.8.10 or the number of visits in a schedule established by attachment to this Agreement.

3.3.20 Attending meetings in excess of the number provided for in Clause 3.2.8.7.

3.3.21 Providing Services relating to Hazardous Material discovered at the Worksite.

3.3.22 Consultations and representations before governmental authorities or others having jurisdiction over the Project other than normal assistance in securing building permits.

3.3.23 Out-of-town travel by the Architect/Engineer in connection with the Work, except between the Architect/Engineer's office, the Owner's office and the Worksite.

3.3.24 Services requested by the Owner or required by the Work which are not specified in the Contract Documents and which are not normally part of generally accepted design and construction practice.

3.3.25 Other Services as agreed to by the Parties and identified in an attached exhibit.



3.4 QUALIFICATIONS The Architect/Engineer warrants and represents that the Architect/Engineer and its consultants are duly qualified, licensed, registered and authorized by law to perform the Services under this Agreement.

3.5 CONSULTANTS The Architect/Engineer shall not engage the Services of any consultant without first obtaining the Owner's written approval, which approval shall not be unreasonably withheld. Such approval by the Owner shall not be deemed to create any contractual relationship between the Owner and any such consultant, except that the Owner shall be considered the intended beneficiary of the performance of their Services. Except for the waivers required under Paragraph 5.4 and Subparagraph 7.3.2, the Architect/Engineer shall not include any limits of liability in its agreements with any consultants without the prior written approval of the Owner. The Architect/Engineer shall bind its consultants in the same manner as the Architect/Engineer is bound to the Owner under this Agreement.

3.6 ARCHITECT/ENGINEER'S REPRESENTATIVE The Architect/Engineer's representative is \_\_\_\_\_, who shall possess full authority to receive and act on instructions from the Owner.

3.7 KEY PROJECT PERSONNEL The key Project personnel whom the Architect/Engineer shall assign are as set forth in Exhibit C, including the percentage of time to be devoted by each to the Architect/Engineer's Services. Such personnel shall not be changed without the written approval of the Owner, which approval shall not be unreasonably withheld.

3.8 FINANCIAL INFORMATION Prior to commencement of Services, and thereafter, the Architect/Engineer shall have the right, upon written request, to receive from the Owner evidence of the Owner's financial ability to pay for the Architect/Engineer's Services. Evidence of the Owner's financial ability to pay for Services shall be a condition precedent to the Architect/Engineer commencing or continuing Services. The Architect/Engineer shall be notified prior to any material change in the Owner's ability to pay for Services.

3.9 ROYALTIES, PENALTIES AND COPYRIGHTS The Architect/Engineer shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by the Architect/Engineer and incorporated in the design documents of the Architect/Engineer. The Architect/Engineer shall defend, indemnify and hold the Owner, Construction Manager, Trade Contractor and Subcontractors harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection.

3.10 CONFIDENTIALITY The Architect/Engineer shall treat as confidential and not disclose to third parties, except as necessary for the performance of this Agreement or as required by law, or use for its own benefit, any of the Owner's confidential information, know-how, discoveries, production methods and the like that is so identified in writing and disclosed to the Architect/Engineer or which the Architect/Engineer acquires in performing the Services required by this Agreement. The Owner shall treat as confidential information all proprietary design systems and methods that may be disclosed to the Owner in connection with the performance of this Agreement. The Owner and the Architect/Engineer shall each specify those items to be treated as confidential and shall mark them as "Confidential."

## ARTICLE 4

### OWNER'S RESPONSIBILITIES

#### 4.1 INFORMATION AND SERVICES PROVIDED BY THE OWNER

4.1.1 To the extent the Owner has obtained the information and Services identified below, the Owner shall provide them to the Architect/Engineer in a timely manner. The Architect/Engineer shall

be entitled to rely on the completeness and accuracy of such information and Services.

4.1.1.1 Information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, existing conditions, subsurface and environmental studies, reports and investigations, all as set forth in Exhibit A.

4.1.1.2 Inspection and testing Services during construction as required by law or as mutually agreed.

4.1.1.3 Unless otherwise provided in the Contract Documents, necessary approvals, site plan review, rezoning, easements and assessments, fees and charges required for the construction, use, occupancy or renovation of permanent structures, including legal and other required Services.

The information required by Clause 4.1.1.1 shall be provided in reasonable detail. Legal descriptions shall include easements, title restrictions, boundaries, and zoning restrictions. Worksite descriptions shall include existing buildings and other construction and all other pertinent site conditions. Adjacent property descriptions shall include structures, streets, sidewalks, alleys, and other features relevant to the Work. Utility details shall include available Services, lines at the Worksite and adjacent thereto, and connection points. The information shall include public and private information, subsurface information, grades, contours, and elevations, drainage data, exact locations and dimensions, and benchmarks that can be used in laying out the Work.

4.1.2 The Owner shall promptly report to the Architect/Engineer errors, inconsistencies and omissions it discovers in the Construction Documents; however, nothing in this Subparagraph shall relieve the Architect/Engineer of responsibility for its own errors, inconsistencies and omissions.

4.1.3 Approvals by the Owner shall not be deemed to be an assumption of responsibility by the Owner for any error, inconsistency or omission in the drawings and specifications or other documents prepared by the Architect/Engineer, its employees, agents or consultants. The Owner shall provide all approvals required under this Agreement in a timely manner.

