

Agreement Between Owner and Construction Manager

AGREEMENT

made this

_____ day of _____ in the year of 20__

BETWEEN The Owner: **Leoni Township**
 913 Fifth Street
 Michigan Center, MI 49254

and The Construction Manager: **F&V CONSTRUCTION MANAGEMENT, INC.**
(hereinafter referred to as the "CM") **2960 Lucerne Drive SE**
 Grand Rapids, MI 49546

For services in connection with the Project known as: **WWTP Headworks Odor Control Improvements**, as further described in Article 2.

The Owner and CM agree as set forth below:

ARTICLE I RELATIONSHIP OF THE PARTIES

1.1 Owner and Construction Manager

The CM and the Owner shall perform as stated in this Agreement and both CM and Owner accept the relationship between them that is established by this Agreement.

1.2 Owner and Design Professional

The Owner has contracted separately with Fleis & VandenBrink Engineering, Inc. (F&V) as the Design Professional to provide architectural and engineering design for the Project. The Project is defined in Article 2 of this Agreement.

1.3 Owner and Contractors

The Owner will require the CM to contract directly with such Contractors as may be necessary for construction or material supply for the Project. All such contracts shall be issued consistent with the applicable provisions of this Agreement.

1.4 Relationship of the CM to Other Project Participants

In providing Construction Management Services described in this Agreement, the Owner and the CM recognize that F&V is the Design Professional for this project. The Design Professional is solely responsible for the Project design and shall perform in accordance with the Design Professional agreement with the Owner and nothing in this Agreement shall be construed to mean that the CM is responsible for the design of the Project or that the CM assumes any of the contractual or customary responsibilities or duties of the Design Professional or any other persons or parties not specified by this Agreement.

- 1.4.1 The CM and Owner also acknowledge that there is a degree of common ownership of CM and F&V. However, the CM and F&V have distinct responsibilities for certain parts of this Project – F&V as the Design Professional as described in Section 1.2 and CM as the construction manager in accordance with this Agreement.

ARTICLE 2
PROJECT DEFINITION

- 2.1 The term "Project" when used in this Agreement shall mean the total construction to be performed under this Agreement. The term "Work required for the Project" used in this Agreement shall mean the various parts of the total construction to be performed under this Agreement.

The Project name and locations are as follows:

Design as prepared by Fleis & VandenBrink Engineering, entitled "WWTP Headworks Odor Control Improvements". Project site is located at the Leoni Township Wastewater Treatment Plant, 8401 Page Avenue, Jackson, Michigan 49201.

ARTICLE 3
CONSTRUCTION MANAGER'S
BASIC SERVICES

3.1 CM Basic Services

The CM shall perform the Basic Services described herein as follows:

3.1.1 Design Phase Not Applicable.

3.1.2 Procurement (Bidding) Phase

- 3.1.2.1 The CM shall prepare bid documents, as applicable, for the various trades or combination of trades to be bid by bidders, utilizing design documents prepared by the Design Professional.
- 3.1.2.2 The CM shall prepare and place public advertisement(s) to solicit bids on the various trades or combination of trades involved in construction of the Project.
- 3.1.2.3 The CM shall conduct a correspondence campaign to attempt to create interest among qualified bidders.
- 3.1.2.4 The CM shall expedite the delivery of bid documents to interested bidders and shall maintain a record of bidders receiving bid documents.
- 3.1.2.5 The CM shall, under subcontract with the Design Professional, conduct a Pre-Bid Conference to review with the potential bidders the Project requirements, including information concerning schedule requirements, time and cost control requirements, access requirements, coordination and interface requirements with other contractors, administrative requirements, and technical information.
- 3.1.2.6 The CM shall, in conjunction with the Design Professional, prepare addenda, as applicable, to address questions received from potential bidders, and shall distribute a copy of all addenda to each potential bidder receiving bid documents. By doing so, the CM is not acting in a manner as to assume responsibility or liability, in whole or in part, for the Project design or the content of the design documents.
- 3.1.2.7 The CM shall conduct a bid opening, shall review and tabulate the bids received, and shall evaluate the bids to determine the lowest responsive and responsible bidders for each trade or combination of trades. The CM shall make recommendations to the Owner concerning the acceptance or rejection of bids.
- 3.1.2.8 The CM shall prepare the Cost of the Project including the cost of trade contractors based on the recommended bidders, general conditions, contract allowance items, on-site superintendent, construction engineering/staking/testing, a contingency amount, if any, and CM Overhead and Fee, and present a Contract Agreement or an amendment to the Contract Agreement for construction of the Project to the Owner for approval.

