

CONSTRUCTION SERVICES CONTRACT

CC (The PO number assigned to the contact via Epicor)

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Exhibits:

- Exhibit A, Description-Contractor Svcs
Exhibit B, Schedule of Drawings
Exhibit C, Schedule of Work
Exhibit D, Unit Price Schedule
Exhibit E, Change Order

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CONSTRUCTION SERVICES CONTRACT

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This Construction Services Contract ("this Agreement") is made as of the _ day of _____ 2007 by and between (applicable EQ company) ("Owner"), with address at (applicable address of the EQ company) and _____ ("Contractor") with an address at (address - applicable EQ company), a corporation of the State of (_____).

WITNESSETH:

WHEREAS, Owner desires Contractor to perform certain services (the "Work" as defined in the Exhibit A, "Description of Contractor Work") on the property commonly known as (name of the applicable EQ company); and

WHEREAS, Contractor has experience in providing said services and desires to perform the Work.

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. AGREEMENT

1.1. The Contractor has examined this Agreement and all Exhibits (the Documents) attached hereto (Exhibit A, Description of Contractor Services, Exhibit B, Schedule of Drawings, Exhibit C, Schedule of Work, Exhibit D, Contract Cost / Unit Price Schedule, and Exhibit E, Change Orders) and agrees to furnish all equipment and materials and perform all work (the "Project") in accordance with the Documents.

2. LOCATION OF WORK

2.1. All construction services and related activities are to be performed at (name of the applicable EQ company); located at (address with zip code of the applicable EQ company) ("the Site"), unless otherwise directed in writing by Owner.

3. DESCRIPTION OF WORK

3.1. Contractor shall perform the work, and furnish and deliver all labor materials and equipment necessary or required in conjunction with the work, including, but not necessarily limited to the following as listed in this Agreement and Exhibits, which are

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attached hereto and incorporated herein by this reference.

4. CONTRACT PRICE

- 4.1. Owner agrees to pay Contractor, subject to the performance by Contractor of its obligations hereunder, for the performance of the work and furnishing of all equipment and materials, Contractor's cost as described in Exhibit D, Contract Cost/Unit Price Schedule, subject to the terms of this Agreement and Section 35, Payment.

5. SCHEDULE OF WORK

- 5.1. Contractor agrees to perform work covered by this Agreement as stated in Exhibit C, Schedule of Work, which is attached hereto and incorporated herein by this reference.
- 5.2. TIME IS OF THE ESSENCE IN THIS CONTRACT.

6. INSPECTION AND EXAMINATION

- 6.1. Contractor hereby acknowledges that prior to the execution of this Agreement, Contractor has examined and inspected the Site and the Documents or has waived such examination and inspection. Contractor herewith acknowledges all field conditions at and the Documents pertaining to the Site are acceptable.

7. EXECUTION OF WORK AND TIME OF COMPLETION

- 7.1. Contractor shall proceed with his portion or portions of the work in such order as Owner may direct. The Contractor shall cooperate with Owner and all other subcontractors retained by Owner and shall furnish sufficient manpower, materials and equipment, and shall perform his work so that Owner may not be delayed in the completion of the Project.
- 7.2. In the event Contractor fails to maintain the Schedule of Work, Contractor shall accelerate the Work as directed by the Owner, to conform to the Schedule of Work. Any changes to the Schedule of Work shall only be made pursuant to an accepted Change Order, as described in Section 23, Additions/Deletion to the Work.
- 7.3. Should the Contractor be delayed in the prosecution of the work by the act or fault of Owner, or of any other contractor retained by Owner and/or by any damage caused by fire, lightning, earthquake, cyclone or for any other causes shown to the satisfaction of Owner to be without fault or negligence of the Contractor, then the time of completion herein provided for will be extended for such reasonable time as Owner shall determine. Contractor's sole remedy in the event of any such delay shall be an extension of the time for performance, and the Contractor shall not be entitled to damages or additional compensation in connection therewith.

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- 7.4. It is understood however, that the Owner does not assure the Contractor either that the Contractor shall be able to commence, prosecute or complete the work at the time stated, or that the work of the Project shall be completed at the date stated in the Contract.

8. OVERTIME

- 8.1. Owner shall have the right to order the Contractor to work his men and/or the men of his Subcontractors overtime in the event Owner in his sole discretion feels that the Contractor is not or will not be able to complete his work in sufficient time so as not to delay the completion of the Project as further described in Section 5, Schedule of Work and Section 7, Execution of Work and Time of Completion. Any and all additional costs involved due to overtime work shall be the responsibility of the Contractor and not that of the Owner.

9. SUBMITTALS FOR APPROVAL

- 9.1. Contractor agrees to promptly prepare and submit for approval all required shop drawings, brochures, samples, tests, reports, lists of materials, and other required items in sufficient time to permit proper consideration through regular channels without delaying the work.

10. POLLUTION CONTROL TAX EXEMPTIONS

- 10.1. Owner may elect to apply and receive pollution control tax exemption certificates from the State of Michigan, Department of Treasury in accordance with Pollution Control Act 451 of 1994. Owner shall advise Contractor of applicable pollution control tax exemption certificates and of applicable pollution control tax exemption applications.
- 10.2. Contractors and Subcontractors shall use the tax exemption certificate number to exempt sales and use tax payments for supplies/services provided in accordance with the Agreement, and shall not include exempt taxes on invoices to the Owner.
- 10.3. Contractors and Subcontractors shall obtain tax refunds from suppliers for sales/use tax payments made to suppliers prior to receipt of an approved tax pollution control tax exemption certificate.
- 10.4. Contractors and Subcontractors shall obtain applicable sales/use tax refunds within 90 days of receipt of pollution control tax exemption certificate(s) from Owner.
- 10.5. Contractor shall remit subsequent refunds to Owner within 30 days of receipt and shall provide monthly written reports of refunds to Owner until Contractor remits all applicable sales/use tax refunds to Owner.