4.2 OWNER'S REPRESENTATIVE The Owner's representative is \_\_\_\_\_.  
The Representative:

4.2.1 shall be fully acquainted with the Project;

4.2.2 agrees to furnish the information and Services required of the Owner pursuant to Paragraph 4.1 so as not delay the Services of the Architect/Engineer; and

4.2.3 shall have authority to bind the Owner in all matters requiring the Owner's approval, authorization or written notice. If the Owner changes its representative or the representative's authority as listed above, the Owner shall notify the Architect/Engineer in writing in advance.

4.3 TRADE CONTRACTS The Owner shall provide the Architect/Engineer with copies of all executed Trade Contracts.

4.4 LEGAL REQUIREMENTS The Owner shall determine and advise the Architect/Engineer and the Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal Services as are necessary to provide the information and Services required under Paragraph 4.1 and to support the Project.

4.6 ROYALTIES, PATENTS AND COPYRIGHTS The Owner shall pay all royalties and license fees

which may be due on the inclusion of any patented or copyrighted materials, methods or systems specifically required by the Owner to be incorporated in the design documents of the Architect/Engineer. The Owner agrees to defend, indemnify and hold the Architect/Engineer harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems required by the Owner or used by the Trade Contractor but not required by the Owner or Architect/Engineer.

## ARTICLE 5

### TIME

5.1 **TIME FOR SERVICES** The Architect/Engineer shall provide the Services required by this Agreement in conformance with the most recent Project Schedule approved by the Owner. The Architect/Engineer's Fee as set forth in Paragraph 6.1 is based on completion of Construction Documents no later than \_\_\_\_\_ (\_\_\_\_\_) Days following execution of this Agreement. If completion of Construction Documents is not achieved within this time through no fault of the Architect/Engineer, the Architect/Engineer's Fee shall be equitably adjusted.

5.2 **DELAYS BY ARCHITECT/ENGINEER** If the progress or completion of the Project is delayed by reason of any error, inconsistency or omission of the Architect/Engineer which violates the applicable standard of care, the Architect/Engineer shall compensate the Owner for and indemnify it against all damages which may accrue as a result of such delay, except as otherwise provided in Paragraph 5.4. In addition, the Architect/Engineer shall provide Services at its own cost, including any overtime costs and expenses, required to make up time lost to the Owner because of such delay. The Owner shall provide prompt written notice to the Architect/Engineer of such delay after the Owner first recognizes the delay.

5.3 **DELAYS BY OWNER** If the Architect/Engineer is delayed in the performance of its Services by any act or omission of the Owner, or by changes ordered by the Owner which are due to causes beyond the Architect/Engineer's control, or by a delay authorized by the Owner pending dispute resolution, then the time allotted in the Project Schedule for the Architect/Engineer's Services shall be extended for the period of such delay or the Owner shall authorize the Architect/Engineer to work overtime to make up such lost time, and the Architect/Engineer's compensation shall be equitably adjusted. The Architect/Engineer shall provide prompt written notice to the Owner of such delay after the Architect/Engineer first recognizes such delay.

### 5.4 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES

5.4.1 The Owner and the Architect/Engineer waive claims against each other for consequential damages arising out of or relating to this Agreement, whether arising in contract, warranty, tort (including negligence), strict liability or otherwise, including but not limited to losses of use, profits, business, reputation or financing, except for those specific items of damages excluded from this waiver, as mutually agreed upon by the Parties and identified below. The Owner agrees to waive damages including but not limited to the Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit or financing related to the Project, as well as the loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project, or loss of reputation. The Architect/Engineer agrees to waive damages including but not limited to loss of business, loss of financing, principal office overhead and expenses, loss of profits not related to this Project or loss of reputation. The following items of damages are excluded from this mutual waiver:

5.4.1.1 The provisions of this Paragraph shall also apply to the termination of this Agreement and shall survive such termination. The Owner and the Architect/Engineer shall require similar

waivers in contracts with their consultants retained for the Project.

## ARTICLE 6

### COMPENSATION AND PAYMENTS

#### 6.1 COMPENSATION FOR BASIC SERVICES

6.1.1 For Basic Services as described in Paragraphs 3.1 and 3.2, the Owner shall compensate the Architect/Engineer on the following basis, including applicable sales taxes (Exclude options not applicable):

6.1.1.1 Stipulated Fee. The amount of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

6.1.1.2 Guaranteed Maximum Fee. The actual cost of the following:

- a. Architect/Engineer's personnel as listed in Exhibit B.
- b. Services of consultants at a multiple of \_\_\_\_\_ (\_\_\_\_\_) times the amount billed to the Architect/Engineer for such Services.
- c. Reimbursable Expenses incurred in connection with Basic Services.

The Architect/Engineer shall be compensated for the above costs up to a Guaranteed Maximum Fee of \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

6.1.1.3 Other basis of Fee:

#### 6.2 ADDITIONAL SERVICES AND REIMBURSABLE EXPENSES

6.2.1 The Architect/Engineer shall be compensated for Additional Services as described in Paragraph 3.3 on the following basis:

6.2.2 The Architect/Engineer shall be compensated for the Reimbursable Expenses described in Exhibit D at their actual cost, unless otherwise provided in Subparagraph 6.1.1.

#### 6.3 PAYMENTS

6.3.1 The Architect/Engineer shall submit to the Owner for its approval monthly applications for payment for Basic and Additional Services and Reimbursable Expenses, if any, with reasonable supporting detail. The Owner shall pay approved amounts no later than thirty (30) Days after the Architect/Engineer has submitted its applications for payment. No matter how computed in Paragraph 6.1, payments for Basic Services:

6.3.1.1 shall not exceed the following percentages of the total Fee for Basic Services at the completion of each Phase of the Architect/Engineer's Services:

Schematic Design Documents	_____ %
Design Development Documents	_____ %
Construction Documents	_____ %
Bidding or Negotiation Assistance	_____ %
Construction Phase	_____ %

**IMPORTANT:** A vertical line in the margin indicates a change has been made to the original text. Prior to signing, recipients may wish to request from the party producing the document a "redlined" version indicating changes to the original text. Consultation with legal and insurance counsel and careful review of the entire document are strongly encouraged.

