

Consultant Agreement

1.1 This Agreement is made as of the date set forth below between the Cleveland-Cuyahoga County Port Authority (Owner), and **TBD** (Consultant) in connection with the Project:

Project Name:	Cuyahoga River Navigation Channel Bulkhead Condition Assessment Services
Site Location:	Cuyahoga River Navigation Channel
Owner:	Cleveland-Cuyahoga County Port Authority
Owner's Representative:	Carly Beck
Address:	1100 West 9 th Street, Suite 300 Cleveland, OH 44113
Consultant:	TBD
Consultant's Principal Contact:	TBD
Address:	TBD

ARTICLE 2 - SCOPE OF WORK

2.1 The Consultant shall perform and provide all of the Services described in this Agreement.

2.1.1 The type of consulting services provided under this Agreement shall be professional services in the form of an above and below the waterline condition assessment survey of the bulkheads and other retaining structures along the Cuyahoga River federal navigation channel ("Site").

2.1.2 The project delivery method(s) for this Project shall be: Electronic Delivery

2.1.3 The Consultant or a qualified representative acting on behalf of the Consultant shall be present at the Site whenever any Work is in preparation or progress, unless otherwise expressly provided in writing by the Owner.

2.1.4 Any subcontract made by the Consultant with the consent of the Owner shall incorporate by reference all the terms of this Agreement necessary for the Consultant to meet its obligations to the Owner under this Agreement.

2.2 The Project Budget is \$X.

ARTICLE 3 - COMPENSATION

3.1 The total not to exceed compensation for the Consultant's Services shall not exceed is \$X, which includes the sum of (1) Direct Personnel Expense, (2) Basic Fee, (3) Additional Services Fee, and (4) Reimbursable Expenses. The Owner shall pay the compensation amount to the Consultant in exchange for the Consultant's proper, timely, and complete performance of the Services.

3.2 Direct Personnel Expense. (NOT APPLICABLE)

3.2.1 RESERVED

3.3 Basic Fee.

3.3.1 For Basic Services provided by the Consultant and all Sub-consultants in accordance with the **Consultant Scope of Services** attached as **Exhibit B**, the Owner shall pay the Consultant the Basic Fee of \$X, which shall not be exceeded without the prior written approval of the Owner and an amendment to this Agreement.

3.4 Additional Services Fees. (NOT APPLICABLE)

3.4.1 RESERVED

3.5 Reimbursable Expenses. (NOT APPLICABLE)

3.5.1 RESERVED

ARTICLE 4 - KEY PERSONNEL

4.1 The Consultant's key personnel for the Project are:

4.1.1 TBD

4.2 The identities of the Consultant's key personnel, and the extent of their participation in performing the Consultant's services as identified above, shall not be altered so long as they remain under the employee of Consultant without the Owner's prior written consent. The Consultant was selected for this Project partially based upon the Project Manager's/Project Inspector's previous experience and qualifications. Consultant shall take steps to ensure the employee remain on staff through the completion of the Project. If employee is no longer employed by the Consultant, Owner shall require the Consultant to backfill the position with personnel that are deemed to meet or exceed the qualifications for the key personnel noted above at no additional cost or delay to the Owner.

4.3 The Consultant shall dismiss from the Project any individual employed by the Consultant who the Owner finds, in its sole discretion, to be incompetent, guilty of misconduct, or detrimental to the Project.

ARTICLE 5 - GENERAL PROVISIONS

5.1 Effectiveness.

5.1.1 It is expressly understood by the Consultant that none of the rights, duties, and obligations described in the Contract Documents shall be valid and enforceable unless the Owner first certifies that there is a balance in the Owner's treasury or are in the process of collection to an appropriate fund, free from any previous encumbrance.

5.1.2 Subject to **Section 5.1.1**, the Agreement shall become binding and effective upon execution by the Owner and Consultant.

5.1.3 This Agreement may be executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

5.2 Representations.

5.2.1 The Consultant represents and warrants that it is not subject to an unresolved finding for recovery under ORC Section 9.24. If this representation and warranty is found to be false, the Agreement is void, and the Consultant shall immediately repay to the Owner any funds paid under this Agreement.

5.2.2 The Consultant represents and warrants that throughout the performance of the Services or longer as may be described below, the Consultant shall obtain, pay for, and keep in force, the insurance coverage required by terms of this Agreement and by ORC Section 153.70.