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11. DELIVERY OF MATERIALS

- 11.1. Contractor is solely responsible, unless otherwise agreed to by Owner, to schedule deliveries of equipment, tools, materials and supplies at a time that is mutually agreed upon by Owner and Contractor; provide personnel, equipment and tools as needed to properly and safely offload each delivery or arrange for another, qualified person(s), with Owner's approval, to properly and safely offload each delivery; and inspect each delivery to verify acceptability and/or conformance to project specifications.
- 11.2. If Contractor designates an alternate representative to properly and safely offload a delivery and to inspect a delivery to verify acceptability and/or conformance to project specifications, Contractor is solely responsible for ensuring that such representative strictly complies with the terms and conditions of this Agreement.

12. EQUIPMENT, STORAGE AND HOUSEKEEPING

- 12.1. The Contractor agrees to furnish all equipment required for his work. Contractor shall have the right to use the Site, in pursuit of the performance of this Agreement, for the storage of tools, equipment, materials, and supplies when and where as directed and authorized by the Owner.
- 12.2. It shall be the sole responsibility of Contractor to properly store and protect its delivered materials, equipment and tools. Any loss in connection with such materials, equipment and tools resulting from damage, theft or otherwise shall be borne solely by Contractor.
- 12.3. Contractor agrees to do all clean up and promptly remove all rubbish and debris caused by the Work. If Contractor refuses to properly and promptly cause the aforementioned to be done, Owner shall cause it to be done and charge all costs incurred to Contractor. Contractor shall not unreasonably encumber any part of the Site with its materials.

13. MATERIALS AND MATERIALS SUPPLIERS

- 13.1. Owner shall have the right to order Contractor to change material suppliers and/or substitute materials in the event Contractor's material suppliers have not or will not, in Owner's sole opinion, be able to fulfill the terms and conditions of this Agreement, including, without limitation, quality, scheduling and specification terms as described herein. Any such requests by Owner shall be made pursuant to a Change Order; provided, however, that such requests shall not require Contractor's consent.

14. MEETINGS AND REPORTS

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- 14.1. Contractor, and relevant subcontractors if necessary and if requested by Owner, shall schedule and attend regular progress meetings with Owner for the purpose of reviewing progress of the Work, adherence to the Schedule of Work, and other issues relevant to this Agreement and the Work. Meetings shall be held no less than monthly at Owner's facility or at such other place as Owner and Contractor may mutually agree upon. All attendees shall sign in at every meeting. Meeting minutes will be recorded by Owner or Owner's representative. A copy of the sign-in sheet and meeting minutes shall be sent to Contractor and to Owner within five (5) business days of each meeting.
- 14.2. Contractor shall provide Owner with a written report of all changes to the Description of Contractor Work on a monthly basis. Such monthly report shall be provided to Owner no later than five (5) business days after the end of the month for which such report is being produced.
- 14.3. Contractor shall provide Owner with a written report of all changes to the Schedule of Work on a monthly basis and shall include a corrective action plan, if applicable, addressing how Contractor intends to conform to the Schedule of Work. Such monthly report shall be provided to Owner no later than five (5) business days after the end of the month for which such report is being produced.

15. WORKMANSHIP

- 15.1. Contractor warrants that all materials and equipment furnished and incorporated in the Work shall be new unless otherwise specified by Owner, and that all Work under this Agreement shall be of good quality, free from faults and defects and in material conformance with Description of Contractor Work.
- 15.2. Contractor shall also make available to Owner all warranties provided to Contractor by suppliers and subcontractors. All Work not conforming to these standards shall be considered defective.
- 15.3. Contractor agrees to repair and replace at its sole cost and expense, in accordance with the Description of Contractor Work, any and all Work determined to be defective provided Owner gives notice to Contractor of its violation of this warranty from completion and acceptance of the Work within the period allowed by Michigan law.
- 15.4. The warranty and remedy provided in this Section shall be in addition to and not in limitation of any other warranty or remedy provided by applicable law or in this Agreement.

16. INTELLECTUAL PROPERTY

- 16.1. Contractor represents that the Work shall not infringe on any patent or other

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intellectual property right of any third party.

17. COMPLIANCE WITH LAWS

- 17.1. Contractor shall acquaint itself with all rules, regulations and laws in connection with the Site and the Work and shall strictly comply, and cause all subcontractors, agents and employees to strictly comply, with such rules, regulations and laws.
- 17.2. Contractor agrees to perform all Work in accordance with applicable local, state and federal codes, ordinances and regulations having jurisdiction over such Work at the time the Work is performed.
- 17.3. Contractor shall be solely responsible for compliance by Contractor, its employees and its subcontractors and suppliers with all applicable state and federal law and any rules promulgated thereunder while performing all or any portion of the Work hereunder.