3.1.3 Construction Phase

- 3.1.3.1 Provide administrative, management and related services as required to coordinate the Work of the Contractors with each other and with the activities and responsibilities of the CM and the Owner and endeavor to complete the Project in accordance with the Project requirements.
- 3.1.3.2 Schedule and conduct pre-construction, and construction progress meetings to discuss such matters as Project requirements, procedures, coordination requirements, scheduling, and other related matters. Prepare and distribute meeting minutes to participants and other interested parties.
- 3.1.3.3 Endeavor to achieve satisfactory performance from each of the Contractors, recommend courses of action to the Owner when requirements of the Contract Documents are not being fulfilled and when the non-performing party will not take satisfactory corrective action.
- 3.1.3.4 Recommend necessary or desirable changes to the Owner, review requests for change, assist in negotiating Contractor's proposals, submit recommendations to the Owner, and if they are accepted, prepare change orders for the Owner's authorization.
- 3.1.3.5 Determine in general that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents. Endeavor to guard the Owner against defects and deficiencies in the Work. Reject Work that does not conform to the requirements of the Contract Documents.
- 3.1.3.6 Receive Certificates of Insurance from the Contractors and provide copies to the Owner.
- 3.1.3.7 Provide, under subcontract with the Design Professional and/or other independent firm(s), construction engineering consisting of engineering consultation as needed, review of shop drawings, construction staking, materials testing, equipment start-up, preparation of contractor punch-list(s), and preparation of record drawings.
- 3.1.3.8 Provide on-site management to provide contract administration and to establish and implement coordination and communication procedures among the CM, Owner, Design Professional, and Contractors.
- 3.1.3.9 Receive from the Contractors operation and maintenance manuals, warranties and guarantees for materials and equipment installed in the Project, in accordance with the Contract Documents, and bind such documents in an organized manner. This information shall be provided to the Owner.
- 3.1.3.10 Obtain information from the Contractors for preparation of record drawings and provide a copy to the Owner.

3.2 Additional Services

- 3.2.1 After authorization from the Owner, the CM shall perform the following Additional Services and shall be compensated for same as provided in Article 7 of this Agreement.
 - 3.2.1.1 Services related to investigation, appraisal or evaluation of existing conditions, facilities or equipment or determination of the accuracy of existing drawings or other information furnished by the Owner.
 - 3.2.1.2 Services related to procurement, storage, maintenance and installation of Owner-furnished equipment, materials, supplies and furnishings.
 - 3.2.1.3 Services related to interfacing or working with consultants or third parties that are beyond the scope of this Agreement.
 - 3.2.1.4 Services related to building site investigations and analysis.
 - 3.2.1.5 Performance of testing over and above the testing identified in the CM's proposal.
 - 3.2.1.6 Preparation of an Operations and Maintenance Manual.
 - 3.2.1.7 Services related to recruiting and training of maintenance personnel.
 - 3.2.1.8 Performance of inspections or warranty inspections after the Construction Phase is complete.
 - 3.2.1.9 Services made necessary by the default of a Contractor.

3.2.1.10 Preparation for and serving as a witness in connection with any public or private hearing or arbitration mediation or legal proceeding.

3.2.1.11 Any other Work or Service not covered in the scope of services described in Article 3.1.

3.3 Record-Keeping

3.3.1 CM shall archive and make available to Owner construction documents dealing with this project including, but not limited to, bid documents, contracts, change orders, written correspondence (including electronically) with and between CM and third-parties involved in the construction. Documents not subject to requests under the Michigan Freedom of Information Act are exempt from this requirement.

ARTICLE 4 DURATION OF THE CONSTRUCTION MANAGER'S SERVICES

4.1 The duration of the CM's Basic Services under this Agreement shall be 460 consecutive calendar days from the commencement date.

4.1.1 The commencement date for the CM's Basic Services shall be the date of the execution of this Agreement by the Owner as stated herein or the date on which the Owner issues to the CM a written instruction to proceed with Basic Services, whichever is earlier.

4.1.2 The CM's Basic Services shall be performed for the periods of time indicated in this Agreement. It is acknowledged by CM and Owner that some of the phase durations may overlap.

