

Exhibit A – Standard Contractual Language

These Terms and Conditions (“Terms”) will apply to the Agreement to which these Terms are recited, attached, or incorporated by reference (such Agreement together with these Terms and all attachments to the Agreement are collectively referred to herein as the “Agreement”), tangible or intangible personal property and fixtures (“Products”), and/or services (“Services”) to be provided by Contractor, as defined in the Agreement, to Elkhart County, as defined in the Agreement. Contractor and Elkhart County are collectively referred to herein as the “Parties.” All Products or Services purchased by Elkhart County pursuant to the Agreement are expressly limited to and conditioned upon acceptance of these Terms.

Any additional or conflicting terms or conditions contained on, attached to, or referenced by any other documentation, or other prior or later communication from Contractor to Elkhart County, will have no effect on the applicability of these Terms and are expressly rejected by Elkhart County, except to the extent such terms are not contradictory and are specifically accepted in writing by an authorized representative of Elkhart County. To the extent such terms presented by Contractor are contradictory to these Terms, they are considered void and of no force and effect. Additionally, Contractor expressly agrees that these Terms will become a legally binding contract between Elkhart County and Contractor upon execution of the Agreement.

In addition to the above, the Parties agree as follows:

1. Pricing; Payment. All quoted prices are in U.S. dollars, unless otherwise explicitly stated. Unless itemized as additional expenses in the Agreement, Products’ prices are inclusive of all shipping charges, costs of freight, taxes, import fees, insurance, duties, bonding, value added taxes, and similar costs.

2. Shipment; Loss or Damage in Transit. All shipments will be considered FOB Destination. Contractor will bear the risk of loss or damage to the Products in transit and title will not pass to Elkhart County until (1) if being installed or assembled by Contractor, such Products are properly installed or assembled according to the specifications established by Elkhart County and in compliance with manufacturer specifications; or (2) if not being installed or assembled by Contractor, such Products have arrived at the agreed upon destination and have been received by an authorized agent of Elkhart County. Elkhart County will not be liable for any damage, loss, or expense resulting from anything occurring during or attributable to transportation, installation, or assembly.

3. Delivery; Export Laws. Manufacture, shipment, and delivery of any Products will be subject to any prohibition or regulation imposed by any federal, state, or local government, or any subdivision or agency thereof. Further, the Products may be subject to control under the U.S. Export Administration Regulations and any other applicable U.S. export control laws and regulations. Elkhart County agrees that it will not export, re-export, or transfer

Products via any means to any prohibited destination, entity, or individual without the required export license(s) or authorization(s) from the U.S. government.

4. Invoicing/Payment. The following invoicing and payment protocols will apply to the Parties to the extent applicable to the contract:

a. Price for Products and Services. Upon final performance of the Services and delivery of the Products, County will pay to Contractor the remaining balance, after deduction for all periodic payments, of the sum set forth in the Agreement (“Purchase Price”), which amount is subject to set-off or reduction. Said sum will be paid periodically as requested by the Contractor provided, however, that no claim for payment under the Agreement can or will be approved until the applicable Products are delivered and Services are performed for which the claim is presented have been approved by Elkhart County. Final payment of the Purchase Price to the Contractor will not be permitted until written acceptance of the project contemplated has been tendered by Elkhart County and accepted by Elkhart County.

b. Change Orders. No change orders to the Agreement are authorized or permitted, except as herein stated. Any change of the Products or Services in the field, or in the amount of money to be paid to the Contractor for Products or Services to be performed based upon such changes of Products or Services in the field, must first be approved by Elkhart County. No change order will exceed the maximum amount permitted by applicable Indiana statutory law.

c. Claims for Payment; Periodic Payments. Notwithstanding any other provision of the Agreement, it is agreed by the Parties that before any periodic payments can or will be made as permitted by the Agreement, Contractor must in each instance submit its claim on the claim form provided by Elkhart County. The claim will then be processed by Elkhart County, which has the authority to deny or approve said claim, as provided by Indiana law. Submitted claims will be processed in the ordinary course of business for Elkhart County. Notwithstanding the above, and except for final payments for public works contracts governed by Section 4.f below, nonrecurring fees will be paid by Elkhart County within 45 days of Elkhart County receiving an acceptable submitted claim from Contractor.