18. APPROVALS, CERTIFICATES, PERMITS AND LICENSES

- 18.1. Contractor shall, and if necessary with the reasonable assistance of Owner, secure all design, engineering, construction and installation and operating approvals, certificates and permits that may be required for the proper execution and completion of the Work.
- 18.2. Contractor shall deliver to Owner copies of all such approvals, certificates and permits. All such approvals, certificates and permits shall be in the name of Contractor as representative of Owner.

19. SAFETY

- 19.1. Contractor shall initiate and maintain, and shall cause all subcontractors or agents to initiate and maintain, for the limited purpose of performing the Work, reasonable safety precautions and programs to conform with applicable provisions of federal, state and local safety or health laws, codes, rules, regulations, ordinances or other requirements to prevent injury to persons or damage to property on, about or adjacent to the Site, all before commencement of Work on the Site.
- 19.2. Contractor shall participate in EQ's Contractor Environmental Health and Safety program including, but not limited to:
 - 19.2.1. Contractor shall complete and return with an [EQ Contractor Pre-Job Checklist QES-FM-071-ALL](#) with requested attachments to the EQ Representative, EQ Project Manager, or QEHS Manager, prior to beginning any work. This checklist shall be completed also for any and all subcontractors.

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19.2.2. Contractor shall review and understand the rules and policies of the sections of the EQ Environmental Health and Safety Manual as directed by the EQ Representative, EQ Project Manager or EQ QEHS Manager with QES-FM-120-ALL, Contractor EHS Manual Section Checklist.) The sections are available at www.eqonline.com/purchasing/supplier-qualification-process.asp.

19.2.3. Contractor shall review the EQ Contractor Orientation Form QES-FM-093-ALL with the EQ Representative, EQ Project Manager, or EQ QEHS Manager, prior to the start of work at an EQ site. This form is developed by the EQ Representative for this specific work being done.

All participants in the orientation shall sign an attendance sheet, which will be attached to the signed "Contractor Sign-Off Sheet" (Appendix B) cited below.

19.2.4. Contractor's Designated Representative shall sign the Contractor Environmental Health and Safety Manual Sign Off Sheet (Appendix B), QES-FM-098-ALL Sign Off Sheet to acknowledge receipt of the applicable sections of the EQ Contractor Environmental Health and Safety Manual and understanding of requirements thereof, and that it is the Contractor's representative's responsibility to disseminate this information to Contractor's employees and subcontractors.

19.2.5. Contractor shall upon request, provide the Owner with a copy or description of additional safety precautions and programs.

19.3. Contractor shall take reasonable steps to erect and maintain safeguards for the protection of workers and eliminate or abate safety hazards created by or otherwise resulting from performance of the Work.

19.4. Contractor shall take all precautions reasonably necessary for the safety and health of, and shall use efforts to prevent damage, injury or loss to: (a) all persons working at the Site, (b) all materials and equipment, whether in storage on or off the Site, under the care, custody or control of Contractor or any subcontractor, and (c) other property at the Site or adjacent to the Site.

19.5. Contractor shall not load, or permit any part of the structures or appurtenances for which Contractor is responsible to be loaded, with a weight that will endanger the safety of any person.

19.6. For projects involving excavation and/or trenching of any kind, Contractor is responsible for complying with all applicable rules and regulations regarding excavation and trenching safety including whether a Qualified Person, as defined by the Michigan Occupational Safety and Health Administration (MIOSHA), must be present on site during the performance of the work.

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20. COMPLIANCE WITH EMPLOYEE SCREENING; DISMISSAL OF WORKMEN

- 20.1. Contractor hereby represents, covenants and agrees that it will provide Owner with an employee screening policy (including drug and alcohol screening) that Contractor and its subcontractors at the Site prior to commencement of Work on the Site will follow with respect to all of Contractor and Subcontractor employees prior to performance of the Work at the Site by such employees, which may include monthly screening.
- 20.2. In the event that Owner is not satisfied with such policy, Owner may terminate this Agreement by providing five (5) days' written notice to Contractor.
- 20.3. Contractor shall provide Owner documented proof of a Medical Surveillance Program as required in OSHA HAZWOPER 29 CFR 1910.120.
- 20.4. Contractor shall provide Owner documented proof, including proof of a physician's signed "Results of Medical Evaluation for Respirator Use" and air purifying respirator (APR) fit testing results, for all contractor and subcontractor employees that will work in areas that require the use of respiratory equipment.
- 20.5. Contractor shall provide Owner documents showing blood/urine screening for baseline (pre) and post project hazardous constituents for all Contractor and subcontractor employees who may be required to work in areas that may expose them to Heavy Metals, Cadmium, Lead and PCB's. Minimum required constituents shall be a general CBC total blood count, blood for lead and mercury, general urinalysis, and a urinalysis for metals: cadmium, mercury and arsenic; and a liver function tests, specifically ALT AST and alkaline phosphatase (alk phos).
- 20.6. Notwithstanding the foregoing, upon Owner's request, Contractor shall dismiss any workman or others employed performing the Work whom they may deem incompetent, improper or a hindrance to progress of any of the Work, and any so discharged shall not be again employed on any part of the Work without the written consent of Owner.

21. HAZARDOUS WASTE TRAINING REQUIREMENT

- 21.1. Contractor and Subcontractor personnel prior to performing services at the Site shall receive a training described per 29 CFR 1910.120 for Hazardous Waste Operations, as applicable. The amount of training required shall be governed by the type of site where the services are performed. For an uncontrolled site, as defined per 29 CFR 1910.120, forty (40) hours of training will be required. Otherwise, twenty-four (24) hours of training will be required of all personnel as described above. Contractor and/or his subcontractors will furnish current certification and/or other

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documentation as required by the Owner as proof of having received this training, as applicable.