ARTICLE 6 - ENUMERATION OF DOCUMENTS

6.1 This Agreement includes the following documents:

6.1.1 Consultant Standard Terms and Conditions attached as **Exhibit A.**

6.1.2 Consultant Scope of Services attached as **Exhibit B.**

6.1.3 Consultant Proposal attached as **Exhibit C.**

SIGNATURES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below:

TBD

**CLEVELAND-CUYAHOGA COUNTY
PORT AUTHORITY**

Signature
TBD

Printed Name
TBD

Title

Date

Signature
William D. Friedman

Printed Name
President/CEO

Title

Date

END OF DOCUMENT

Draft

ISSUER'S FISCAL OFFICER'S CERTIFICATE

The undersigned, assistant secretary and assistant fiscal officer of the Issuer, hereby certifies that the monies required to meet the obligations of the Issuer during the year 2021 under the Consultant Agreement have been lawfully appropriated by the Legislative Authority of the Issuer for such purposes and are in the treasury of the Issuer or in the process of collection to the credit of an appropriate fund, free from any previous encumbrances. This Certificate is given in compliance with Sections 5705.41 and 5705.44, Ohio Revised Code.

William D. Friedman
Assistant Secretary and Assistant Fiscal Officer

Dated: _____, 2021

Exhibit A - Consultant Standard Terms and Conditions

ARTICLE 1 - CONSULTANT'S RESPONSIBILITIES

1.1 Nondiscrimination

1.1.1 The Consultant shall comply with Applicable Law regarding equal employment opportunity and non-discrimination.

1.2 RESERVED

1.3 Consultant's Services

1.3.1 The Consultant shall provide Services for the Project, including, but not limited to, Services customarily furnished in accordance with generally accepted architectural, landscape architectural, engineering, surveying, commissioning, construction management, or other relevant specialty consulting practice, in accordance with the terms of this Agreement.

1.3.2 The Consultant shall provide the Services in accordance with Applicable Law.

1.3.3 RESERVED

1.3.4 The Consultant shall not be responsible for or have control or charge over the acts or omissions of any Contractors or Subcontractors, any of their agents or employees, or any other persons performing any Work on the Project.

1.3.5 The Consultant shall render interpretations and decisions in connection with a Contractor's responsibilities under the Contract Documents and submit recommendations to the Owner for enforcement of the Contractor's contract as necessary.

1.4 Standard of Care

1.4.1 Notwithstanding any other provision of this Agreement to the contrary, the Consultant shall perform its Services consistent with the professional skill and care ordinarily provided by registered architects, registered landscape architects, professional engineers, professional surveyors, commissioning agents, construction managers, certified inspectors, or other relevant specialty consultant discipline in the same or similar locality under the same or similar circumstances.

1.4.2 The Consultant shall perform its Services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

1.5 Project Budget

1.5.1 The Owner shall provide written notice to the Consultant of any change in the Project Budget.

1.5.2 The Consultant shall perform its Services so that the Project is completed within the Project Budget.

1.5.3. RESERVED

1.6 Cooperation

16.1 The Consultant shall perform the Services so as not to interfere with, disturb, hinder, or delay the services of Separate Consultants or Work of the Contractors, unless directed to do so by the Owner. The Consultant shall cooperate and coordinate fully with all Separate Consultants and Contractors and shall freely share all of the Consultant's Project-related information with them to facilitate the timely and proper performance of the Services and of the services and work of Separate Consultants and Contractors.

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1.6.2 If the Consultant damages the property or work of any Separate Consultant or Contractor, or by failure to perform the Services with due diligence, delays, interferes with, hinders, or disrupts the services of any Separate Consultant or the work of any Contractor who suffers additional expense and damage as a result, the Consultant is responsible for that damage, injury, or expense.

1.6.3 If the proper execution or results of any part of the Services depends upon work performed or services provided by the Owner, a Separate Consultant, or a Contractor, the Consultant shall review that other work and appropriate instruments of service, and promptly report to the Owner in writing any defects or deficiencies in that other work or services that render it unavailable or unsuitable for the proper execution and results of the Services. The Consultant's failure so to report will constitute an acceptance of the other work and services as fit and proper for integration with the Consultant's Services except for defects and deficiencies in the other work or services that were not reasonably discoverable at the time of the Consultant's inspection.

1.6.4 The Consultant shall not delay the Services on account of any claim, dispute, or action between the Consultant and a Separate Consultant or Contractor.