d. Recurring Fees. If a recurring fee (e.g., monthly charge, quarterly charge, annual charge, etc.) is specified in the Agreement, Contractor will invoice Elkhart County for each period established in the Agreement, and Elkhart County will pay the recurring fee within 45 days from the date of such invoice. Contractor will begin to invoice the recurring fee on the applicable commencement date. Invoices for partial months will be prorated. If not otherwise set forth in the Agreement, the amount of recurring fees will not increase in connection with a renewal term. By entering into the Agreement, Elkhart County confirms that it has obtained the necessary budget approval for the first year of

recurring fees, but the remainder of the Agreement term is subject to necessary budget approvals and appropriation approvals by the Elkhart County Council for each year included in the Agreement term and any Agreement renewal term. If such approval is not obtained by Elkhart County, then Elkhart County may immediately terminate the applicable Agreement.

e. No Late Fees. Interest and late fees will not be paid on any past due payments.

f. Public Works Contracts – Final Payment; Verification. After all Products or Services for a public works project have been accepted by Elkhart County, the Contractor must furnish to Elkhart County a statement, executed under the penalties of perjury, that all expenses incurred for labor and material have been paid in full, except such expenditures specifically listed on the statement. Final payment to the Contractor will be delayed at least 60 days after the date the final subcontractor, material supplier, laborer, or person performed the last labor, furnished the last material, or performed the last service, though processing of the claim of the Contractor by Elkhart County may be undertaken during said period to expedite payment.

5. Warranty. Contractor warrants that, as of the date the Products are received by Elkhart County, such Products (1) are free from defects in design, materials, and workmanship, and (2) materially conform to the applicable specifications. This warranty for the Products (“Warranty”) will be for a period of the greater of (1) one year from the date of shipment by Contractor, (2) the period offered by Contractor in the Agreement, if applicable, or (3) the period offered in Contractor’s standard warranty (“Warranty Period”). During the Warranty Period, Contractor will make, at Contractor’s cost, such repairs, adjustments, or replacements as are necessary in order to comply with this Warranty, provided, however, that such repairs, adjustments or replacements will be made at Elkhart County’s cost if they are due to or have been caused by the misuse of the Products or other negligent action of Elkhart County. The warranty period for repaired or replaced Products will be the balance of the original Warranty Period. Notwithstanding the foregoing, in the event Elkhart County fails to operate the Products under normal conditions and in accordance with its applicable specifications, or Elkhart County (1) misuses, neglects, or abuses the Products (2) improperly maintains the Products, (3) causes the Products to be repaired or altered by any party other than Contractor or Contractor’s agent, or (4) acquires or uses the Products in violation of the Agreement, this Warranty will be terminated and deemed void and Contractor will have no further obligations with respect to the same. This Warranty is in addition to all manufacturer warranties associated with the Products, all of which must be in the name of Elkhart County upon completion of the project.

6. Non-Warranty Remedies. In addition to claims covered by the Warranty, Elkhart County and Contractor will each have all remedies allowed by law, including the Uniform Commercial Code, and all remedies otherwise referenced in these Terms.

7. Indemnification.

a. Indemnification of Elkhart County by Contractor. To the fullest extent permitted by law, and without limiting any other rights or remedies, Contractor agrees to defend, indemnify, and hold Elkhart County and its respective elected officials, officers, directors, employees, agents, departments, and successors and assigns harmless from and against any and all damages, losses, liabilities, costs, expenses, penalties, judgments, settlements, claims, or other causes of action, including reasonable attorneys' fees and disbursements, professional fees, and court costs actually incurred by an Elkhart County indemnified party, to the extent it is a result of, arising out of, or in connection with: (1) bodily injury or death, and damage, loss or destruction of any real or personal property (including without limitation the property of Elkhart County), which third-party claims arise out of or relate to Contractor's negligence or willful misconduct or any defects in any Products; or (2) Contractor's breach, nonfulfillment, or nonperformance of any representation, warranty, covenant, or obligation in these Terms.

b. Indemnification of Contractor by Elkhart County. To the fullest extent permitted by law and only to the extent government immunity does not apply, and without limiting any other rights or remedies, Elkhart County agrees to defend, indemnify, and hold Contractor and its respective, officers, directors, employees, agents, departments, and successors and assigns harmless from and against any and all damages, losses, liabilities, costs, expenses, penalties, judgments, settlements, claims, or other causes of action, including reasonable attorneys' fees and disbursements, professional fees, and court costs actually incurred by a Contractor indemnified party, to the extent it is a result of, arising out of, or in connection with: (1) bodily injury or death, and damage, loss or destruction of any real or personal property (including without limitation the property of Contractor), which third-party claims arise out of or relate to Elkhart County's negligence or willful misconduct; or (2) Elkhart County's breach, nonfulfillment, or nonperformance of any representation, warranty, covenant, or obligation in these Terms.