ConsensusDOCS 803 • STANDARD AGREEMENT BETWEEN OWNER AND ARCHITECT/ENGINEER (Where a Construction Manager Acting As an Agent Has Been Retained by the Owner) Copyright © 2007, ConsensusDOCS LLC; revised May 2009. YOU ARE ALLOWED TO USE THIS DOCUMENT FOR ONE CONTRACT ONLY. YOU MAY MAKE 9 COPIES OF THE COMPLETED DOCUMENT FOR DISTRIBUTION TO THE CONTRACT'S PARTIES. ANY OTHER USES, INCLUDING COPYING THE FORM DOCUMENT, ARE STRICTLY PROHIBITED.

TOTAL 100%

or

6.3.1.2 shall not exceed the following lump sum amounts for each Phase of the Architect/Engineer's Services:

Schematic Design Documents	_____ Dollars	(\$ _____)
Design Development Documents	_____ Dollars	(\$ _____)
Construction Documents	_____ Dollars	(\$ _____)
Bidding or Negotiation Assistance	_____ Dollars	(\$ _____)
Construction Phase	_____ Dollars	(\$ _____)

Upon receipt of payment from the Owner, Architect/Engineer shall promptly make payment to its consultants as appropriate.

6.3.2 Prior to final payment to the Architect/Engineer, the Architect/Engineer shall furnish evidence satisfactory to the Owner that there are no claims, obligations or liens outstanding in connection with its Services. Acceptance of final payment shall constitute a waiver of all claims by the Architect/Engineer for compensation for its Services.

6.3.3 Should there be any claim, obligation or lien asserted before or after final payment is made that arises from the Architect/Engineer's Services, the Architect Engineer shall reimburse the Owner for any costs and expenses, including attorneys' fees, costs and expenses, incurred by the Owner in satisfying, discharging or defending against any such claim; obligation or lien, including any action brought or judgment recovered, provided the Owner is making payments or has made payments to the Architect/Engineer in accordance with the terms of this Agreement.

6.3.4 Should the Architect/Engineer or its consultants cause damage to the Project, or fail to perform or otherwise be in default under the terms of this Agreement, the Owner shall have the right to withhold from any payment due or to become due, or otherwise be reimbursed for, an amount sufficient to protect the Owner from any loss that may result. Payment of the amount withheld shall be made when the grounds for the withholding have been removed.

6.3.5 The Architect/Engineer's expense records shall be maintained in accordance with generally accepted accounting principles and shall be available to the Owner at mutually convenient times for all Services to be compensated on the basis of actual cost.

6.3.6 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

## ARTICLE 7

### INDEMNITY, INSURANCE AND WAIVERS

#### 7.1 INDEMNITY

7.1.1 ARCHITECT/ENGINEER'S INDEMNITY To the fullest extent permitted by law, the Architect/Engineer shall indemnify and hold harmless the Owner, the Owner's officers, directors, members, consultants, agents and employees, the Construction Manager, Trade Contractor, Subcontractors and Others (the Indemnitees) from and against all claims, losses, damages, liabilities, including reasonable attorneys' fees, costs and expenses, for bodily injury, sickness or

death, and property damage (other than to the Work itself), that may arise from the performance of or the failure to perform Services under this Agreement, but only to the extent caused by the negligent acts or omissions of the Architect/Engineer, the Architect/Engineer's consultants or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Architect/Engineer shall be entitled to reimbursement of any defense costs paid above Architect/Engineer's percentage of liability for the underlying claim to the extent provided for under Paragraph 7.1.2. Nothing in this indemnity shall be construed to limit the insurance obligations agreed to herein.

7.1.2 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Architect/Engineer, its officers, directors, members, consultants, agents, and employees, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured under Paragraph 7.3, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of work by Owner or Others, but only to the extent caused by the negligent acts or omissions of the Owner or Others. The Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for under Paragraph 7.1.1.

7.1.3 CONSTRUCTION MANAGER AND TRADE CONTRACTOR INDEMNITY The Owner shall cause the Construction Manager and Trade Contractors to agree to indemnify and hold harmless the Owner and the Architect/Engineer from all claims for bodily injury and property damage, other than to the Work itself and other property insured under Paragraph 7.3, that may arise from the Construction Manager's Services or the Trade Contractor's Work, but only to the extent that such claims result from the negligent acts or omissions of the Construction Manager or the Trade Contractor, respectively, or anyone for whose acts or omissions the Construction Manager or Trade Contractor, respectively, is liable. Such provisions shall be in a form no less protective of the Parties than the Construction Manager's Indemnity provided in ConsensusDOCS 801 (2007) or the Trade Contractor's indemnity provided in ConsensusDOCS 802 (2007) respectively, and shall be reasonably satisfactory to the Owner and the Architect/Engineer.

7.1.4 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of the Architect/Engineer, anyone directly or indirectly employed by the Architect/Engineer or anyone for whose acts the Architect/Engineer may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Architect/Engineer under Workers' Compensation acts, disability benefit acts or other employee benefit acts.