- 21.2. All personnel, as described above in this section, shall become familiar with EQ's site specific health and safety plan for each controlled site; controlled as defined per 29 CFR 1910.120. Otherwise, Contractor shall prepare a site specific health and safety plan for its Services.

22. LIENS

- 22.1. In case suit is brought for claims or liens on labor performed or materials furnished to or used for the Work or provided by Contractor or any of its subcontractors, Contractor shall pay and satisfy any such lien or judgment as may be established by the decision of the court in said suit.
- 22.2. Contractor agrees, within five (5) days (or such longer period if mutually agreed upon) after written demand, to cause the effect of any such suit or lien to be removed and, in the event Contractor shall fail so to do, Owner is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed and the cost thereof, together with actual attorneys' fees, shall be immediately due and payable to Owner by Contractor. The parties acknowledge and agree that timely payment in full by Owner to Contractor of all undisputed amounts is a condition precedent to any obligations of Contractor herein.

23. ADDITIONS/DELETIONS TO THE WORK

- 23.1. Any and all work performed in addition to or different from those described in this Agreement and Exhibits hereto, shall only be performed pursuant to an accepted Change Order.
- 23.2. Owner shall have the right from time to time to order additions to, or deletions from, or any other changes in extent and character of the work as may be required. A Change Order is an instrument for such changes in form and content similar to the form attached hereto as Exhibit E to this Agreement and shall specify (a) the changes in Contractor services (additions and/or deletions); (b) the change in the cost of Contractor services; (c) any changes in the work schedule as a result of the change in Contractor services; and (d) other such information as Owner may reasonably request.
- 23.3. The cost of the changes in the scope of construction services shall be computed based on Exhibit D, Contract Cost/Unit Price and Exhibit A, Description of Contractor Services subject to any limitation or maximum or any other qualification set forth in these aforementioned documents.
- 23.4. In the event that the Contract Cost/Unit Price Schedule does not set forth the unit cost of a particular task or services and is not set forth in the Description of Contractor

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Services, or Change Order, the cost of such service or task shall be that unit price for that service or task as determined by Owner to be appropriate.

- 23.5. An accepted Change Order is a Change Order, which has been signed by Contractor and Owner. Only authorized persons who may sign this Agreement on behalf of Contractor and Owner may sign Change Order(s), on behalf of their respective organizations. This duty may be delegated to a subsequent person within their respective organizations; however, notice of this delegation must be made in writing to the other party. Each accepted Change Order shall be incorporated herein by this reference and shall be subject to all of the terms and conditions contained herein.

24. INDEPENDENT CONTRACTOR

- 24.1. Contractor is an independent contractor and not a partner, joint venture, subsidiary or affiliate of Owner.
- 24.2. No contractual relationship shall be deemed to exist by virtue of this Agreement between Owner and any of Contractor's suppliers or subcontractors and their employees and agents.
- 24.3. Notwithstanding the foregoing, Contractor shall cause each of its suppliers and subcontractors, and their employees and agents, to comply with all terms and conditions of this Agreement.
- 24.4. All acts, and omissions to act, of said suppliers and subcontractors, their employees and agents, shall be deemed to be the acts and omissions of Contractor.

25. SUBCONTRACTS AND SUBCONTRACTORS

- 25.1. This Agreement between Owner and Contractor and all obligations imposed upon Contractor are imposed upon Contractor's suppliers and Subcontractors, and all acts or omissions to act of said suppliers or Subcontractors, their employees and agents shall be deemed to be the acts and omissions of Contractor. No contractual relationship shall be deemed to exist by virtue of this Agreement between Owner and any of Contractor's suppliers or Subcontractors.
- 25.2. Contractor shall have the right to have any of the Work accomplished by subcontractors pursuant to written subcontracts between the Contractor and such subcontractors provided, however, that 1) Contractor shall be solely responsible for the engagement and management of the subcontractors in the performance of the Work; 2) Contractor shall be solely liable under all such subcontracts to perform all of its duties and obligations under such subcontracts, and the Owner shall not have any obligation or liability under any such subcontracts; 3) Nothing in any subcontracts shall in any way diminish or relieve the Contractor from any duties or

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obligations under this Agreement; 4) Contractor shall use commercially reasonable efforts to obtain in each contract entered into between Contractor and a subcontractor a provision permitting assignment of such contract to the Owner; and 5) Owner shall have the right to refuse any proposed subcontractor in the exercise of Owner's reasonable discretion.

26. CONTRACTOR'S INSURANCE

26.1. The Contractor shall not commence work under this Contract until he has obtained all insurance's required as hereinafter set forth and certificates of insurance delivered to Owner.

26.2. Unless otherwise agreed by the parties, Contractor shall maintain insurance coverage in the forms and in at least the amounts specified below during the term of this Agreement and until two (2) years after the completion of the Work to be performed hereunder.