8. Intellectual Property.

a. Definition. "Intellectual Property Rights" means any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered design and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights and databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any

websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar affect that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions.

b. Preexisting Rights. Nothing in the Agreement affects either Party's rights in preexisting Intellectual Property Rights (including preexisting Intellectual Property Rights of either Party contained in or related to Confidential Information). Contractor will own and retain all rights, title, and interest in and to all Contractor preexisting Intellectual Property Rights. Elkhart County will own and retain all rights, title, and interest in and to all Elkhart County Intellectual Property and data. Contractor will have no rights to access, use, or modify Elkhart County's data unless it has the prior written signed consent of Elkhart County. Contractor does not acquire any ownership interest in or right to the information (1) transmitted to or from Elkhart County, Elkhart County's representatives, or Elkhart County citizens or (2) stored on Contractor's equipment or cloud servers by Elkhart County or Elkhart County's representatives. As between Contractor and Elkhart County, Elkhart County is, and will remain, the sole and exclusive owner of all right, title, and interest in and to any documents, specifications, data, know-how, methodologies, software, and other materials provided to Contractor by Elkhart County ("Elkhart County Materials"), including all Intellectual Property Rights therein. Contractor has no right or license to use, publish, reproduce, prepare derivative works based upon, distribute, perform, or display any Elkhart County Materials except solely during the term of the Agreement to the extent necessary to perform Contractor's obligations under the Agreement. All other rights in and to Elkhart County Materials are expressly reserved by Elkhart County. Contractor has no right or license to use Elkhart County's trademarks, service marks, trade names, logos, symbols, or brand names.

c. Work Product. To the extent Contractor provides Products or Services developed specifically for Elkhart County by Contractor, Elkhart County is and will be the sole and exclusive owner of all right, title, and interest throughout the world in and to all writings, technology, inventions, discoveries, processes, techniques, methods, ideas, concepts, research, proposals, and materials, and all other work product of any nature whatsoever, that are created, prepared, produced, authored, edited, modified, conceived, or reduced to practice in the course of performing Services under the Agreement (collectively, the "Work Product") including all Intellectual Property Rights therein. Contractor agrees that the Work Product is "work made for hire" as defined in 17 U.S.C. § 101 for Elkhart County and all copyrights therein automatically and immediately vest in Elkhart County. If, for any reason, any Work Product does not constitute "work made for hire," Contractor hereby irrevocably assigns to Elkhart County, for no additional consideration, Contractor's entire right, title, and interest throughout the world in and to such Work Product, including all Intellectual Property Rights therein, including the right to sue for past, present, and future infringement, misappropriation, or dilution thereof.

d. Moral Rights Waived. To the extent any copyrights are assigned under Section 8.c, Contractor hereby irrevocably waives in favor of Elkhart County, to the extent permitted by applicable law, any and all claims Contractor may now or hereafter have in any jurisdiction to all rights of paternity or attribution, integrity, disclosure, and withdrawal and any other rights that may be known as “moral rights” in relation to all Work Product to which the assigned copyrights apply.

e. Cooperation and Appointment. Upon the request of Elkhart County, during and after termination of the Agreement, Contractor will promptly take such further actions, including execution and delivery of all appropriate instruments of conveyance, and provide such further cooperation, as may be necessary to assist Elkhart County to apply for, prosecute, register, maintain, perfect, record, or enforce its rights in any Work Product and all Intellectual Property Rights therein. In the event Elkhart County is unable, after reasonable effort, to obtain Contractor’s signature on any such documents, Contractor hereby irrevocably designates and appoints Elkhart County as Contractor’s agent and attorney-in-fact, to act for and on Contractor’s behalf solely to execute and file any such application or other document and do all other lawfully permitted acts to further the prosecution and issuance of trademarks, copyrights, or other intellectual property protection related to the Work Product with the same legal force and effect as if Contractor had executed them. Contractor agrees that this power of attorney is coupled with an interest.

f. Incorporation of Preexisting Materials. Contractor agrees that none of Contractor’s preexisting materials are or will be incorporated in or combined with any Work Product without providing Elkhart County with advance written notice. To the extent that any of Contractor’s preexisting materials are incorporated in or combined with any Work Product or otherwise necessary for the use or exploitation of any Work Product, Contractor hereby grants to Elkhart County an irrevocable, worldwide, perpetual, royalty-free, non-exclusive license to use, publish, reproduce, perform, display, distribute copies of, prepare derivative works based upon, make, have made, sell, offer to sell, import, and otherwise exploit such preexisting materials and derivative works thereof. Elkhart County may assign, transfer, and sublicense such rights to others without Contractor’s approval.