## 7.2 ARCHITECT/ENGINEER INSURANCE

7.2.1 Before commencing its Services and as a condition of payment, the Architect/Engineer shall purchase and maintain such insurance as will protect it from claims arising out of the performance of its Services under this Agreement, whether such Services are provided by the Architect/Engineer or by any of its consultants or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable.

7.2.2 The Architect/Engineer shall maintain in effect all insurance coverage required under Subparagraph 7.2.1 with insurance companies lawfully authorized to do business in the jurisdiction in which the Project is located and which is reasonably satisfactory to the Owner:

7.2.2.1 Workers' Compensation and Employers' Liability Insurance in accordance with the laws of the State in which the Project is located and wherever the Architect/Engineer's

Services are being performed. Employers' Liability coverage shall be written with at least the following limits of liability:

- a. \$ \_\_\_\_\_ Bodily Injury by Accident Each Accident
- b. \$ \_\_\_\_\_ Bodily Injury by Disease Policy Limit
- c. \$ \_\_\_\_\_ Bodily Injury by Disease Each Employee

7.2.2.2 Commercial General Liability Insurance, including contractual liability insurance for the liability assumed in Subparagraph 7.1.1, with at least the following limits of liability:

- a. \$ \_\_\_\_\_ Each occurrence limit
- b. \$ \_\_\_\_\_ General aggregate
- c. \$ \_\_\_\_\_ Products/Completed Operations aggregate
- d. \$ \_\_\_\_\_ Personal and Advertising Injury Limit

7.2.2.3 Business Automobile Liability Insurance with at least the following limit of liability:

- a. \$ \_\_\_\_\_ Each Accident

7.2.3 The Architect/Engineer shall require its consultants to maintain Business General Liability and Business Automobile Liability coverage with a company satisfactory to the Owner and with limits acceptable to the Owner.

7.2.4 PROFESSIONAL LIABILITY INSURANCE The Architect/Engineer shall maintain Professional Liability Insurance with a company satisfactory to the Owner for claims arising from the negligent performance of professional Services under this Agreement, which shall be either:

- \_\_\_\_\_ Practice Policy
- \_\_\_\_\_ Project Specific Coverage

written for not less than \$ \_\_\_\_\_ per claim and in the aggregate with a deductible not to exceed \$ \_\_\_\_\_. The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all Services performed by the Architect/Engineer for this Project. If Project Specific Coverage is used, these requirements shall be continued in effect for \_\_\_\_\_ (\_\_\_\_\_) year(s) following final payment to the Architect/Engineer. The deductible shall be paid by the Architect/Engineer.

7.2.5 Consultants retained by the Architect/Engineer for this Project shall maintain Professional Liability Insurance with a company and for such amounts as are satisfactory to the Owner for claims arising from the negligent performance of their professional Services, which shall be either:

- \_\_\_\_\_ Practice Policy
- \_\_\_\_\_ Project Specific Coverage

The Professional Liability Insurance shall contain prior acts coverage sufficient to cover all Services performed by the consultants for this Project. If Project Specific Coverage is used, these requirements shall be continued in effect for \_\_\_\_\_ (\_\_\_\_\_) year(s) following final payment to the Architect/Engineer. Deductibles shall be paid by the Architect/Engineer.

7.2.6 The Architect/Engineer shall furnish to the Owner certificates of insurance evidencing the

required coverages listed in this Paragraph 7.2 and a copy of its Professional Liability policy. No policy shall be cancelled or modified without thirty (30) Days prior written notice to the Owner. Such requirement for prior written notice does not apply to modifications caused by claims made against the policy. The Architect/Engineer and its Professional Liability insurance carrier shall notify the Owner within thirty (30) Days of any claims made or loss expenses incurred against the Professional Liability policy. The Owner shall have the right to notify directly the Architect/Engineer's Professional Liability insurance carrier of a claim against the policy. The Professional Liability policies shall be continued in effect for \_\_\_\_\_ (\_\_\_\_\_) year(s) following final payment to the Architect/Engineer.

### 7.3 PROPERTY INSURANCE

7.3.1 The Owner shall provide property insurance that names the Architect/Engineer and its consultants as named additional insureds. The Owner shall furnish to the Architect/Engineer certificates of insurance evidencing such coverages.

7.3.2 The Owner and Architect/Engineer waive all rights against each other and the Trade Contractor, Subcontractors, and Sub-subcontractors for loss or damage to the extent covered by property insurance, except such rights as they may have to the proceeds of such insurance. The Owner and the Architect/Engineer shall require similar waivers from all of their consultants retained for the Project.

## ARTICLE 8 TERMINATION

8.1 TERMINATION BY EITHER PARTY Either Party may terminate this Agreement upon seven (7) Days' written notice if the other Party materially breaches its terms through no fault of the initiating Party.

8.2 TERMINATION BY OWNER FOR CONVENIENCE Upon seven (7) Days' written notice, the Owner may, without cause, terminate this Agreement with the Architect/Engineer. If this Agreement is terminated pursuant to this Paragraph, the Architect/Engineer may recover from the Owner payment for all Services performed in accordance with this Agreement, and any proven loss, cost or expense in connection with the Services, including those resulting from the termination, and a premium as set forth in the schedule below (Insert here the schedule agreed to by the Parties):

## ARTICLE 9 DISPUTE MITIGATION AND RESOLUTION

9.1 CONTINUANCE OF SERVICES AND PAYMENT Unless otherwise agreed in writing, the Architect/Engineer shall continue to perform its Services during any dispute mitigation or resolution proceeding. If the Architect/Engineer continues to perform, the Owner shall continue to make payments in accordance with this Agreement for amounts not in dispute.