1.7 Records

1.7.1 The records of all of the Consultant's Direct Personnel Expenses Reimbursable Expenses, and payments to Sub-consultants (if applicable) pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to the Owner at all times and shall be maintained for 7 years after Substantial Completion of all Work.

1.7.2 All other records kept by the Consultant related to the Project shall be available to the Owner at all times and shall be maintained for 6 years after Substantial Completion of all Work.

1.7.3 Upon completion of the Project, the Owner will request all pertinent project documentation be delivered which includes reports, photos, GIS database information, and all inspection and testing documentation.

ARTICLE 2 - OWNER'S RIGHTS AND RESPONSIBILITIES

2.1 The Owner

2.1.1 The Owner shall designate a Project Manager for the Project. The Project Manager is authorized to act on behalf of the Owner to perform specific responsibilities under the Agreement.

2.1.2 The Owner shall furnish information and services required of it in a timely manner.

2.2 Required Actions

2.2.1 The Owner shall review, approve, or take such actions as are required of them by this Agreement, the Contract Documents, and Applicable Law in a reasonable and timely manner.

2.3 Owner's Requirements

2.3.1 The Owner shall provide, to the Consultant, full information regarding its requirements for the Project including the Owner's use, design, time, and financial objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, time constraints imposed by fiscal and budgetary considerations, special equipment, and systems and Site requirements.

2.3.1 The Owner shall provide, to the Consultant, a work station on site in our Site Operator's (Logistec's) field office trailer. The work station will consist of a conditioned work space with a desk and a chair. Consultant will be responsible to keep the office space neat, clean, and orderly. Consultant will be responsible for providing their own necessary computer, tablets, software, printer, internet access, and office supplies necessary to perform their work.

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2.4 Site Description

2.4.1 If reasonably requested by the Consultant as necessary for the Project, the Owner shall furnish a legal description and a certified land survey of the Site, giving, as applicable, grades and lines of streets, alleys, pavements and adjoining property; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the Site; locations, dimensions, and complete data pertaining to existing buildings, other improvements, and trees; and full information concerning available service and utility lines, both public and private, above and below grade, including inverts and depths.

2.5 Provided Information

2.5.1 The Owner does not warrant or guarantee the accuracy of Project-related information they provide to the Consultant, but the Consultant may rely upon that information.

2.6 Notice to Consultant

2.6.1 If the Owner observes or otherwise becomes aware of any Defective Work or other fault or defect in the Project, that may result in a life safety or health issues, prompt written notice thereof shall be given to the Consultant.

2.7 Legal Representation

2.7.1 The Owner shall not be responsible to provide or pay for any legal representation of the Consultant.

2.8 Limitation of Authority

2.8.1 The Consultant shall not have any authority to bind the Owner for the payment of any costs or expenses without the prior express written approval of the Owner.

2.8.2 The Consultant shall have authority to act on behalf of the Owner only to the extent provided in this Agreement and the Contract Documents.

2.8.3 The Consultant's authority to act on behalf of the Owner may be modified only by an amendment to this Agreement in accordance with Article 4 of this Agreement.

2.9 Approval or Disapproval of Consultant's Services

2.9.1 The Owner may disapprove any portion of the Services.

2.9.2 If the Owner disapproves of the Services at any Stage, the Consultant shall proceed, when requested by the Owner, re-perform the Services to satisfy the objections without additional compensation to the Consultant or its Sub-consultants.

2.9.3 The Consultant acknowledges that any review or approval by the Owner of any Services shall not relieve the Consultant of the Consultant's responsibility to properly and timely perform the Services.

ARTICLE 3 - SUB-CONSULTANTS

3.1 Sub-consultant Services

3.1.1 The Consultant may provide a portion of the Services through one or more Sub-consultants, provided, however, that the Consultant shall remain responsible for all of the Consultant's duties and obligations under this Agreement.

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3.1.2 By appropriate written agreement, the Consultant shall require each Sub-consultant, to the extent of the Sub-consultant's portion of the Services, to be bound to the Consultant by the terms of this Agreement, and to assume toward the Consultant all of the obligations and responsibilities which the Consultant assumes toward the Owner.

3.1.2.1 The Consultant shall not retain any Sub-consultant on terms inconsistent with this Agreement.

3.1.2.2 All agreements between the Consultant and a Sub-consultant shall identify the Owner as the agreement's intended third-party beneficiaries.

3.1.2.3 Upon the request of the Owner, the Consultant shall submit a copy of the agreement between the Consultant and each Sub-consultant.