4.1.2.1 The CM's Basic Services during the Bid and Award Phase shall be performed for a period of 93 Days.

4.1.2.2 The CM's Basic Services during the Construction Phase shall be performed for a period of 322 Days.

4.1.2.3 The CM's Basic Services during the Post-Construction Phase shall be performed for a period of 45 Days.

ARTICLE 5 CHANGES

5.1 Owner Changes

5.1.1 The Owner, without invalidating this Agreement, may make Changes in the CM's Basic Services specified in Article 3.1 of this Agreement. The CM shall promptly notify the Owner of changes which increase or decrease the CM's compensation, or the duration of the CM's Basic Services, or both.

5.1.2 Additional Compensation and Extended Duration

The CM shall be entitled to receive additional compensation and additional time when the scope of Basic Services is increased or extended through no fault of the CM or because of changed conditions associated with the Project. If the scope of the Basic Services is increased or the duration of the CM's Basic Services is extended or the duration of the Basic Services to be performed within a phase duration specified in Article 4 is extended, the CM shall be entitled to receive additional compensation, and the duration of the Agreement shall be extended. A request for additional compensation shall be given by the CM to the Owner within thirty (30) days of the occurrence of the event giving rise to such request. The amount of additional compensation to be paid and the amount of the extension of the duration of this Agreement shall be determined based on the CM's cost, an adjustment in the CM's fee consistent with the provisions of Article 7, and a determination of the length of the extensions of the duration of this Agreement.

5.1.3 Changes in the CM's Basic Services

Changes in CM's Basic Services and entitlement to additional compensation shall be made by an amendment to this Agreement approved by the Owner and the CM.

5.1.4 Changes in Conditions

Pursuant to Section 5.1.2 above, additional time or additional compensation may be due to CM as a result of a change in conditions associated with the Project. A change in conditions shall include, but not be limited to the following:

- 5.1.4.1 Encumbrances or restrictions not of general application but specifically related to the use of the site of the Project.
- 5.1.4.2 Subsurface or physical conditions associated with the site of the Project that: (i) differ materially from those conditions disclosed to CM by Owner; or (ii) are of an unusual nature and differ materially from those encountered and generally recognized as inherent in the work required for the Project.
- 5.1.4.3 Hazardous environmental conditions associated with the site of the Project that: (i) differ materially from environmental conditions disclosed to CM by Owner; or (ii) are of an unusual nature and differ materially from those encountered and generally recognized as inherent in the work required for the Project.
- 5.1.4.4 Any event or circumstance that is beyond the control of CM and the Contractors of CM, including but not limited to, acts or neglect by Owner, acts or neglect by utility owners or other contractors performing work as contemplated on the Project, fires, floods, abnormal weather conditions or acts of God.

5.1.5 Payment of Additional Compensation

The CM shall submit invoices for additional compensation with its invoice for Basic Services and payment shall be made pursuant to the provisions of Article 7 of this Agreement.

ARTICLE 6 OWNER'S RESPONSIBILITIES

- 6.1 The Owner shall provide to the CM complete information regarding the Owner's requirements for the Project.
- 6.2 The Owner shall examine information submitted by the CM and shall render decisions thereto promptly.
- 6.3 The Owner shall furnish design, legal, accounting and insurance counseling services as may be necessary for the Project.
- 6.4 The Owner shall furnish insurance for the Project as specified in Article 8.
- 6.5 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformity with the Contract Documents, the Owner shall give prompt written notice thereof to the CM.
- 6.6 The Owner shall furnish required information and approvals and perform its responsibilities and activities in a timely manner to facilitate orderly progress of the work in cooperation with the CM, consistent with this Agreement, and in accordance with the planning and scheduling requirements and budgetary restraints of the Project as determined by the CM.
- 6.7 If the Owner contracts separately with any other parties, the Owner shall cause all such agreements to be compatible and consistent with this Agreement. Each of the agreements shall include waiver of subrogation.
- 6.8 The Owner shall in a timely manner secure, submit and pay for necessary approvals, easements, assessments, permits and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities unless otherwise mutually agreed by the Owner and CM.
- 6.9 The Owner, its representatives and consultants shall communicate with the Contractors only through the CM.
- 6.10 The Owner shall designate an officer, employee or other authorized representatives to act in the Owner's behalf with respect to the Project. The Owner's representative for the Project is the **Township Supervisor unless otherwise designated by the Township Board.**

This representative shall have the authority to approve changes in the scope of the Project and shall be available as may be required to render decisions and furnish information in a timely manner.

- 6.11 The Owner shall make payments to the CM on the basis of the Contractors payment applications presented by the CM and on the basis of the CM invoices for its services performed, and in accordance with MCLA §125.1561, et seq.