9. Ownership of Documents and Access to Records.

a. Ownership. Provided Elkhart County makes all payments for Products received and Services rendered under the Agreement in accordance with the terms and provisions hereof, all documents and materials, in original and any altered format and media, including tracings, drawings, reports, estimates, specifications, field notes, investigations, studies, and instruments of service prepared in providing the Products and/or Services under the Agreement, including all Intellectual Property Rights related

to the same, are to be the property of Elkhart County. If the Agreement is terminated before all Products and/or Services contemplated thereby are complete, then upon payment for work performed prior to termination, all documents and materials, in original and any altered format and media, including tracings, drawings, reports, estimates, specifications, field notes, investigations, studies, and instruments of service prepared in providing the Products and/or Services under the Agreement rendered prior to termination, including all Intellectual Property Rights related to the same, are to be the property of Elkhart County. During the performance of any Services and prior to delivery of any Products, Contractor will be responsible for any loss or damage to the documents enumerated while they are in Contractor's possession, and any such loss or damage will be restored at Contractor's expense. Contractor will give Elkhart County full access to the documents and materials during the term of the Agreement.

b. Access. Contractor will maintain all books, documents, papers, accounting records, and other evidence pertaining to the costs incurred and will make such materials available at its respective offices at all reasonable times during the terms of the Agreement and for 3 years from the date of final payment under the terms of the Agreement for inspection by Elkhart County. Copies thereof must be furnished to Elkhart County upon request.

10. Confidential Information.

a. Definition. "Confidential Information" means Elkhart County information in any form or medium (whether oral, written, electronic, or other) that is statutorily protected as confidential, marked by Elkhart County as confidential, or is otherwise not subject to or is non-disclosable for purposes of public record request under the Indiana Access to Public Records Act for any reason including, but not limited to, an exception or privilege that permits non-disclosure. Confidential Information also means Contractor information that is marked by Contractor as confidential and is not subject to public record request under the Indiana Access to Public Records Act or any other federal, state, or local law. Confidential Information does not include information that either Party can demonstrate by written or other documentary records: (1) was already known to such Party without restriction on use or disclosure prior to receipt of such information from or on behalf of the other Party; (2) was or becomes generally known by the public other than by breach of the Agreement by, or other wrongful act of, the receiving Party or any of its representatives or agents; (3) was received by a Party from a third party who was not, at the time, under any obligation to the other Party or any other person to maintain the confidentiality of such information; or (4) was or is independently developed by a Party without reference to or use of any of the other Party's Confidential Information. Confidential Information also does not include information that is confirmed in writing by Elkhart County to be subject to public record request under the Indiana Access to Public Records Act, without any exception or privilege that would permit non-disclosure.

b. Obligations. Contractor and Elkhart County each acknowledge that in connection with the Agreement Contractor and Elkhart County, respectively, may gain access to Confidential Information. As a condition of the Agreement, the Parties agree as follows:

i. Contractor will not access or use Elkhart County's Confidential Information other than as strictly necessary to perform its obligations under and in accordance with the Agreement;

ii. Contractor and Elkhart County must maintain all Confidential Information in strict confidence and, except as may be permitted by and subject to its compliance with Section 10.c below, not disclose or permit access to Confidential Information other than to its representatives who: (1) need to know such Confidential Information for purposes of performance of its obligations under and in accordance with the Agreement; (2) have been informed of the confidential nature of the Confidential Information and the Parties' obligations under this Section 10; and (3) are bound by confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Section 10; and

iii. Contractor must safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its most sensitive information and in no event less than a reasonable degree of care.

c. Compelled Disclosures. If either Party is compelled by applicable Law to disclose any Confidential Information then, to the extent permitted by applicable law, such Party will: (1) promptly, and prior to such disclosure, notify the other Party of such requirement so that such Party can seek a protective order or other appropriate remedy or waive its rights under this Section 10; and (2) provide reasonable assistance to such Party in opposing such disclosure or seeking a protective order or other limitations on disclosure. If the non-disclosing Party waives compliance or, after providing the notice and assistance required under this Section 10.c, the disclosing Party remains required by law to disclose any Confidential Information, the disclosing Party may disclose only that portion of the Confidential Information that, on the advice of the disclosing Party's legal counsel, the disclosing Party is legally required to disclose and will use commercially reasonable efforts to obtain assurances from the applicable court or other presiding authority that such Confidential Information will be afforded confidential treatment.