3.1.3 The Consultant shall obtain the Owner's written approval before engaging any Sub-consultant not named in the Agreement. The Consultant shall not employ any Sub-consultant against whom the Owner has a reasonable objection. The Owner's approval or disapproval of any Sub-consultant, however, will not relieve the Consultant of the Consultant's full responsibility for performance of the Services.

3.1.4 The Consultant shall not remove any Sub-consultant from the Project or reduce the extent of any Sub-consultant's participation in providing the Services without the Owner's prior written consent. The Consultant shall not permit any Sub-consultant to replace any previously identified team member except with the Owner's prior written consent unless the Sub-consultant ceases to employ that person. On notice from the Owner, the Consultant shall immediately and permanently remove from the Project any Sub-consultant or person under a Sub-consultant's control whose performance is not satisfactory to the Owner.

3.1.5 The Owner may communicate with any Sub-consultant either through the Consultant or directly with the Sub-consultant, but the Owner may not modify the agreement between the Consultant and any Sub-consultant. The Owner will advise the Consultant with reasonable promptness of direct communication with any Sub-consultant.

3.1.6 The Consultant hereby assigns to the Owner each Sub-consultant's agreement provided that the assignment is effective only after the Owner terminates this Agreement and only for those agreements that the Owner accepts by notifying the Sub-consultant and Consultant in writing. The Owner may re-assign accepted agreements.

3.2 Payments by Consultant

3.2.1 Within 10 business days of receipt of payment made pursuant to this Agreement, the Consultant shall pay all portions thereof due to Sub-consultants and to persons who provided items, the expenses of which are Reimbursable Expenses.

3.2.2 The Owner has no obligation to pay or see to the payment of money to any Sub-consultant except as otherwise required under Applicable Law.

ARTICLE 4 - MODIFICATIONS

4.1 Compensation for Extension of Project Time

4.1.1 If the Consultant notifies the Owner not less than 30 days before the date for completion of the Project set in the approved Project Schedule, that the time for completion is reasonably expected to be extended through no fault of the Consultant, and for good cause shown, the Consultant's compensation for Services to be rendered during such extended period, shall be negotiated to the mutual reasonable satisfaction of the Owner and Consultant.

4.1.2 If, through such negotiation, the Owner agrees, in its sole discretion, that the Consultant shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Section 4.3.

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4.1.3 Such amendment shall be executed before the Consultant renders any Services made necessary by such extension of the time of completion, unless otherwise agreed in writing by the Owner.

4.2 Compensation for Change of Scope of Project or Project Budget

4.2.1 The Project Scope is defined by the Approved Consultant's Scope of Services, as provided in Exhibit B.

4.2.2 The Project Budget is defined in the Agreement.

4.2.3 If the Owner, through no fault of the Consultant, materially changes the Project Scope or materially changes the Project Budget at any time after the execution of this Agreement, any necessary adjustment in the Consultant's compensation shall be negotiated to the mutual reasonable satisfaction of the Owner and Consultant.

4.2.4 If, through such negotiation, the Owner agrees, in its sole discretion, that the Consultant shall be paid additional compensation, an amendment to that effect shall be executed in accordance with Section 4.3.

4.2.5 Such amendment shall be executed before the Consultant renders any Services made necessary by such change in the Project Scope or the Project Budget, unless otherwise agreed in writing by the Owner.

4.3 Amendments

4.3.1 This Agreement may be modified only by an amendment prepared by the Owner and executed by both the Consultant and the Owner.

ARTICLE 5 - DISPUTE RESOLUTION

5.1 Mediation

5.1.1 The Owner and Consultant may by written agreement submit any claims, requests, disputes, or matters in question between or among them to mediation as shall be mutually agreeable.

5.2 Notice and Filing of Requests

5.2.1 Any request by the Consultant for additional fees or expenses shall be made in writing to the Owner prior to Consultant performing any services giving rise to such additional fees and/or prior to consultant incurring any such additional expenses. The Consultant's failure to comply with the requirements of this Section 5.2.1 shall constitute an irrevocable waiver by the Consultant of any request for such fees and expenses.

5.3 Substantiation of Request

5.3.1 In every written request filed pursuant to Section 5.2, the Consultant shall provide the nature and amount of the request; identification of persons, entities and events responsible for the request; activities on the Project Schedule affected by the request or new activities created by any delay and the relationship with existing activities; anticipated duration of any delay; and recommended action to avoid or minimize any future delay.