ARTICLE 7
COMPENSATION FOR CM
SERVICES AND PAYMENT

7.1 NOT USED

7.2 Compensation to the CM

The total compensation to CM shall consist of four components: (1) compensation for Basic Services described in Article 3.1 above, (2) reimbursement for all "Costs of the Project" defined in Article 7.5 (3) General Conditions costs, and (4) the CM overhead and profit fee.

- 7.2.1 Subject to adjustment as provided for in Article 5.1.2, and for any Additional Services provided approved by Owner in accordance with Article 3.2, the compensation for Basic Services set forth in Exhibit A is a lump sum amount to be billed monthly on a progress completion basis.
- 7.2.2 The General Conditions costs are estimated and shown on Exhibit A attached and will be paid on either of the following basis:
A Lump sum payment in the amount of **\$110,000.00** will be paid based on a percentage completion of the Work in accordance with the payment provisions of this Agreement, subject to adjustment under Articles 5.1.2 and 3.2.
- 7.2.2.1 CM shall provide performance bonds and payment bonds for the project with Owner named as the specific entity protected by said bonds.
- 7.2.3 The CM overhead and profit fee shall be calculated as a total of all accepted bids, and expenses related to General Conditions, multiplied by a factor of **8.50%** as a fixed fee shown in the completed Exhibit A. The fixed fee shall not be increased or reduced by changes during construction unless the Owner expands the project scope or as otherwise negotiated.
- 7.2.4 Any additional services or costs incurred by CM on behalf of the Project and requested by the Owner, not addressed above, shall be performed on a cost plus **8.50%** basis.
- 7.2.5 As part of the compensation, and as part of the budgetary process for this Project, a CM Contingency Allowance and Owner's Contingency has been established for the project, as shown on Exhibit A.
- 7.2.5.1 The CM Contingency Allowance is available for CM's exclusive use for unanticipated costs it has incurred. By way of example, and not as a limitation, such costs are shown below. The Owner's Contingency is to be used for costs that are covered by Change Order and are identified in Section 5.1.4. Changes in Conditions.
(a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials costs; (d) correction of defective, damaged or nonconforming Work, omissions, however caused; (e) Subcontractor defaults; (f) insurance deductibles, such as builder's risk, and others; or (g) those Delays to the Work events that result in an extension of the Contract Time but do not result in an increase in the Contract Price such as delays in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond CM's control.
- 7.2.5.1.1. An Allowance includes the direct cost of all labor, subcontractors, vendors, materials, equipment, transportation, taxes and insurances associated with the applicable allowance item.
- 7.2.5.1.2 The CM Contingency Allowance is not available to Owner for any reason, including, but not limited to changes in scope or any other item which would enable CM to increase the Contract Price. CM shall provide Owner an accounting of the CM Contingency Allowance. CM agrees that with respect to any expenditure from the CM Contingency Allowance relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, CM will in good faith exercise reasonable steps, less than litigation, to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. CM agrees that if CM is subsequently reimbursed for said costs, then said recovery will be credited back to the CM Contingency Allowance.

7.2.5.1.3 Upon reaching Substantial Completion, any excess greater than **\$37,000.00** of CM Contingency Allowance may be released to the Owner for change order items. Prior to the release of any available excess CM Contingency Allowance, the Shared Savings will be calculated in accordance with the provisions of Article 7.6 and shall be reserved. Final Savings amount shall be determined and paid at the time of Final Completion.

7.2.5.1.4 Final Construction Cost of the project will be calculated after the warranty period has been reached. The remaining CM Contingency Allowance will be released to the Owner after any one (1) year warranty items have been agreed to as being satisfactorily addressed.

7.2.5.1.5 Whenever the actual cost for an allowance item is more than the value of the CM Contingency Allowance, the Contract price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between the actual cost less than the remaining CM Contingency Allowance value.

7.2.5.2 Change Order eligible cost are to be allocated from the Owner Contingency or other Owner's funds. The basis for a Change Order includes but are not limited to Changes in Conditions as defined in Article 5.1.4.

7.3 Payments

7.3.1 Payments by Owner to CM shall be made pursuant to MCLA §125.1562. This Article shall be read consistent with those provisions.

7.3.2 Not Used

7.3.3 Invoices from the CM shall be submitted to Owner monthly. Payment by the Owner of uncontested charges shall be made to CM within seven (7) days of approval of same by the Township Board at its next regularly scheduled meeting that is at least seven (7) days after submission by CM to Owner of its monthly invoice

7.3.4 No deductions shall be made from the CM's compensation due to any claim of the Owner, Contractors or others not a party to this Agreement or retainage or other sums withheld from payments to the Contractors or others not a party to this Agreement. If Owner contests a charge(s) by CM Owner, at its sole option, may remit payment for said contested charges to an escrow agent, the identity of which to be by mutual agreement of CM and Owner.