Workman's Compensation Employers Liability	Statutory Limits
Each Accident	\$1,000,000
Disease - Ea. Employee	\$1,000,000
Disease – Policy Limit	\$1,000,000
Commercial General Liability	
Each Occurrence	\$1,000,000
General Aggregate	\$1,000,000
Products/Completed OP Aggregate	\$1,000,000
Personal Injury and Advertising	\$1,000,000
Automobile Liability	
Each Occurrence	\$1,000,000
Pollution Liability	
Each Occurrence	\$1,000,000
Professional Errors and Omissions	
Each Occurrence	\$1,000,000
Commercial Umbrella Liability	
Each Occurrence	\$5,000,000

26.3. Contractor's Commercial General Liability, Commercial Umbrella Liability, and Commercial Automobile Liability shall name EQ Holdings Inc. and Affiliated Companies Attn: Purchasing Dept. 36255 Michigan Ave, Wayne MI 48184 as an additional insured certificate holder. All policies shall be primary and non-contributory, and to include a Waiver of Subrogation in favor of EQ Holdings Co. and Affiliated Companies. The above insurance limits are minimum requirements and do not constitute limits on the Contractor's liability.

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- 26.4. All insurance shall be written by companies with an AM Best rating of “A” or higher. Such certificates shall require that the policies shall not be canceled or reduced in coverage until thirty (30) days written notice of such cancellation or reduction has been received by Contractor and Owner.
- 26.5. Contractor shall include all Subcontractors as insured under its policies or shall furnish separate certificates or endorsements for each subcontractor. All coverage’s for subcontractors shall be subject to all of the requirements stated herein.
- 26.6. If the Contractor neglects or refuses to provide any insurance required herein, or if any insurance is canceled, Owner may, at its option, procure such insurance and adjust the Agreement Price downward by the reasonable amount of premiums paid or to be paid.

27. PERFORMANCE AND PAYMENT BONDS

- 27.1. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as a security for the faithful performance and payment of all of Contractor’s obligations under this contract. These bonds shall remain in effect until one (1) year after the date when final payment becomes due or until completion of correction period specified in this contract, whichever is later, except as provided otherwise by laws or regulations or by this Contract. Contractor shall also furnish such other bonds as are required by this Contract.
- 27.2. All bonds shall be in the form prescribed herein except as provided otherwise by laws and regulations, and shall be executed by such sureties as are named in the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies: as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury, or by a surety mutually agreeable to Owner and Contractor. All bonds signed by an agent must be accompanied by a certified copy of the agent’s authority to act.
- 27.3. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of this Contract, Contractor shall promptly notify Owner and shall, within 20 days after the event giving rise to such notification, provide another bond and surety, both of which shall comply with the requirements of sections 27.1 and 27.2.
- 27.4. All bonds required by this Contract to be purchased and maintained by Owner or Contractor shall be obtained from surety companies that are duly licensed or authorized in the jurisdiction in which this Project is located to issue bonds for the

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limits and coverage so required.

- 27.5.** In the event Contractor fails to promptly provide any required bonds, Owner may terminate the Contract and enter into a Contract for the balance of the contract work with another Contractor. All Owner costs and expenses incurred by the Owner as a result of said termination shall be paid by the Contractor.

28. INDEMNIFICATION

- 28.1. The Contractor shall indemnify, hold harmless and, at Owner's option, defend Owner, its affiliates, and subsidiaries and their respective officer, directors, shareholders, employees, representatives, agents, successors and assigns against any and all claims, losses, damages, liabilities and expenses (including costs of defense arbitration, settlement, reasonable attorney's fees and litigation) for death of or bodily injury to any person, destruction of or damage to any property, loss of any property rights or entitlement, contamination of or adverse effects on the environment, or violation of governmental laws, regulations or orders, if and to the extent they result from, arise out of or are in connection with (a) any negligent or willful act or omission of the Contractor, its employees, agents, representative and its Subcontractors, or (b) the Contractor's breach of any term or provision of this Agreement or any accepted Change Order(s). The Contractor shall not be responsible for any claim, loss, damage, liability or expense to the extent caused solely by the negligence or willful misconduct of Owner, its employees, representatives or agents.
- 28.2. The obligations of indemnification imposed by this section shall survive the termination of this Agreement and the completion of all work as described by EXHIBIT C of this Agreement.

29. OWNER'S RIGHT TO DO WORK

- 29.1. If the Contractor should neglect to prosecute the work diligently and properly or fail to perform any provision of this Agreement, Owner, after five (5) days' written notice to the Contractor may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Contractor. If the expenses of repairing such deficiencies exceed the amount of payment then or thereafter due the Contractor, then Contractor shall pay the difference to Owner.

30. OWNER'S RIGHT TO TERMINATE AGREEMENT

- 30.1. Upon any of the following occurrences (each a "Termination Event"), Owner may, without prejudice to any other right or remedy after giving Contractor fifteen (15) days' written notice and opportunity to cure (or other period as the parties may mutually agree), terminate Contractor and take possession of the Site:

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Contractor being adjudged a bankrupt, or making a general assignment for the benefit of creditors, or executing a trust mortgage, or appointing a receiver, or Contractor failing generally to pay its debts as they become due, or doing anything which under the applicable provisions of the Federal Bankruptcy Code would permit a petition to be filed by or against Contractor, or Contractor refusing, except in cases for which extension of time is provided, to supply enough properly skilled workmen or proper materials, Contractor failing to maintain the Schedule of Work and, as a result, Owner believes, in its reasonable judgment, that Contractor will be unable to complete the project, or Contractor failing to make prompt payment for reasonably valid claims by subcontractors or for material or labor, or Contractor violating laws, ordinances or the instructions of Owner, or Contractor otherwise materially breaching any provision of this Agreement, or A delay in the Work as described in Section 31, Suspension of Work or Owner terminating this Agreement in accordance with Section 29, Owner's Right to Terminate. This Agreement may also be terminated by the mutual written consent of Owner and Contractor.