9.2 DIRECT DISCUSSIONS If the Parties cannot reach resolution on a matter relating to or arising out of the Agreement, the Parties shall endeavor to reach resolution through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such matter and who shall record the date of first discussions. If the Parties' representatives are not able to resolve such matter within five (5) business Days of the date of first discussion, the Parties' representatives shall immediately inform senior executives of the Parties in writing that resolution was not affected. Upon



receipt of such notice, the senior executives of the Parties shall meet within five (5) business Days to endeavor to reach resolution. If the dispute remains unresolved after fifteen (15) Days from the date of first discussion, the Parties shall submit such matter to the dispute mitigation and dispute resolution procedures selected herein.

9.3 MITIGATION If the Parties select one of the dispute mitigation procedures provided in this Paragraph 9.3, disputes remaining unresolved after direct discussions shall be directed to the selected mitigation procedure. The dispute mitigation procedure shall result in a nonbinding finding on the matter, which may be introduced as evidence at a subsequent binding adjudication of the matter, as designated in Paragraph 9.5. The Parties agree that the dispute mitigation procedure shall be:

(Designate only one:)

Project Neutral

Dispute Review Board

9.3.1 MITIGATION PROCEDURES The Project Neutral/Dispute Review Board shall be mutually selected and appointed by the Parties and shall execute a retainer agreement with the Parties establishing the scope of the Project Neutral's/Dispute Review Board's responsibilities. The costs and expenses of the Project Neutral/Dispute Review Board shall be shared equally by the Parties. The Project Neutral/Dispute Review Board shall be available to either Party, upon request, throughout the course of the Project, and shall make regular visits to the Project so as to maintain an up-to-date understanding of the Project progress and issues and to enable the Project Neutral/Dispute Review Board to address matters in dispute between the Parties promptly and knowledgeably. The Project Neutral/Dispute Review Board shall issue nonbinding finding(s) within five (5) business Days of referral of the matter to the Project Neutral, unless good cause is shown.

9.3.2 If the matter remains unresolved following the issuance of the nonbinding finding by the mitigation procedure or if the Project Neutral/Dispute Review Board fails to issue nonbinding findings within five (5) business Days of the referral, the Parties shall submit the matter to the binding dispute resolution procedure designated in Paragraph 9.5.

9.4 MEDIATION If direct discussions pursuant to Paragraph 9.2 do not result in resolution of the matter and no dispute mitigation procedure is selected under Paragraph 9.3, the Parties shall endeavor to resolve the matter by mediation through the current Construction Industry Mediation Rules of the American Arbitration Association, or the Parties may mutually agree to select another set of mediation rules. The administration of the mediation shall be as mutually agreed by the Parties. The mediation shall be convened within thirty (30) Days of the matter first being discussed and shall conclude within forty-five (45) business Days of the matter first being discussed. Either Party may terminate the mediation at any time after the first session, but the decision to terminate shall be delivered in person by the terminating Party to the non-terminating Party and to the mediator. The costs of the mediation shall be shared equally by the Parties.

9.5 BINDING DISPUTE RESOLUTION If the matter remains unresolved after submission of the matter to a mitigation procedure or to mediation, the Parties shall submit the matter to the binding dispute resolution procedure selected herein.

(Designate only one:)

Arbitration using the current Construction Industry Arbitration Rules of the American Arbitration Association or the Parties may mutually agree to select another set of arbitration rules. The administration of the arbitration shall be as mutually agreed by the Parties.

\_\_\_\_\_ Litigation in either the state or federal court having jurisdiction of the matter in the location of the Project.

9.5.1 The costs of any binding dispute resolution processes shall be borne by the non-prevailing Party, as determined by the adjudicator of the dispute.

9.5.2 VENUE The venue of any binding dispute resolution procedure shall be the location of the Project unless the Parties agree on a mutually convenient location.

9.6 MULTIPARTY PROCEEDINGS The Owner and Architect/Engineer agree that all Parties necessary to resolve a matter shall be parties to the same dispute resolution procedure. Appropriate provisions shall be included in all other contracts relating to the Project to provide for the joinder or consolidation of such dispute resolution procedures.

9.7 LIEN RIGHTS Nothing in this Article 9 shall limit any rights or remedies not expressly waived by the Architect/Engineer that the Architect/Engineer may have under lien laws.

## ARTICLE 10

### MISCELLANEOUS PROVISIONS

10.1 OWNERSHIP OF TANGIBLE DOCUMENTS The Owner shall receive ownership of the property rights, except for copyrights, of all documents, drawings, specifications, electronic data and information (hereinafter "Documents") prepared, provided or procured by the Architect/Engineer or by consultants retained by the Architect/Engineer and distributed to the Owner for this Project, upon the making of final payment to the Architect/Engineer or in the event of termination under Article 8, upon payment for all sums due to Architect/Engineer pursuant to Paragraphs 8.1 and 8.2.

10.1.1 COPYRIGHT The Parties agree that Owner \_\_\_\_\_ shall/ \_\_\_\_\_ shall not (indicate one) obtain ownership of the copyright of all Documents. The Owner's acquisition of the copyright for all Documents shall be subject to the making of payments as required by Paragraph 10.1 and the payment of the fee reflecting the agreed value of the copyright set forth below:

If the Parties have not made a selection to transfer copyright interests in the Documents, the copyright shall remain with the Architect/Engineer.

10.1.2 USE OF DOCUMENTS IN EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to Article 8, the Owner shall have the right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under Subparagraph 10.1.1, provided payment has been made pursuant to Paragraph 10.1.