11. Representations and Warranties. Contractor warrants to Elkhart County that:

a. Quality of Work. Any Products and Services to be provided to Elkhart County will be at a professional level of quality conforming to generally accepted industry standards and in compliance in all material respects with all applicable laws and regulations and the specifications set forth in the Agreement and by the applicable manufacturer.

b. Noninfringement. The Products and Services provided by Contractor to Elkhart County will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights or other rights of any third party.

c. Uninfected Products and Services. When delivered, any Products and Services of Contractor, will not contain and will not allow, directly or indirectly, except to the extent it is the result of Elkhart County's or Elkhart County's representatives' action: (i) any virus, Trojan horse, worm, backdoor, malware, or other software the effect of which is to permit unauthorized access or to disable, erase, corrupt, or otherwise harm any computer, systems, or software, or (ii) any time bomb, drop-dead device, or other software designed to disable a computer program automatically with the passage of time or under the positive control of any person, or otherwise deprive Elkhart County of its lawful right to use Elkhart County equipment.

d. Intended Performance. When delivered, the Products and Services of Contractor will perform in all material respects as described in the Agreement or other documentation relating to such Products and Services and will meet the specific needs and purposes identified by Elkhart County in writing for such Products and Services, unless the Parties agree in writing to move forward with a specific Product or Service that Contractor states, in its opinion, will not meet the specific needs and purposes of Elkhart County.

e. Authorizations. Contractor has, and will maintain, throughout the term of the Agreement, all licenses, permits, authorizations, and approvals necessary for the conduct of its business, sale of its Products, and performance of the Services in accordance with all laws.

f. Other Contracts. Neither Contractor's act of entering the Agreement with Elkhart County nor Contractor's performance of the Services or delivery of the Products conflicts with or results in any breach or default under any other agreement to which Contractor is subject.

12. Relationship of Parties. It is understood and agreed between the Parties that Contractor is an independent contractor in the performance of each part of the Agreement and is not guaranteed any additional work as a result of the Agreement. Contractor may perform

services for other persons or entities and to the general public during the term of the Agreement with Elkhart County and Elkhart County may use other contractors to perform the same or similar services simultaneous with Contractor. No agent or employee of Elkhart County or Contractor is or will be deemed to be the employee or agent of the other Party. None of the benefits provided by Elkhart County or Contractor to their respective employees, including, but not limited to workers' compensation insurance, unemployment insurance, and benefits, are available to the employees or agents of the other Party. In no event will Elkhart County be responsible or liable for any debts, liabilities, or other obligations of Contractor. Contractor will be solely responsible for paying all taxes in accordance with federal, state, and local law related to its separate and independent business. Contractor will furnish, at its own expense, its own office supplies, equipment, and other materials necessary to supply the Services and deliver any Products acquired in connection with the Agreement. Apart from meeting Elkhart County and manufacturers specifications, Contractor will be responsible for controlling the means and methods for meeting such specifications. Contractor will not receive any training from Elkhart County with respect to the Products and Services to be provided under the Agreement.

13. Transition Assistance. In connection with the expiration or termination of the Agreement, for any reason, and notwithstanding any dispute between the Parties, Contractor will provide Elkhart County with assistance to transfer any ongoing affected Services to Elkhart County, including, providing to Elkhart County, or a designated third party, personnel training in the performance of the affected Services ("Transition Assistance Services") for a period of up to 12 months, or as otherwise described in the Agreement, for the orderly transition of the Services to Elkhart County or another independent contractor of Elkhart County, beginning upon the expiration or termination of the Agreement ("Transition Assistance Period") or as otherwise agreed upon between Elkhart County and Contractor as follows:

a. Applicable Requirements and Access. At no additional cost, Contractor will provide to Elkhart County and any designated third-party service provider in writing, to the extent available, applicable requirements, standards, policies, operating procedures, and other documentation relating to the affected Services and Products;

b. Development of Transition Assistance Plan. If requested by Elkhart County, Contractor will assist Elkhart County and its designated third-party service provider in developing a written methodology and approach, including deliverables and timelines, that Contractor will use to deliver Transition Assistance Services during the Transition Assistance Period ("Transition Assistance Plan"), with hours of assistance provided at pricing consistent with Section 13.c below;

c. Comparable Prices. Contractor will provide the Transition Assistance Services during the Transition Assistance Period, including prices no worse to Elkhart County than those for comparable Services prior to termination, or if comparable services were not performed for Elkhart County prior to termination or expiration, then at prices no worse than the fair market value for such Services;

d. Post-Transition Assistance. For up to 3 months after the Transition Assistance Period at pricing consistent with Section 13.c above, Contractor will answer all reasonable and pertinent verbal or written questions from Elkhart County regarding the Products or Services on an “as needed” basis as requested by Elkhart County, and deliver to Elkhart County any remaining Elkhart County documentation or equipment still in Contractor’s possession; and

e. Absolute Obligation. Contractor agrees that it has an absolute and unconditional obligation to provide Elkhart County with Transition Assistance Services, and Contractor’s quality and level of performance during the Transition Assistance Period will continue to adhere to all requirements of the Agreement.