- 30.2. Upon such termination, Owner shall be entitled to all rights under this Agreement which, by their nature, survive termination of this Agreement (including, without limitation.
- 30.3. In addition, Contractor shall, unless the notice otherwise directs, immediately discontinue the Work on the date and to the extent specified in the notice; place no further orders or contract with subcontractors for material, equipment, services, or facilities, except as may be necessary for the completion of such portion of the Work as is not discontinued, if any; promptly make every reasonable effort to procure cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of the discontinued portion of the Work. Contractor shall thereafter do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plats and equipment on the Site or in transit thereto.
- 30.4. Subject to Owners rights as set forth herein and under applicable law, in the event that this Agreement is terminated, Contractor shall be entitled to be paid for the Work completed through the date of such termination and no further compensation or damages.

31. SUSPENSION OF WORK

- 31.1. Should Owner suspend work in accordance with Section 7, Execution of Work and Time of Completion and such suspension continues for a period of fifteen (15) days or more, Owner shall have the right to terminate this Agreement by providing written notice to Contractor. In the event of such termination, Contractor shall be entitled to be paid for Work completed through the date of such termination and no further compensation or damages.

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- 31.2. Should Owner discontinue the Project, on account of Contractor or its agents failing to comply with this Agreement or for any other cause not the fault of Owner, Contractor shall, on written order, discontinue work for such time as he may be required to by such cause, and proceed again at such time as shall be ordered by Owner, but should such suspension be continued and the Project not completed by Owner, Contractor shall be entitled to be paid for the work he performed or finished, at such a price as the work is worth in proportion to the total work to be done under this Agreement, at this contract price, and no further compensation or damages.
- 31.3. Should Contractor be delayed on account of progress of other portions of the Project, or on account of material to be furnished by Owner, or any other delay caused by Owner, the same shall not be grounds to Contractor for claim of damages or extra compensation.

32. CONSTRUCTION TRADE LABOR

- 32.1. Contractor shall acquaint himself with labor conditions in the locality and shall provide materials and employ labor in the manufacture and installation of all his work acceptable to labor authorities. Contractor shall comply with all local practices, rules and regulations of labor organizations having jurisdiction at the Site.
- 32.2. In the event the Contractor, his subcontractors, material suppliers and/or employees, fail to strictly comply with this provision, Owner may send to the Contractor written notice requesting compliance with this provision within 48 hours and if the Contractor, his subcontractors, material suppliers and/or employees, fail to so comply within said 48 hours, then this Agreement shall be deemed canceled without further notice and thereafter shall be of no further force or effect.
- 32.3. Notwithstanding anything herein to the contrary, the Contractor shall be liable for and shall indemnify Owner and its subsidiaries and affiliates and their respective officers, directors, shareholders, agents, representatives, employees, successors and assigns against all damages sustained by Owner and any other party or parties directly or indirectly affected by this Agreement as a result of the Contractor's, his Subcontractor's, material suppliers and/or employees' failure to comply with this provisi

33. DISMISSAL OF WORKMEN

- 33.1. Owner may require Contractor to dismiss any workman or others employed on the Project whom they may deem incompetent, improper or a hindrance to progress of any of the work on the Project, whereupon, such workman, workmen or others shall be discharged, and any so discharged shall not be again employed on any part of the work without the written consent of Owner.

34. NOTICE

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- 34.1. Any notice, request, instruction or other document to be given hereunder by either party to the other shall be in writing, and delivered personally or by courier, express mail, telefax or certified mail, postage prepaid, return receipt requested (such mailed notice to be effective on the date such receipt is signed by the receiving party) as follows:

If to Owner: (The EQ Company)
(Address of the EQ Company)
(Address of the EQ Company)
Attn: _____
Phone: _____
Fax: _____

If to the Contractor: _____

Attn: _____
Phone: _____
Fax: _____

35. INVOICING

- 35.1. In order to receive payment for work completed by the last working day of the month, an invoice with detailed back-up (invoices or paid invoices of suppliers, etc.), American Institute of Architects ("AIA") Form G702/703 with a sworn statement and appropriate waivers (full, partial or conditional) must be submitted to Owner each month at: (Name of the EQ company), Attn: Accounts Payable/Contract CC _____, 36255 Michigan Avenue, Wayne, MI 48184

36. PAYMENT

- 36.1. Owner agrees to pay the Contractor for performing the work in accordance with the terms and conditions of this Agreement the sum, subject to additions and deductions for changes.
- 36.2. During the period of construction, Owner shall withhold a sum from the payments due the Contractor of ten percent (10%) of completed value of Contractor's work as of the last working day of the calendar month preceding billing. This retainer shall be kept until final acceptance of the work under this Agreement.
- 36.3. Contractor agrees, as a condition precedent to partial payments or final payment, to furnish Owner satisfactory releases, waivers of lien, affidavits, etc., and such further evidence as may be required by Owner to substantiate all reasonably valid claims for labor, material, equipment, appurtenances, etc., used in connection with or incorporated in said Work have been fully paid for and are unencumbered.