7.3.5 Payments due the CM that are unpaid or escrowed for more than thirty (30) days from the due date of the CM's Invoice shall bear interest at a rate equal to the lower of seven percent per annum (0.58% per month) or the highest rate permitted under applicable law, whichever is lower.

7.3.6 The monthly payments shall be made by Owner to CM on the basis of the progress of the Work required for the Project, and as applied for by CM. Retainage if any, is limited to what is permissible under MCLA §125.1563(1) through (3).

7.4 Not Used.

7.5 Cost of the Project

7.5.1 The term "Cost of the Project" shall include all amounts paid by CM for payment to all separate Contractors, including cost adjustments for replacing non-performing Contractors, materials, suppliers and equipment lessors for all work, material, and equipment supplied to the Project including allowance items and general conditions items and any obligation incurred by the CM on behalf of the Owner for construction of the project.

7.5.2 The Cost of the Project shall not include following:

7.5.2.1 The CM's overhead and profit fee, and fee for Basic Services;

7.5.2.2 All professional fees paid by the Owner to the Design Consultant or other Consultants retained directly by the Owner;

7.5.2.3 All costs paid directly by the Owner to contractors or suppliers retained directly by the Owner;

7.5.2.4 All Additional Service costs as defined herein; and/or

7.5.2.5 All other costs not within the control of the CM.

- 7.5.2.6 The Cost of the Project may be further defined in the documentation required by this Agreement.
- 7.5.2.7 The CM shall promptly notify the Owner when changes to the scope of the Project or a part thereof or when delays caused in whole or in part by the Owner increase or extend the scope or duration of the CM's Basic Services. The CM shall be entitled to receive additional compensation and an increase in the duration of this Agreement pursuant to the provision of Article 5 and consistent with the provisions of Article 7 of this Agreement.
- 7.6 Savings
- 7.6.1 Any potential cost-saving items identified by CM during construction will be presented to Owner and Design Engineer for acceptance. Savings attained by CM will be credited to the CM Contingency Allowance.
- 7.6.2 Any remaining CM Contingency Allowance ("Savings") shall be shared as follows: 80% of savings to Owner and 20% of savings to be allocated to the CM overhead and profit fee. Payment for Savings is due in accordance with 7.2.5.1.3.

ARTICLE 8
INSURANCE AND MUTUAL INDEMNITY

8.1 CM's Liability Insurance

- 8.1.1 The CM or Contractors shall purchase and maintain such insurance that shall protect the CM from the claims set forth below that may arise out of or result from the CM's performance of Services pursuant to this Agreement:
- 8.1.1.1 Claims under Workers' compensation, disability benefits and other similar employee benefits acts that are applicable to the work performed;
- 8.1.1.2 Claims for damages because of bodily injury, occupational sickness or disease or death of CM's employees under any applicable employer's liability law;
- 8.1.1.3 Claims for damages because of bodily injury or death of any person other than CM's employees;
- 8.1.1.4 Claims for damages insured by usual personal injury liability coverage that are sustained (1) by any person as a result of an offense directly related to the employment of such person by the CM or (2) by any other person;
- 8.1.1.5 Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss or use therefrom; or
- 8.1.1.6 Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.
- 8.1.2 The comprehensive General and Automobile Liability Insurance, as required by Paragraph 8.1.1, shall be written for not less than the following limits of liability:

a. Comprehensive General Liability

1. General Aggregate:	\$2,000,000
2. Products - Completed Operations Aggregate:	\$2,000,000
3. Personal and Advertising Injury:	\$1,000,000
4. Each Occurrence (Bodily Injury and Property Damage	\$1,000,000
5. Property Damage liability insurance shall provide Explosion, Collapse and Underground coverages, where applicable.	
6. Excess or Umbrella Liability:	
a. General Aggregate:	\$10,000,000
b. Each Occurrence:	\$10,000,000

b. Automobile Liability

1. Combined Single Limit (Bodily Injury and Property Damage):

Each Accident: \$1,000,000

8.1.3 Comprehensive General Liability insurance may be arranged under a single policy for the full Limits required or by a combination of underlying policies with the balance provided by an excess or umbrella liability policy.