14. Termination. Termination may occur at any time by written agreement of the Parties. If the Agreement includes an automatic renewal term, either party may give written notice, at least 30 days prior to the end of the current term, that the Agreement will not automatically renew and will terminate at the end of its current term. If either Party defaults in the performance of any of the obligations required under the Agreement, the non-defaulting Party may terminate the Agreement according to the provisions set forth in Section 15 below. Regardless of whether a default exists, and without providing any opportunity for cure, the Agreement may be immediately terminated by Elkhart County if any of the following occur: (1) if Contractor’s business entity is dissolved by the Indiana Secretary of State or otherwise ceases to exist; (2) Contractor becomes insolvent or takes or fails to take any action which constitutes an admission of inability to pay debts as they mature; (3) Contractor makes a general assignment of the benefit of creditors to an agent authorized to liquidate any substantial amount of assets; (4) Contractor becomes a subject of an “order of relief” within the meaning of the United States Bankruptcy Code; (5) Contractor applies to a court for the appointment of a receiver for any assets or properties; (6) Contractor makes a fraudulent misrepresentation that is material to the Agreement; or (7) Elkhart County determines that a termination is in the best interest of the local government. If a basis for immediate termination exists, Elkhart County may terminate by delivering to Contractor a Notice of Termination specifying the basis for emergency termination. If the Agreement is terminated in the middle of a month, Contractor will be entitled to compensation only for Services performed prior to termination, including a proration for the number of days prior to termination compared to the total number of days for the month. Under no circumstances will Elkhart County be liable to Contractor for an early termination charge.

15. Default and Opportunity for Cure. If either Party defaults in the performance of any of the obligations required under the Agreement, the non-defaulting Party may terminate the Agreement after the defaulting Party fails to cure the default within 10 days of the defaulting Party receiving written notice of the default. In the event the defaulting Party fails to cure the default within said 10-day period, then the Agreement may be terminated as set forth above without further liability on the part of the non-defaulting Party. Such termination,

however, will not foreclose the non-defaulting Party from pursuing any other rights or recovering any legal or equitable relief permitted by law as the result of the default of the defaulting Party.

16. Cumulative Remedies; Waiver; Equitable Remedies. Except when specifically stated to the contrary, all remedies available to either Party for breach of the Agreement, or at law or in equity, are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies. The failure of either Party at any time to require performance by the other Party of any provision hereof will not affect the full right to require such performance at any time thereafter, nor will the waiver by either Party of a breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself. No single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. If a Party actually threatens to, or would inevitably breach the Agreement, such Party acknowledges that the breach would cause the other Party irreparable harm, a remedy at law alone would be inadequate, and the other Party is entitled to apply for injunctive relief without any requirement to post a bond or other surety.

17. Assignment. The Agreement is not assignable, delegable, sublicensable, or otherwise transferable by Contractor, in whole or in part, without the prior written consent of Elkhart County. Elkhart County may resell the Products and assign all interest therein, including but not limited to any licenses and warranties without Contractor's consent. Any assignment or transfer without the required consent will be void and will be considered a material breach of the Agreement. Upon any permitted assignment, Contractor will remain jointly and severally responsible for the performance under the Agreement, unless released in writing by Elkhart County.

18. Force Majeure. A Party will not be liable for any failure of or delay in the performance of the Agreement for the period that such failure or delay is beyond the reasonable control of a Party, materially affects the performance of any of its obligations under the Agreement, and could not reasonably have been foreseen or provided against, but will not be excused for failure or delay resulting from only general economic conditions or other general market effects.

19. Notices. Any notices required by the Agreement, including but not limited to, demands, requests and other communications required or permitted hereunder (not including invoices) must be in writing and will be deemed given: (i) when delivered in person, (ii) one (1) business day after deposit with an overnight delivery service for next day delivery, or (iii) three (3) business days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, and addressed to the recipient Party at the addresses provided in the Agreement.

20. Compliance with Legal Requirements. Contractor will comply with all applicable international, federal, state, and local laws, regulations, and requirements including recordkeeping and reporting requirements with respect to the Products and Services provided under the Agreement. Contractor will further ensure that any action suggested or proposed by Contractor to be taken by Elkhart County does not violate any international, federal, state, or local law, regulation, or requirement or any third-party rights. Contractor will further comply with any additional requirements necessary to secure grant funding to pay for Products and Services rendered under the Agreement.