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- 36.4. Final payment shall be made to Contractor within sixty (60) days after completion and acceptance of work under this Agreement.
- 36.5. Owner may withhold, in good faith, any payment on account of: (a) defective Work which Contractor has not cured within five (5) days of receiving written notice from Owner (or such longer period if mutually agreed upon); (b) reasonably valid claims filed or reasonable evidence indicating probable filing of a claim; (c) failure of the Contractor to make reasonably valid payments properly to its subcontractors or for material, labor or fringe benefits; (d) penalties assessed against Owner or the Contractor for failure of Contractor to comply with applicable laws or this Agreement; or (e) any other ground for withholding payment allowed by law. When the above matters are rectified, such amounts as then due and owing shall be paid or credited to the Contractor.
- 36.6. In the event that the Contractor fails to pay and discharge when due any bills of any kind or nature incurred by the Contractor in fulfillment of this Agreement, or if at any time there shall be evidence of any lien or claim against Owner or the Owner as a result of the Contractor's operations, Owner shall have the right to retain out of any payment due, or any payment to become due, an amount sufficient for Owner to completely indemnify Owner and each of their subsidiaries and affiliates and their respective officers, directors, shareholders, agents, representatives, employees, successors and assigns against any such lien or claim, including reasonable attorneys' fees incurred by reason thereof.
- 36.7. No payment made under this Agreement, shall be conclusive evidence of the performances of this Agreement either wholly or in part, and no payment, including final payment, shall be construed to be an acceptance of defective workmanship or improper materials.

37. CORPORATE STANDING

- 37.1. The Contractor is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, is qualified to do business in the state of Michigan and that the execution, delivery and performance of this Agreement has been duly authorized by all requisite corporate action and will not violate any provision of any governmental rule, regulation, ordinance, or violate any provisions of its charter or bylaws or any indenture, agreement or instrument to which it is a party or by which it or its property may be bound or affected.

38. NO VIOLATION OF LAW

- 38.1. Entering into this Agreement and performing the obligations hereunder are not a violation by Contractor of any applicable law, statute, order, rule or regulation promulgated, or judgment entered, by any Federal, state, local or governmental

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authority.

39. ASSIGNMENTS

- 39.1. Contractor shall not assign or transfer this Agreement or any part thereof without the written approval of Owner.
- 39.2. Neither this agreement nor any obligations or rights hereunder may be assigned or subcontracted by either party without the prior consent of the other, except that EQ may assign or subcontract to related companies, with Contractor notice. In the event EQ gives its consent and Contractor does subcontract any services under this agreement, Contractor must require its subcontractor to be bound by the same obligations undertaken by Contractor in this Agreement, including but not limited to the insurance requirements set forth in Section 26 and indemnification requirements set forth in Section 28.

40. ELECTRONIC DOCUMENTS. This agreement is to create an obligation between the parties using e commerce and it ensures that:

- 40.1. Use of any electronic equivalent of documents (transactions) referenced or exchanged under this agreement shall be deemed an acceptable practice in the ordinary course of business.
- 40.2. Such transactions shall be admissible as evidence on the same basis as customary paper documents

41. SURVIVAL OF PROVISIONS

- 41.1. All covenants, agreements, indemnities, guarantees and warranties made by Contractor shall survive completion of the Work and payment of the Contract Price, in full or in part, for a reasonable period of time.

42. REMEDIES NOT EXCLUSIVE

- 42.1. Each and every of the rights, remedies, and benefits provided to Owner by this Agreement shall be cumulative, and shall not be exclusive of any other of said rights, remedies and benefits, or of any other rights, remedies and benefits allowed by law.

43. APPLICABLE LAW AND DISPUTE RESOLUTION

- 43.1. This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of Michigan, without regard to conflict of laws principles. The parties hereby agree that the courts located in Wayne County, Michigan shall be the exclusive forum for all disputes in connection with this Agreement or its subject matter, and the parties irrevocably submit to the personal jurisdiction of such forum.

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44. SECTION HEADINGS

- 44.1. The section headings contained herein are for convenience only and shall not in any way affect the meaning or interpretation of this Agreement.

45. COUNTERPARTS

- 45.1. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

46. NON-EXERCISE OF RIGHTS

- 46.1. The failure at any time to enforce any provision of this Agreement or failure to exercise any right herein granted shall not constitute a waiver of such provision or of such right thereafter to enforce any or all of the provisions of this Agreement.

47. SEPARABILITY

- 47.1. If any portion of this Agreement is adjudged illegal, invalid, or unenforceable, such illegality, invalidity or unenforceability shall not affect any other portion of this Agreement.

48. CONFLICT

- 48.1. In the event of any conflict or inconsistency between the terms of this Agreement and/or any accepted Change Orders, the terms of this Agreement, modified by such accepted Change Orders, shall control.

49. ENTIRE AGREEMENT; NO THIRD-PARTY BENEFICIARIES

- 49.1. This Agreement, including all Exhibits shall be for the exclusive benefit of Owner and Contractor, is the only agreement or understanding between the parties with respect to the subject matter hereof, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior written or oral understanding between the parties with respect to the subject matter hereof. This Agreement is for the sole and exclusive benefit of the parties hereto and there are no third-party beneficiaries to this Agreement, either express or implied.
- 49.2. Any documents and attachments referenced in this Agreement and Exhibits hereto are incorporated herein by this reference except to the extent that such terms, conditions, documents and attachments are inconsistent with the provisions of this Agreement (in which case this Agreement shall control).
- 49.3. The terms and provisions of this Agreement, including all Exhibits A through F

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inclusive constitute the entire agreement between Owner and Contractor. There are no promises, terms, conditions or obligations referring to the subject matter other than contained therein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

By: _____

By: _____

Its: _____

Its: _____

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EXHIBIT A

DESCRIPTION OF CONTRACTOR SERVICES

THIS IS A SAMPLE DESCRIPTION OF SERVICES (WRITTEN SPECIFICALLY FOR EACH CONTRACT)

SEDIMENTATION POND CLEANING PROJECT
Wayne Disposal, Inc.