8.1.4 The foregoing policies shall contain a provision that coverages afforded under the policies shall not be cancelled or expire until at least thirty (30) days written notice has been given to the Owner and shall include either a Liability endorsement covering this Agreement or an endorsement making the Owner an additional insured under the policies. Certificates of insurance showing such coverages to be in force shall be filed with the Owner prior to commencement of the CM's services.

8.2 Builder's Risk Insurance

8.2.1 The CM shall be responsible for purchasing and maintaining insurance to protect the Project from perils of physical loss. The insurance shall provide for the full cost of replacement for the entire Project at the time of any loss. The insurance shall include as named insureds the Owner, the CM, the Contractors and their subcontractors and shall insure against loss from the perils of fire and all-risk coverage for physical loss or damage due to theft, vandalism, collapse, malicious mischief, transit, flood, earthquake, testing, defective design, negligent workmanship or defective material. The CM shall increase the coverage limits as necessary to reflect changes in the estimated replacement cost.

8.3 Property Insurance

8.3.1 If the Project includes an addition to or is adjacent to an existing structure, the CM, the Contractors and the subcontractors shall be named as additional insureds for the Owner's property insurance covering such structure and its contents.

8.3.2 If the Owner occupies or uses a part or parts of the Project prior to substantial completion thereof, such occupancy shall not occur until the Owner obtains property insurance for the structure and until all insurance companies providing insurance for the Project consent to such occupancy by endorsement to the insurance policies.

8.4 Owner's Insurance

8.4.1 The CM shall be named as an additional insured in any insurance policy for the Project that may be obtained by the Owner.

8.5 Notices and Recovery

8.5.1 The Owner and CM each shall provide the other with copies of all policies that are obtained for the Project. Each party shall provide the other sixty (60) days' notice of cancellation, non-renewal or endorsement reducing or restricting coverage.

8.6 Waiver of Subrogation

8.6.1 The Owner and the CM waive all rights against each other and against other contracted parties, the Design Professional and consultants, agents and employees of the other for damages occurring during construction. The Owner and the CM shall each require appropriate similar waivers from their contractors, Design Professionals, consultants and agents.

8.7 Indemnity

8.7.1 The CM hereby indemnifies and holds harmless the Owner and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage for which the CM is liable that arise out of wrongful acts or omissions of the CM in performing the Construction Manager's Services under this Agreement provided, however, that the CM does not assume any risk of damages to property that is incorporated in or shall be incorporated in or is located at the Project site that is not within the possession of the CM or under the CM's direction or control. The total liability of the CM to the Owner arising by reason of this indemnity for losses that are not

insured shall not exceed the amount of the total compensation actually paid to the CM by the Owner pursuant to this Agreement.

- 8.7.2 The Owner hereby indemnifies and holds harmless the CM and its employees, agents and representatives from and against any and all claims, demands, suits and damages for bodily injury and property damage that a rise out of or result from, in whole or in part, wrongful acts or omissions of the Owner, its employees, agents, representatives, independent contractors, material suppliers, the Contractors and the Design Professional.

ARTICLE 9 TERMINATION AND SUSPENSION

9.1 Termination

- 9.1.1 This Agreement may be terminated by the Owner for convenience after fifteen (15) days, written notice to the CM.
- 9.1.2 This Agreement may be terminated by either party hereto upon seven (7) days, written notice should the other party fail substantially to perform in accordance with the terms hereof through no fault of the other or if the Project in whole or substantial part is stopped for a period of sixty (60) days under an order of any court or other public authority having jurisdiction or as a result of an act of government.
- 9.1.3 In the event of termination pursuant to Paragraph 9.1.1, the CM shall be paid its compensation for services performed to the date of termination, services of professional consultants then due and all termination expenses. Termination expenses are defined as those expenses arising prior, during and subsequent to termination that are directly attributable to the termination, plus an amount computed as a percentage of the total compensation earned at the time of termination as follows:
- 9.1.3.1 Twenty (20) percent if the termination occurs during the Bidding Phase; or
- 9.1.3.2 Ten (10) percent if the termination occurs during the Construction Phase or Post-Construction Phase.
- 9.1.4 In the event of termination pursuant to Paragraph 9.1.2, the CM shall be paid its compensation for services performed to the date of termination, services of professional consultants then due and all termination expenses. No amount computed as provided in paragraphs 9.1.3.1 and 9.1.3.2 shall be paid in addition.