21. Subcontractors. Contractor will not, without notice to and approval by Elkhart County, engage any person or entity that is not an employee of Contractor to perform Services or provide Products hereunder. Contractor's use of any such subcontractor does not relieve Contractor of its obligations under the Agreement, and Contractor will:

a. Agency Relationship. Be responsible and liable for the acts and omissions of each subcontractor (including its employees) to the same extent as if such acts or omissions were by Contractor or its employees.

b. Agreement. Prior to the commencement of Services by any subcontractor, enter into a written agreement acceptable to Elkhart County with such subcontractor that binds such subcontractor to the provisions protecting Elkhart County's interest set forth in the Agreement (e.g., confidentiality provisions that are at least as protective of Elkhart County's Confidential Information as those contained in the Agreement) and provide Elkhart County with a copy of the executed original of such agreement promptly upon request.

c. Third-Party Beneficiary. Name Elkhart County a third-party beneficiary under Contractor's agreement with each subcontractor with respect to the Services, with rights to enforce each agreement.

d. Fees and Expenses. Be responsible for all fees and expenses payable to any subcontractor, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments, and disability benefits.

22. Non-Discrimination. Pursuant to Indiana Code § 22-9-1-10, Contractor and its subcontractors, if any, will not discriminate against any employee or applicant for employment to be employed in the performance of the Agreement, with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, religion, color, sex, disability, national origin, or ancestry. Breach of this covenant may be regarded as a material breach of the Agreement. Pursuant to Indiana Code § 22-9-10-9, Contractor and its subcontractors, if any, will not discriminate against any

applicant for employment to be employed in the performance of the Agreement because of their status as a veteran.

23. Non-Solicitation. During the term of the Agreement and for a period of 2 years after termination of the Agreement, Contractor agrees not to (1) solicit any Elkhart County employees for employment with Contractor; and (2) interfere with the employment relationship of any Elkhart County employees with the County of Elkhart.

24. State Law Certifications.

a. Contractor is aware of the provisions under Indiana Code § 36-1-21 et seq. with respect to anti-nepotism in contractual relationships with governmental entities. Contractor certifies that none of the owners of Contractor is a relative of any elected County Commissioner, County Council Member of Elkhart County, or any other Elkhart County elected official. Contractor has further disclosed any relationship an owner of Contractor has with any member of any board reviewing the Agreement.

b. Pursuant to Indiana Code § 5-22-16.5 et seq., Contractor certifies that Contractor is not engaged in investment activities in Iran.

25. E-Verify Program. Pursuant to Indiana Code § 22-5-1.7-11, Contractor agrees to and will enroll in and verify the work eligibility status of all newly hired employees of Contractor after the date of the Agreement through the E-Verify Program as defined in Indiana Code § 22-5-1.7-3; provided, however, Contractor is not required to verify the work eligibility status of all newly hired employees after the date of the Agreement through the E-Verify Program if the E-Verify Program no longer exists. Contractor further represents, certifies, and affirms under the pains and penalties of perjury that it does not knowingly employ an unauthorized alien.

26. Telephone Solicitation Act Compliance. Contractor certifies that, except for de minimis and non-systematic violations, it has not violated the terms of Indiana Code § 24-4.7 et seq., Indiana Code § 24-5-12 et seq., or Indiana Code § 24-5-14 et seq. in the previous 365 days, even if Indiana Code § 24-4.7 et seq. is preempted by federal law, and that Contractor will not violate the terms of Indiana Code § 24-4.7 et seq. for the duration of the Agreement, even if Indiana Code § 24-4.7 et seq. is preempted by federal law. Contractor further certifies that any affiliate or principal of Contractor and any agent acting on behalf of Contractor or on behalf of any affiliate or principal of Contractor, except for de minimis and non-systematic violations, has not violated the terms of Indiana Code § 24-4.7 et seq. in the previous 365 days, even if Indiana Code § 24-4.7 et seq. is preempted by federal law, and will not violate the terms of Indiana Code § 24-4.7 et seq. for the duration of the Agreement, even if Indiana Code § 24-4.7 et seq. is preempted by federal law.

27. Modification. No change, modification, or waiver of any term of the Agreement will be valid unless it is in writing and signed by both Elkhart County and Contractor.

28. Attorney Fees. In the event Elkhart County is required to retain legal counsel as a result of any breach of the Agreement, Elkhart County will be entitled to reasonable attorneys' fees, costs, and expenses incurred. The preceding sentence is intended to be severable from the other provisions of the Agreement and to survive any judgment and, to the maximum extent permitted by law, will not be deemed merged into such judgment.

29. Entire Agreement. The Agreement contains the entire agreement of the Parties and supersedes all prior discussions, negotiations, proposals, understandings, and agreements regarding the Products or Services to be provided by Contractor to Elkhart County under the Agreement.