10.1.3 OWNER'S USE OF DOCUMENTS AFTER COMPLETION OF PROJECT After completion of the Project, the Owner may reuse, reproduce or make derivative works from the Documents solely for the purposes of maintaining, renovating, remodeling or expanding the Project at the Worksite. The Owner's use of the Documents without the Architect/Engineer's involvement or on other projects is at the Owner's sole risk, except for the Architect/Engineer's indemnification obligations pursuant to Paragraph 3.9, and the Owner shall defend, indemnify and hold harmless the Architect/Engineer and its consultants, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from such any prohibited use.

10.1.4 ARCHITECT/ENGINEER'S USE OF DOCUMENTS Where the Architect/Engineer has transferred its copyright interest in the Documents under Subparagraph 10.1.1, the Architect/Engineer may reuse Documents prepared by it pursuant to this Agreement in its practice, but only in their separate constituent parts and not as a whole.

10.1.5 The Architect/Engineer shall obtain from its consultants rights and rights of use that correspond to the rights given by the Architect/Engineer to the Owner in this Agreement and the Architect/Engineer shall provide evidence that such rights have been secured.

10.2 ELECTRONIC DOCUMENTS If the Owner requires that the Owner, Architect/Engineer, Construction Manager and Trade Contractor exchange documents and data in electronic or digital form, prior to any such exchange, the Owner, Architect/Engineer, Construction Manager and Trade Contractor shall agree on a written protocol governing all exchanges in ConsensusDOCS 200.2 or a separate Agreement, which, at a minimum, shall specify: (1) the definition of documents and data to be accepted in electronic or digital form or to be transmitted electronically or digitally; (2) management and coordination responsibilities; (3) necessary equipment, software and Services; (4) acceptable formats, transmission methods and verification procedures; (5) methods for maintaining version control; (6) privacy and security requirements; and (7) storage and retrieval requirements. Except as otherwise agreed to by the Parties in writing, each Party shall bear its own costs for requirements identified in the protocol. In the absence of a written protocol, use of documents and data in electronic or digital form shall be at the sole risk of the recipient.

10.3 ASSIGNMENT Neither the Owner nor the Architect/Engineer shall assign their interest in this Agreement without the written consent of the other except as to the assignment of the proceeds.

10.4 GOVERNING LAW AND VENUE This Agreement shall be governed by the law in effect at the location of the Project. The venue for any dispute resolution proceeding shall be the location of the Project unless the Parties agree otherwise.

10.5 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

10.6 NO WAIVER OF PERFORMANCE The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

10.7 TITLES The title given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

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

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

10.10 OTHER PROVISIONS:

## ARTICLE 11

**SCHEDULE OF EXHIBITS**

The attached Exhibits are part of this Agreement:

EXHIBIT A: Owner's Program and other relevant data defining the Project as set forth in Article 2, dated \_\_\_\_\_, \_\_\_\_\_ page(s), and information as set forth in Subparagraph 4.1.1, dated \_\_\_\_\_, \_\_\_\_\_ page(s).

EXHIBIT B: Direct Personnel Expense Rates, dated \_\_\_\_\_, \_\_\_\_\_ page(s).

EXHIBIT C: Key Project Personnel, dated \_\_\_\_\_, \_\_\_\_\_ page(s).

EXHIBIT D: Reimbursable Expenses, dated \_\_\_\_\_, \_\_\_\_\_ page(s).

EXHIBIT E: Dispute Resolution Menu, one page.

EXHIBIT F: Schedule of Worksite visits (if required), dated \_\_\_\_\_, \_\_\_\_\_ page(s).

This Agreement entered into as of the date entered in Article 1.

ATTEST: .....

OWNER: \_\_\_\_\_

BY: .....

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

ATTEST: .....

ARCHITECT/ENGINEER: \_\_\_\_\_

BY: .....

PRINT NAME: \_\_\_\_\_

PRINT TITLE: \_\_\_\_\_

**IMPORTANT:** A vertical line in the margin indicates a change has been made to the original text. Prior to signing, recipients may wish to request from the party producing the document a "redlined" version indicating changes to the original text. Consultation with legal and insurance counsel and careful review of the entire document are strongly encouraged.

ConsensusDOCS 803 • STANDARD AGREEMENT BETWEEN OWNER AND ARCHITECT/ENGINEER (Where a Construction Manager Acting As an Agent Has Been Retained by the Owner) Copyright © 2007, ConsensusDOCS LLC; revised May 2009. YOU ARE ALLOWED TO USE THIS DOCUMENT FOR ONE CONTRACT ONLY. YOU MAY MAKE 9 COPIES OF THE COMPLETED DOCUMENT FOR DISTRIBUTION TO THE CONTRACT'S PARTIES. ANY OTHER USES, INCLUDING COPYING THE FORM DOCUMENT, ARE STRICTLY PROHIBITED.

**Amendments to the Contract  
ConsensusDOCS 803  
Standard Agreement Between Owner and Architect/Engineer**

Article 10.1.2: Omit Article 10.1.2 in its entirety and substitute the following:

USE OF DOCUMENTS IN THE EVENT OF TERMINATION In the event of a termination of this Agreement pursuant to Article 8, the Owner shall have the absolute right to use, to reproduce, and to make derivative works of the Documents to complete the Project, regardless of whether there has been a transfer of copyright under Subparagraph 10.1.1. Disputes of payment will be resolved in accordance with Article 9, Dispute Mitigation and Resolution.