5.4 Meeting with the Project Manager

5.4.1 Within 30 days after receipt of the request filed with the Owner pursuant to Section 5.2, or other period mutually agreed by the parties, the Project Manager shall schedule a meeting to resolve the request and render a decision on the request promptly thereafter or render a decision on the request without a meeting.

5.4.2 The meeting scheduled by the Project Manager shall be attended by persons expressly and fully authorized to resolve the request on behalf of the Consultant.

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5.7 Performance

5.7.1 The Consultant shall proceed with the Consultant's performance of this Agreement during any dispute resolution process, unless otherwise agreed by the Consultant and the Owner in writing.

5.7.2 The Owner shall continue to make payment, in accordance with this Agreement, of any amounts not in dispute pending final resolution of any dispute.

5.8 Mutual Waiver of Consequential Damages

5.8.1 Except as provided under Section 5.8.2, the Owner and Consultant each waive against the other all claims for consequential damages that may arise out of or relate to this Agreement.

5.8.1.1 The Owner's waiver includes claims for loss of use, income, profit, revenue, financing, cost of capital, business and reputation, management and employee productivity, and consequential damages arising from termination of the Agreement or related to insolvency.

5.8.1.2 The Consultant's waiver includes claims for overhead; delay damages except as otherwise specifically provided for in the Agreement; increased cost of funds for the Project; lost opportunity to work on other projects; losses of financing, business, and reputation; loss of profit except anticipated profit arising directly from properly performed Services; and consequential damages arising from termination of the Agreement or related to insolvency.

5.8.2 Notwithstanding Section 5.8.1, this Section 5.8:

5.8.2.1 does not apply to any damages that would be covered by insurance required or provided in connection with the Project if the Agreement did not include Section 5.8.1;

5.8.2.2 does not apply to the Consultant's indemnity obligations for third-party claims against the Indemnified Parties even if those claims are for damages that Section 5.8.1 would otherwise preclude; and

5.8.2.3 does not apply to Claims for damages arising from the Owner or Consultant's gross negligence or willful misconduct.

5.8.3 This Section 5.8 shall survive termination of the Agreement.

5.9 Civil Actions

5.9.1 Any dispute not resolved pursuant to this Article V shall be resolved in the civil courts located in Cuyahoga County, Ohio having jurisdiction over such claims.

ARTICLE 6 - COMPENSATION AND PAYMENT

6.1 Direct Personnel Expense (NOT APPLICABLE)

6.1.1 RESERVED

6.2 Basic Fee

6.2.1 For Basic Services provided by the Consultant and all Sub-consultants, the Owner shall pay the Consultant a Basic Fee in accordance with the amount identified in the Agreement.

6.2.2 A change in the Basic Fee may be made only by an amendment to this Agreement in accordance with Section 4.3.

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6.3 Additional Services Fee (NOT APPLICABLE)

6.3.1 RESERVED

6.4 Reimbursable Expenses (NOT APPLICABLE)

6.4.1 RESERVED

6.5 Method and Terms of Payment

6.5.1 Direct Personnel Expense.

6.5.1.1 RESERVED

6.5.2 Basic Fee

6.5.2.1 Payment of the Basic Fee shall be made monthly in proportion to Basic Services performed.

6.5.2.2 The Owner may, in its sole discretion, waive the withholding of any final balance or part thereof if the Consultant has performed to the satisfaction of the Owner.

6.5.2.3 The entire Basic Fee is subject to all setoffs for claims against the Consultant in favor of the Owner.

6.5.3 Additional Services Fees & Reimbursable Expenses.

6.5.3.1 RESERVED

6.5.4 Retention.

6.5.4.1 The Owner shall not retain any retention on this Project.

ARTICLE 7 - INSURANCE AND INDEMNIFICATION

7.1 Consultant's General Insurance Requirements

7.1.1 Throughout the performance of the Services or longer as may be described below, the Consultant shall obtain, pay for, and keep in force, the minimum insurance coverage described in this Article 7.

7.1.1.1 Each requirement of this Article 7 applies to Sub-consultants just as it applies to the Consultant.

7.1.1.2 If a Sub-consultant's usual insurance coverage does not meet the minimum coverage requirements, before entering into an agreement with that Sub-consultant, the Consultant shall submit to the Owner (1) a certificate of insurance evidencing the insurance the Sub-consultant will carry without additional compensation and (2) if the Owner requests, a written proposal from the Sub-consultant to provide coverage that meets the minimum coverage requirements. The Owner will decide whether to accept the non-conforming insurance coverage or the proposal to provide conforming coverage.