9.2 Suspension

- 9.2.1 The Owner may order, in writing, the CM to suspend all or any part of the CM's Services for the Project for the convenience of the Owner or for work stoppage beyond the control of the Owner or the CM. If the performance of all or any part of the Services for the Project is suspended, an adjustment in the CM's compensation shall be made for the increase, if any, in the cost of the CM's performance of this Agreement caused by such suspension and this Agreement shall be modified in writing accordingly.
- 9.2.2 In the event the CM's Services on the Project are suspended, the Owner shall reimburse the CM for all of the costs of its construction site staff, assigned Project home office staff and other costs as provided for by this Agreement for the first thirty (30) days of such suspension. The CM shall reduce the size of such staff for the remainder of the suspension period as directed by the Owner and during such period, the Owner shall reimburse the CM for all of the costs of reduced staff. Upon cessation of the suspension, the CM shall restore the construction site and home office staff to its former size.
- 9.2.3 Persons assigned to another project during such suspension or period and not available to return to this Project upon cessation of the suspension shall be replaced. The Owner shall reimburse the CM for costs incurred in relocating staff persons returning to the Project or new persons assigned to the Project.
- 9.2.4 If the Project is suspended by the Owner for more than three (3) months, the CM shall be paid compensation for Services performed prior to receipt of written notice from the Owner of such suspension, together with direct expenses then due and all expenses and costs directly resulting from such suspension. If the Project is resumed after being suspended for more than six (6) months, the CM shall have the option of requiring that its compensation, including rates and fees, be renegotiated. Subject to the provisions of this Agreement relating to termination, a delay or suspension of the Project does not void this Agreement.

ARTICLE 10
DISPUTE RESOLUTION

10.1 Mediation Prior to Arbitration

10.1.1 Mediation shall first be governed by MCLA §125.1564, to the extent applicable. To the extent that a dispute is not governed by MCLA §125.1564, and except for injunctive relief, any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to nonbinding mediation as a condition precedent to the institution of arbitration proceedings under Section 10.2 below. Unless mutually agreed in writing, the mediation shall be conducted by the American Arbitration Association in accordance with its Construction Industry Mediation Rules currently in effect.

10.1.2 Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Mediation shall proceed in advance of arbitration proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing of the notice to mediate, unless stayed for a longer period by agreement of the parties.

10.2 Arbitration

10.2.1 After exhausting remedies under MCLA §125.1564, all claims, disputes or controversies arising out of or relating to the Project or to this Agreement or the breach thereof shall be decided by arbitration in accordance with the Construction Industry Rules of the American Arbitration Association then obtaining unless the parties mutually agree otherwise. An arbitration arising out of or relating to the Contract Documents or this agreement to arbitrate may include by consolidation or joinder the Contractors and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Contractors shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. This agreement to arbitrate and any agreement to arbitrate with an additional person or persons duly consented to by the parties to this Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof, and the award shall be final and binding.

10.2.2 Notice of demand for arbitration shall be filed in writing with the other party to this Agreement in accordance with the rules of the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based upon such claim, dispute or other matter in question would be barred by the applicable statutes of limitation.

10.2.3 In any judicial proceeding to enforce this agreement to arbitrate, the only issues to be determined shall be those set forth in 9 U.S.C. Section 4 Federal Arbitration Act and such issues shall be determined by the court without a jury. All other issues, such as, but not limited to, arbitrability, prerequisites to arbitration, compliance with contractual time limitations, applicability of indemnity clauses, clauses limiting damages and statutes of limitation shall be for the arbitrators whose decision thereon shall be final and binding. There shall be no interlocutory appeal of an order compelling arbitration.

10.2.4 The award rendered by the arbitrators shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE 11
ADDITIONAL PROVISIONS

11.1 Confidentiality

11.1.1 The CM shall not disclose or permit the disclosure of any confidential information except to its agents, employees and other consultants who need such confidential information in order to properly perform their duties relative to this Agreement. Nothing herein shall be interpreted as to allow avoidance of the requirements of the Michigan Freedom of Information Act.

11.2 Limitation and Assignment

11.2.1 The Owner and the CM each bind themselves, their successors, assigns and legal representatives to the terms of this agreement.

11.2.2 Neither the Owner nor the CM shall assign or transfer its interest in this Agreement without the written consent of the other, except that the CM may assign accounts receivable to a commercial bank for securing loans without approval of the Owner. However, nothing contained in this paragraph shall prevent the CM from employing such consultants, associates or subcontractors as the CM may deem appropriate to assist in performance of the services hereunder.

11.3 Governing Law

11.3.1 Unless otherwise provided, this Agreement shall be governed by the law of the State where the Project is located.

11.4 Extent of Agreement

11.4.1 This Agreement represents the entire and integrated agreement between the Owner and the CM and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and the CM. Nothing contained in this Agreement is intended to benefit any third party. The Contractors and Design Professional are not intended third-party beneficiaries of this Agreement.