Article 10.2 Add the following to this article:

Documents and data in electronic or digital form shall be Electronically Accessible Files. Electronically Accessible Files means, in the case of drawings, electronic data files in an industry standard version of Auto CAD compatible data, with all layers fully accessible (not "plot" files); in the case of specifications, fully accessible documents in an MS Word compatible electronic format (not "password-protected" files); and in the case of correspondence, approvals submittals, documents in their native electronic format as it resides on the electronic storage media in the Architect's or Engineer's office.

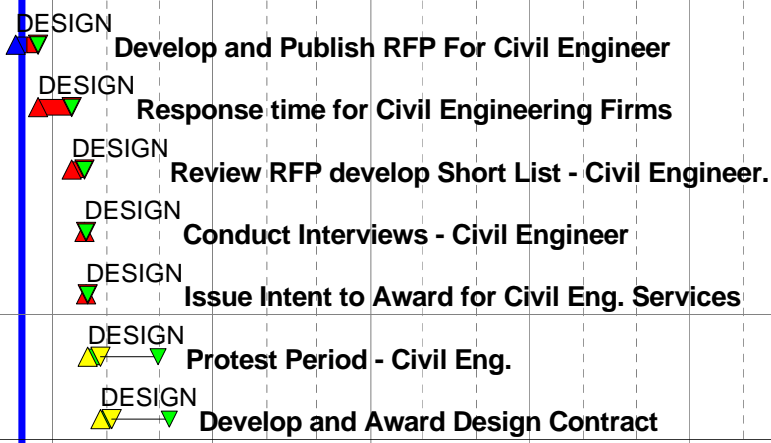
**General**

**Design Team Selection**

**Civil Engineer Selection**

15	0	10SEP10A	22SEP10	10SEP10A	22SEP10
13	0	23SEP10	11OCT10	23SEP10	11OCT10
5	0	12OCT10	18OCT10	12OCT10	18OCT10
1	0	19OCT10	19OCT10	19OCT10	19OCT10*
1	0	20OCT10	20OCT10	20OCT10	20OCT10*
5	21	21OCT10	27OCT10	19NOV10	29NOV10
5	21	28OCT10	03NOV10	30NOV10	06DEC10

RFP 2010-3 Attachment C

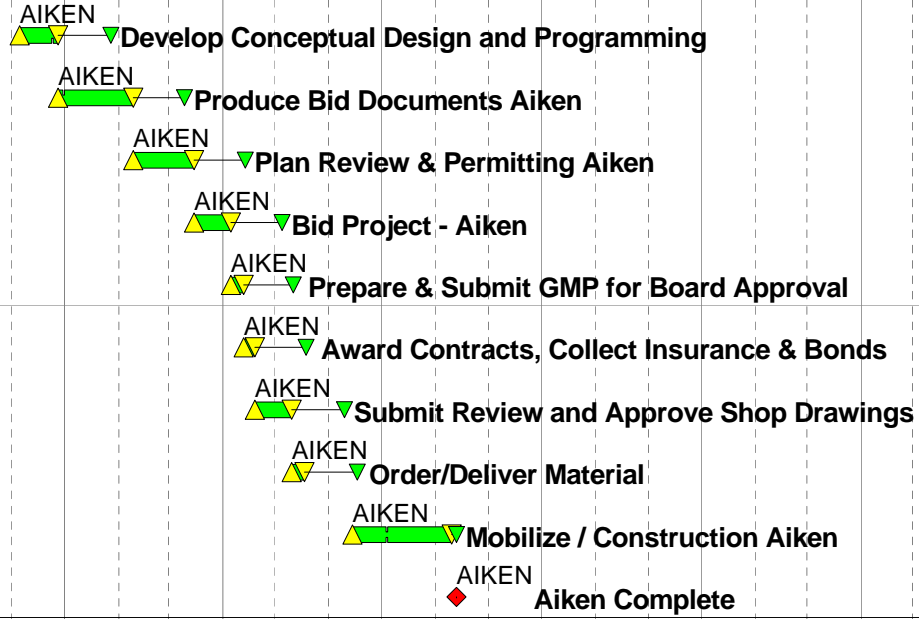


**Elementary School Projects**

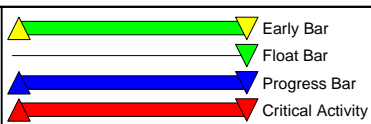
**Aiken Drop Off**

**Bus Loop**

15	21	06DEC10	27DEC10	06JAN11	26JAN11
30	21	28DEC10	08FEB11	27JAN11	09MAR11
25	21	09FEB11	15MAR11	10MAR11	13APR11
15	21	16MAR11	05APR11	14APR11	04MAY11
5	21	06APR11	12APR11	05MAY11	11MAY11
5	21	13APR11	19APR11	12MAY11	18MAY11
15	21	20APR11	10MAY11	19MAY11	09JUN11
5	21	11MAY11	17MAY11	10JUN11	16JUN11
40	2	15JUN11	10AUG11	17JUN11	12AUG11
0	0		12AUG11*		12AUG11*