1. **Overview.** This specification is for excavation of the existing bottom of the sludge basin, which is part of the water pollution control system at Wayne Disposal, Inc. in Belleville, Michigan. Pursuant to the Consultant, the existing bottom under the sludge should be suitable to run a wide track Dozer on if the standing water is removed. In addition, the bottom and sludge material may require additional drying by the various mean discussed by the Consultant and Wayne Disposal's (name of WDI contact.)
2. **Work Plan.** It is Consultant's intention to place a Dozer in the pond pushing material to a backhoe on the bank and load off-road trucks for dumping at a site direction by the Owner. If a drag line setup is necessary, Consultant will be unable to provide this equipment.
3. **Estimated Volume.** Consultant Work is estimated on 15,000 cubic yards of material to be removed.
4. **Equipment Delivery.** Contractor shall have full responsibility for the delivery of all equipment to complete the Work to Owner's facility in Belleville, Michigan in accordance with Exhibit D, Schedule of Work. Contractor shall give Owner 24 hours prior notice before delivering any equipment to work site.
5. **Labor.** There is no requirement to use Union labor except to operate equipment, such as cranes, and such operators shall be Operating Engineers. Forklifts and manlifts do not require Union labor to operate them. Contractor shall provide on-site supervisor.

This description of services is hereby made a part of and is incorporated into the Construction Services Contract between Owner and Contractor dated _____. All work shall be performed in accordance with and be governed by the terms and conditions of this Agreement.

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(EQ Company)

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EXHIBIT B

SCHEDULE OF DRAWINGS

THIS IS A SAMPLE DESCRIPTION OF SERVICES (WRITTEN SPECIFICALLY FOR EACH CONTRACT)

SEDIMENTATION POND CLEANING PROJECT
Wayne Disposal, Inc.

1. **Drawings:** Not applicable
2. **Construction Drawings:** Not applicable
3. **As-Built Drawings:** Not applicable
4. **Manuals:** Not applicable

This description of services is hereby made a part of and is incorporated into the Construction Services Contract between Owner and Contractor dated . All work shall be performed in accordance with and be governed by the terms and conditions of this Agreement.

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(EQ Company)

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EXHIBIT C

SCHEDULE OF WORK (TIME OF PERFORMANCE)

THIS IS A SAMPLE DESCRIPTION OF SERVICES (WRITTEN SPECIFICALLY FOR EACH CONTRACT)

SEDIMENTATION POND CLEANING PROJECT
Wayne Disposal, Inc.

1. Owner and Contractor agree to the following general schedule for the Work as described in Exhibit B, Description of Contractor Services:
 - 1.1. Contractors shall work to a schedule that allows 55 hours per week and completion within 5 weeks, and shall work continuously from the project commencement, and shall work pursuant to the direction of WDI's
 - 1.2. Work shall commence not later than _____, 1999 and shall be completed before _____, 1999.
 - 1.3. Contractor shall deliver, at the Owner's expense, all equipment required to complete the Work.
 - 1.4. Contractor shall give the Owner 24 hours prior notice before delivery any equipment to the work site.
 - 1.5. The agreement price on Exhibit E, Unit Price Schedule reflects the amount of overtime required to complete the Work.

This schedule of work is hereby made a part of and is incorporated into the Construction Services Contract between Owner and Contractor dated _____. All work shall be performed in accordance with and be governed by the terms and conditions of this Agreement.

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(EQ Company)

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EXHIBIT D

UNIT PRICE SCHEDULE

THIS IS A SAMPLE DESCRIPTION OF SERVICES (WRITTEN SPECIFICALLY FOR EACH CONTRACT)

SEDIMENTATION POND CLEANING PROJECT
Wayne Disposal, Inc.

- 1. Price.** Contractor states that he can perform the work for a price not to exceed the sum of (write out) dollars (\$_____).
- 2. Cost Breakdown:**

This unit price schedule is hereby made a part of and incorporated into the Construction Services Agreement between Owner and Contractor dated _____. All work shall be performed in accordance with and shall be governed by the terms and conditions of this Agreement.

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(EQ Company)

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EXHIBIT E
TYPICAL SAMPLE
CHANGE ORDER
(Additions/Deletions to this Construction Contract)

Project Name

Contract No.

Change Order No.

Date:

Requested By:

Site Location:

Reason for Additional Services:

Description of Change Order:

Cost of Additional Services:

Total Cost of Change Order No. _____: \$

This Change Order is hereby made a part of and incorporated into the Construction Services Agreement between Owner and Contractor dated _____. All work performed pursuant to this Change Order shall be performed in accordance with and shall be governed by the terms and conditions of this Construction Services Agreement.

Agreed to and accepted:

(Contractor)

EQ-The Environmental Quality Co. _____
(Owner)

By: _____

By: _____

Its: _____

Its: _____

Construction Contract CC _____
(EQ Company)

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