11.5 Severability

11.5.1 If any provision of this Agreement is held as a matter of law to be unenforceable, the remainder of this Agreement shall be enforceable without such provision.

11.6 Meaning of Terms

11.6.1 References made in the singular shall include the plural and the masculine shall include the feminine or neuter.

11.6.2 The meaning of terms used herein shall be consistent with the definitions expressed in the CMAA Standard Form Agreements, Contracts and General Conditions.

11.7 Notices

11.7.1 All notices required by this Agreement or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post office, first class, postage prepaid, addressed as follows:

To The Owner:

Leoni Township
913 Fifth Street
Michigan Center, MI 49254

To The CM:

F&V Construction Management, Inc.
2960 Lucerne Drive SE
Grand Rapids, MI 49546

ARTICLE 12
SUBSTANTIAL COMPLETION

12.2 Substantial Completion

12.2.1 Substantial completion is the state in the progress of the Work required for the Project when the Work required for the Project, or a designed portion thereof, is sufficiently complete in accordance with the Contract Documents so that the Owner may utilize the Work for its intended use. The date established for Substantial Completion of all Work required for the Project is estimated to be **by May 1, 2021**, with such adjustments as provided for in the Agreement.

12.2.2 Upon Substantial Completion of all Work required for the Project, and upon application by CM, the Owner shall make final payment to CM, including all unpaid retainage, for all Work required for the Project.

ARTICLE 13
CORRECTION PERIOD

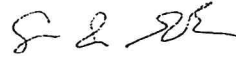
13.1 Correction Period

If within one (1) year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, CM shall inform the Contractor responsible to promptly, without cost to Owner in accordance with Owner's written instructions: (i) correct such defective Work or, (ii) if the defective Work has been rejected by Owner, remove and replace any damage to other Work, to the work of others or other land or areas resulting there from. If such Contractor does not promptly comply with the terms of such instructions, or in any emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced, and all Claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be sought by Owner solely against the responsible Contractor. Items not provided within the project scope of construction activities, such as existing and reused: structures, facilities, materials, salvaged equipment, and paving are not included in CM's warrantee.

This Agreement is executed the day and year first written above.

OWNER:
LEONI TOWNSHIP

CONSTRUCTION MANAGER:
F&V CONSTRUCTION MANAGEMENT, INC.



6-3-2020

Title: Township Supervisor

Title: Vice President

Attest: _____

Attest: Daniel C. Henry

Attachment:
Exhibit A

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EXHIBIT A- Cost-Plus Contract

Client Name: Leoni Township, Michigan Estimator: DCH Date: 06/02/20

Job Name: WWTP Headworks Odor Control Improvements Design By: F&V Bid Date: 05/27/20

Location: 8401 Page Avenue, Jackson, MI 49201 Check By: JKP

Job Number: 844141

Description: Headworks Building- Cover Flow Channels, New Ductwork, Biotrickling
Filter & Carbon Treatment System, and Make-Up-Air Unit

Duration: Construction lasting approximately 12 months to reach Substantial Completion

<u>Trade Category</u>	<u>Subcontractor / Location</u>	<u>Accepted Bid</u>
Contract 1 Site Work & Excavation	Parrish Excavating Quincy, MI	\$105,189.00
Contract 2 Concrete	J.R. Heineman Saginaw, MI	\$180,000.00
Contract 3 General Trades	First Peninsula Contractors	\$134,000.00
Contract 4 Painting	Murray Painting	\$13,197.00
Contract 5 Mechanical	Paul Bengel Company	\$808,000.00
Contract 6 Electrical, Instrumentation & Control	A.C.E.S	\$49,025.00
Contract 7 Owner's System Integrator	Utilities Instrumentation Service (UIS)	\$32,275.00
Total of Trades		\$1,321,686.00
General Conditions - Lump Sum		\$110,000.00
Sub Total		\$1,431,686.00
Construction Management Overhead & Profit Fee - Lump Sum		\$121,700.00
Sub Total		\$1,553,386.00
CM's Contingency Allowance (5%)		\$77,700.00
Basic Services - Bid Phase Services - Lump Sum, no markup		\$37,000.00
Basic Services - Construction Management & Site Superintendent (FVCM) - Lump Sum, no markup		\$207,000.00
Total FVCM Budget Authorization		\$1,875,086.00

	<u>Initial</u>	<u>Date</u>
OWNER:	_____	_____
FVCM:	_____	_____