Start Date	19JUL10
Finish Date	24AUG12
Data Date	13SEP10
Run Date	20SEP10 14:27



OSD1

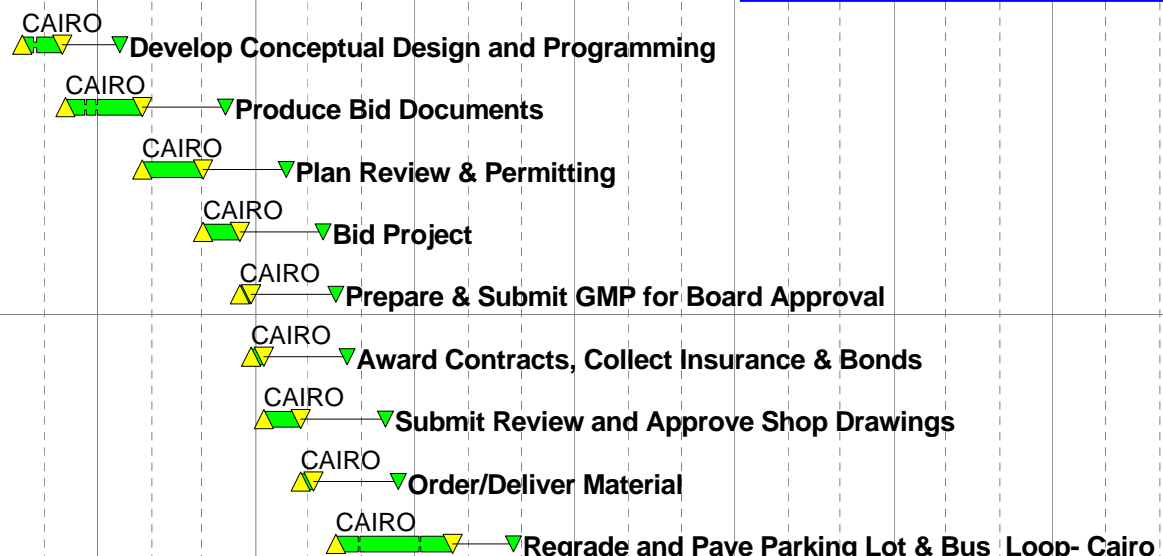
Sheet 1 of 2

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Ontario School District  
Bond Schedule

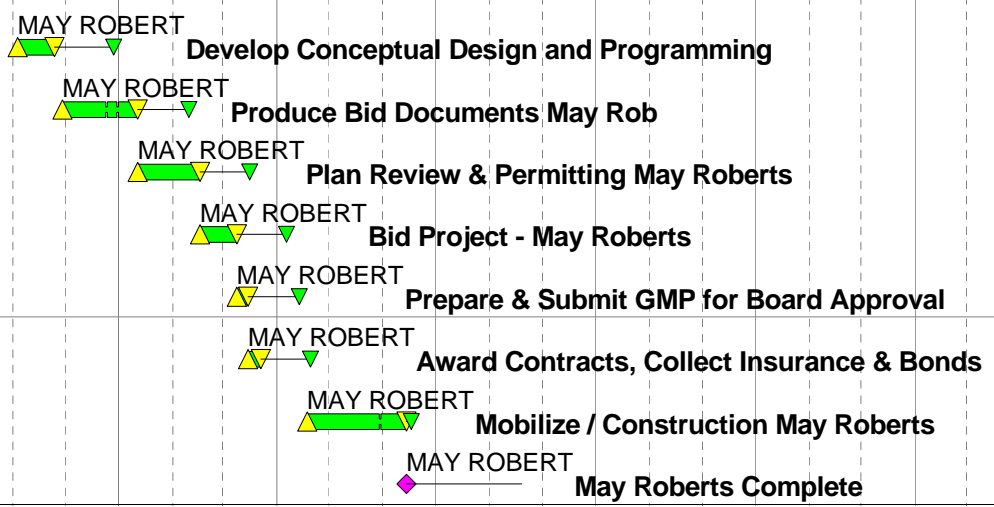
Date	Revision	Checked	Approved
10SEP10	Original Draft	DR	AE
15SEP10	Design Selection Revisions	DR	AE

Orig Dur	Total Float	Early Start	Early Finish	Late Start	Late Finish
<b>Cairo Elementary. Upgrades</b>					
<b>Pave Parking Lot</b>					
15	21	18NOV10	10DEC10	21DEC10	12JAN11
30	34	13DEC10	25JAN11	01FEB11	14MAR11
25	34	26JAN11	01MAR11	15MAR11	18APR11
15	34	02MAR11	22MAR11	19APR11	09MAY11
5	34	23MAR11	29MAR11	10MAY11	16MAY11
5	34	30MAR11	05APR11	17MAY11	23MAY11
15	34	06APR11	26APR11	24MAY11	14JUN11
5	34	27APR11	03MAY11	15JUN11	21JUN11
47	25	17MAY11*	22JUL11	22JUN11	26AUG11

RFP 2010-3 Attachment C



Orig Dur	Total Float	Early Start	Early Finish	Late Start	Late Finish
<b>May Roberts Elementary - Drop Off</b>					
<b>Bus Loop</b>					
15	21	04NOV10	24NOV10	07DEC10	28DEC10
30	21	29NOV10	11JAN11	29DEC10	09FEB11
25	21	12JAN11	15FEB11	10FEB11	16MAR11
15	21	16FEB11	08MAR11	17MAR11	06APR11
5	21	09MAR11	15MAR11	07APR11	13APR11
5	21	16MAR11	22MAR11	14APR11	20APR11
40	2	19APR11*	14JUN11	21APR11	16JUN11
0	47		14JUN11		19AUG11*



Start Date 19JUL10  
 Finish Date 24AUG12  
 Data Date 13SEP10  
 Run Date 20SEP10 14:27

OSD1

Sheet 2 of 2

**Prepared by CM Company, Inc.  
 Ontario School District  
 Bond Schedule**

Date	Revision	Checked	Approved
10SEP10	Original Draft	DR	AE
15SEP10	Design Selection Revisions	DR	AE