7.1.1.3 On a case-by-case basis, the Owner and Consultant may agree to adjust the below requirements for any particular Sub-consultant.

7.1.2 Before starting the Services, upon renewal of any policy, and upon a change of any insurance carrier, the Consultant shall deliver to the Owner certificates evidencing that the required insurance is in force.

7.1.3 With the exception of government-controlled workers compensation coverage:

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7.1.3.1 the Consultant shall place the insurance with companies that (1) are satisfactory to the Owner, (2) hold an A.M. Best Rating of A-, X, or higher, and (3) are authorized to conduct business in Ohio;

7.1.3.2 the policies shall be endorsed to require the Consultant's insurance carrier to (1) provide at least 30-days' written notice to the Owner (as certificate holder) of the cancellation or non-renewal of the insurance and (2) provide at least 10-days' written notice to the Owner (as certificate holder) of the cancellation of the insurance for non-payment of premium; and

7.1.3.3 within 30 days of the Owner's request, the Consultant shall submit insurance-company certified copies of the policies, the policy endorsements, or both from which the Consultant may redact the premium amount.

7.1.4 The Consultant shall pay all deductibles, or self-insured retentions, or both contained in the Consultant's policies of insurance required or provided in connection with the Project. The Owner reserves the right to approve or reject all levels of self-insured retention, captive insurance programs, or other alternative risk financing the Consultant may use to comply with any insurance requirement.

7.1.5 The Consultant shall pay a proportionate share of the deductibles, or self-insured retentions, or both contained in any insurance policy the Owner purchases for the Project. The Consultant's proportionate share will derive from the percentage of the associated claim or loss attributable to the negligence of the Consultant or a Sub-consultant.

7.1.6 The Owner does not represent that required coverage or limits are adequate to protect the Consultant.

7.1.7 Failure of the Owner to demand a certificate or other evidence of full compliance with the insurance requirements or failure of Owner to identify a deficiency from evidence that is provided shall not be construed as a waiver of the Consultant's obligation to maintain the required insurance.

7.1.8 The Owner may terminate the Agreement for cause on account of the Consultant's failure to maintain the required insurance.

7.2 Consultant's Minimum Coverage Requirements

7.2.1 Workers Compensation. Consultant shall at all times during the term of this Agreement subscribe to and comply with the Workers' Compensation Laws of the State of Ohio and pay such premiums as may be required thereunder and save the Owner harmless from any and all liability arising from or under said laws. If there is an exposure of injury to the Consultant's employees under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

7.2.2 Employers Liability Coverage. The Consultant shall maintain employer's liability coverage with (1) an each-accident limit of not less than \$1,000,000, (2) a disease each-employee limit of not less than \$1,000,000, and (3) a disease policy limit of not less than \$1,000,000. If there is an exposure of injury to the Consultant's employees under the U.S. Longshore and Harbor Workers' Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

7.2.3 Commercial General Liability. The Consultant shall maintain commercial general liability ("CGL") coverage, that provides (1) an each-occurrence limit of not less than \$1,000,000, (2) a general-aggregate limit of not less than \$2,000,000, and (3) a products and completed-operations aggregate limit of not less than \$2,000,000.

7.2.3.1 The CGL insurance shall be written on ISO occurrence form CG 00 01 10 01 or a substitute form, providing at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations, personal and advertising injury, and liability assumed under an insured contract.

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7.2.3.2 The Consultant shall include the Owner, the as an additional insured under the CGL policy using ISO endorsement CG 20 10 07 04 and ISO endorsement CG 20 37 07 04 or a substitute form(s) providing equivalent coverage.

7.2.3.3 The CGL policy shall be endorsed using ISO endorsement CG 25 03 or a substitute form providing equivalent coverage to provide that the general aggregate limit applies separately to each of the insured's projects.

7.2.3.4 The CGL insurance shall apply as primary and non-contributory insurance with respect to any other insurance or self-insurance programs that cover the additional insured.

7.2.3.5 The CGL policy shall not exclude coverage to the additional insured for bodily injury or property damage arising out of the products/completed-operations hazard.

7.2.3.6 The Consultant shall maintain the CGL insurance in effect for no less than five years after the earlier of the termination the Agreement or Substantial Completion of all Work.