30. Applicable Law, Jurisdiction, and Exclusive Venue. The Agreement will be governed by, and construed and enforced in accordance with, the laws of the state of Indiana without regard to conflicts of law principles. Elkhart County and Contractor agree that all suits, actions or proceedings arising out of or relating to the Agreement may only be filed in a state court in Elkhart County, Indiana or federal court in the Northern District of Indiana. Elkhart County and Contractor hereby consent and submit to the jurisdiction of said courts and hereby waive any right to transfer or change venue or to claim any such proceeding has been brought in an improper or inconvenient forum.

31. Counterparts, Fax, and Electronic Signatures. The Agreement may be executed in two or more counterparts, each of which will be deemed an original, and all such counterparts will constitute a single instrument. Elkhart County and Contractor agree that a fax or electronic signature of a Party hereto will be deemed to be as legally effective and binding as a signed original; provided, however, any Party providing a fax or electronic signature hereof will be required to promptly forward a signed original to any requesting Party.

32. Severability. Each of the provisions contained in the Agreement and words contained within such provisions will be severable, and the unenforceability of one will not affect the enforceability of any others or of the remainder of the Agreement.

33. Survival. The following provisions will survive the delivery of the Products, the completion of the Services, and the termination of the Agreement: (1) all obligations arising prior to any termination of the Agreement, (2) the Parties' respective representations, warranties, and covenants, together with obligations of confidentiality, and (3) all provisions of the Agreement allocating responsibility or liability between Elkhart County and Contractor, together with obligations with respect to any warranty or indemnification.

34. Headings. The headings of the sections and subsections of the Agreement are inserted for convenience only and will not constitute a substantive part hereof.

35. Authorization. Contractor certifies that he or she has been and is properly authorized on behalf of Contractor to enter into the Agreement and execute the same.

36. Binding Effect. The Agreement is binding upon and will inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

37. No Waiver of Governmental Immunity. Nothing in the Agreement waives or is intended to waive any protections that may be applicable to Elkhart County or any of its elected or appointed officials, employees, agents, or representatives under any applicable statutes, rules, or regulations providing governmental immunity, or any other rights, protections, immunities, defenses, or limitations on liability that Elkhart County or such related parties are provided by law. To the extent this provision conflicts with any other provision contained in this Agreement, this provision controls.

38. Public Works Agreements.

a. Performance Bond; Payment Bond; Hold Harmless Commitment. This Subsection only applies to Agreements for public works projects exceeding \$200,000.00. The Parties agree that a performance bond and payment bond equal to the total amount owed to Contractor under the applicable Agreement will be required of the Contractor as part of this Agreement. The payment bond must state that it is for the benefit of the subcontractors, laborers, material suppliers, and those performing services. The payment bond and performance bond must specify that: (1) a modification, omission, or addition to the terms and conditions of the public work contract, plans, specifications, drawings, or profile; (2) a defect in the public work contract; or (3) a defect in the proceedings preliminary to the letting and awarding of the public work contract; does not discharge the surety. These bonds will remain in effect at least one year after the date of final settlement with the Contractor.

b. Retainage. This Subsection only applies to all Agreements for public works projects exceeding \$200,000.00. A percent, as set forth in the Agreement, of all claims for payment for the dollar value of acceptable products delivered and services satisfactorily rendered will be withheld until the project is substantially completed for the purpose of securing payment for materialmen, laborers, and subcontractors, as contemplated by Indiana law ("Retainage"). If no percent is identified in the Agreement, then the maximum amount permitted by Indiana law may be withheld by Elkhart County. Elkhart County may refuse to make payment of the full amount owed under the applicable Agreement if: (1) claims have been made on account of Contractor's performance or furnishing of Products or Services; (2) liens have been filed in connection with the Products or Services that have not been released; or (3) there are other items entitling Elkhart County to a set-off against the amount owed including, but not limited to, liquidated damages.

c. Domestic Preference. As required by Indiana Code § 5-16-8-2, as amended, Contractor must only use steel and foundry products made in the United States in the performance of any public works project for Elkhart County unless Elkhart County has determined, in writing, that the cost of steel or foundry products made in the United States is considered to be unreasonable. For the purposes of this Section, the price of steel or foundry products of domestic origin will not be considered unreasonable if the price does not exceed the sum of the offered price of like steel or foundry products of foreign origin (including any applicable duty) plus a differential of 15% of the bid or offered price of the steel or foundry products of foreign origin.

39. Additional Terms. An Agreement may contain supplemental terms that are specific to the Agreement so long as they do not conflict with these Terms and do not limit the rights and protections given to Elkhart County under these Terms.