7.2.4 Business Automobile Liability. The Consultant shall maintain business automobile ("BA") coverage written on ISO form CA 00 01 10 01 or a substitute form, providing at least equivalent coverage with a limit of not less than \$1,000,000 each accident.

7.2.4.1 The coverage shall extend to any auto: owned (if any), non-owned, leased, rented, hired, or borrowed.

7.2.4.2 The Consultant shall include the Owner as an additional insured under the BA policy.

7.2.5 Umbrella/Excess Liability. The Consultant may employ an umbrella/excess liability policy to achieve the above-required minimum coverage.

7.2.6 Professional Liability. The Consultant shall maintain professional liability ("PL") insurance with a per-claim limit of not less than \$2,000,000 and an annual aggregate limit of not less than \$2,000,000.

7.2.6.1 The PL policy shall have an effective date, which is on or before the date that the Consultant first started to provide any Project-related Services.

7.2.6.2 Upon submission of the associated certificate of insurance and at each policy renewal, the Consultant shall advise the Owner in writing of any actual or alleged claims that may erode the PL policy's limits.

7.2.6.3 The Consultant shall maintain the PL insurance in effect for no less than five years after the earlier of the termination of the Agreement or Substantial Completion of all Work.

7.2.6.4 If the Project is using the design-build project delivery system, the PL policy shall not contain any design-build exclusions.

7.2.7 Pollution Liability. If the Services include environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, Asbestos abatement, storage-tank removal, or similar activities), or involves Hazardous Materials, the Consultant shall maintain a contractor's pollution liability ("Pollution") policy with (1) a per-claim limit of not less than \$1,000,000 and (2) an annual-aggregate limit of not less than \$1,000,000, covering the acts, errors and/or omissions of the Consultant for damages (including from mold) sustained by the Owner by reason of the Consultant's performance of the Services.

7.2.7.1 The Pollution policy shall have an effective date, which is on or before the date that the Consultant first started to perform any Project-related Services.

7.2.7.2 Upon submission of the associated certificate of insurance and at each policy renewal, the Consultant shall advise the Owner in writing of any actual or alleged claims that may erode the Pollution policy's limits.

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7.2.7.3 The Consultant shall maintain the Pollution insurance in effect for no less than 5 years after the earlier of the termination of the Agreement or Substantial Completion of all Work.

7.2.7.4 The Consultant may achieve the Pollution insurance requirement through a PL policy, which provides the required pollution coverage.

7.3 Waivers of Subrogation

7.3.1 To the fullest extent permitted by Applicable Law, the Consultant waives all rights against the Owner, and its agents and employees for damages to the extent covered by any insurance (not including professional liability insurance), except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

7.3.2 To the fullest extent permitted by Applicable Law, the Consultant waives all rights against the Owner, and its employees for damages to the extent covered by any professional liability insurance, except rights to the proceeds of that insurance. All policies shall accomplish the waiver of subrogation by endorsement or otherwise.

7.3.3 The Owner and Consultant waive all rights against each other for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any property insurance, inland marine insurance, or builder's risk insurance applicable to the Work.

7.4 Indemnification for Injury or Damage

7.4.1 To the fullest extent not prohibited by law, Consultant shall indemnify, defend and hold harmless the Owner and the State of Ohio, their respective consultants, partners, officers, employees and anyone else acting for or on behalf of any of them (herein collectively called "Indemnities") from and against all liability, damages, loss, claims, demands, actions, costs and expenses (including reasonable attorney's fees and court costs) of any nature whatsoever which arise out of the negligent performance of Consultant or any negligent act or omission of Consultant.

7.4.2 The Consultant's indemnification obligation under Section 7.4 will not be limited by any insurance policy provided or required in connection with the Project.

7.4.3 The Consultant's obligations under Section 7.4 shall not negate, abridge, or reduce other rights or obligations of indemnity, which would otherwise exist as to a Person indemnified under Section 7.4.

7.4.4 The Consultant's indemnification obligation under Section 7.4 will survive termination of the Agreement and Final Acceptance of the Work.

ARTICLE 8 - TERMINATION

8.1 Termination for Convenience

8.1.1 The Owner may terminate the Agreement in whole or in part for the Owner's convenience and without cause, at any time upon written notice to the Consultant. Upon receipt of the notice of termination for convenience, the Consultant shall immediately proceed with performance of the following duties in accordance with instructions from the Owner: (1) cease operation as specified in the notice; (2) no further Sub-consultant agreements except as necessary to complete continued portions of the Project; (3) terminate all Sub-consultant agreements to the extent they relate to the Services terminated; and (4) proceed with Services not terminated.

8.1.2 The Owner shall pay the Consultant for Services rendered before the date of termination in accordance with the allocations the Agreement, including any Reimbursable Expenses incurred, but not in excess of the allocations

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and caps otherwise provided in the Agreement. In no event shall the Consultant be entitled to overhead and profit associated with Services the Consultant did not perform on account of the termination or otherwise.

8.1.3 If the Owner terminates the Services under this Section 8.1, the termination shall not affect the rights or remedies of the Owner against the Consultant then existing or which may thereafter accrue for Services performed in full before the termination.

8.1.4 Notwithstanding Section 8.1.2, if the Owner terminates the Services under this Section 8.1, but there exists an event of the Consultant's default, the Consultant shall be entitled to receive only such sums as it would be entitled to receive following the occurrence of an event of default as provided in Section 8.2.

8.2 Termination for Cause

8.2.1 The Owner may terminate all or a portion of the Agreement if the Consultant commits a material breach of the Agreement including but not limited to: (1) failure to prosecute the Services with the necessary force or in a timely manner; (2) refusal to remedy disapproved Services; (3) failure to properly make payment to Sub-consultants; or (4) disregarding laws, ordinances, or rules, regulations, or orders of a public authority with jurisdiction over the Project.

8.2.2 If the Owner intends to exercise its termination rights under this Section 8.2, the Owner shall notify the Consultant in writing of the Owner's intent to terminate this Agreement and the cause(s) for that termination.

8.2.3 If the Consultant fails to cure the identified cause(s) for termination within 7 calendar days after receiving the notice described under Section 8.2.2, the Owner may terminate the Agreement by giving written notice of the termination to the Consultant.

8.2.4 If the Agreement is terminated, the Owner may complete the Services by means the Owner determines appropriate and take immediate possession of all Consultant Documents.

8.2.5 If the Agreement is terminated, the Consultant shall not be entitled to further payment.

8.2.5.1 If the unpaid balance of the sum of the Basic Fee plus Additional Services Fees plus Reimbursable Expenses is exceeded by the costs of finishing the Services, including without limitation the fees and charges of contractors, engineers, architects, attorneys, and other professionals and court costs, and other damages incurred by the Owner, the Consultant shall immediately pay the amount of the insufficiency to the Owner. This obligation for payment shall survive termination of the Agreement.

8.2.6 If the Owner terminates the Services under this Section 8.2, the termination shall not affect any rights or remedies of the Owner against the Consultant then existing or which may thereafter accrue. The Owner's retention or payment of funds due the Consultant shall not release the Consultant from liability for performance of the Services in accordance with the requirements of the Contract Documents.

8.2.7 If the Owner is adjudged to have improperly terminated the Services under this Section 8.2, the termination will be deemed to have been a termination under Section 8.1.

8.3 Consultant's Termination for Cause

8.3.1 The Consultant may terminate this Agreement for cause if the Owner fails to pay undisputed amounts owed to the Consultant when required under this Agreement.

8.3.2 If the Consultant elects to terminate this Agreement for cause, the Consultant must give the Owner written notice of (1) the Consultant's intention to terminate the Agreement and (2) an accounting of the undisputed amounts owed to the Consultant and the date(s) on which the Consultant believes payment of those amounts was due. If the Owner does not cure the cause for termination by initiating the process to pay the undisputed amounts owed to the Consultant within 30 days after receiving the notice, the termination will take effect upon the Owner's

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receipt of the Consultant's written notice of termination, which is in addition to the Consultant's notice of intention to terminate.

8.3.3 If the Consultant properly terminates this Agreement for cause, but subject to other provisions of this Agreement, the Owner must pay the Consultant for Services performed by the Consultant before the date of termination. In no event will the Owner be obligated to pay anything on account of Services the Consultant does not perform.

8.3.4 If the Consultant improperly terminates this Agreement under this Section 8.3, the Consultant shall be obligated to the Owner as described under Section 8.2.5.1.

ARTICLE 9 - GENERAL PROVISIONS

9.1 Consultant's Documents and Contract Documents

9.1.1 Except as provided under Section 9.1.2 and subject to Section 9.1.6, the Owner alone owns the Consultant's Documents and the Contract Documents and every right, title, and interest in the Consultant's Documents and the Contract Documents from the moment of creation.

9.1.2 Section 9.1.1 does not apply to standard details and specifications regularly used by the Consultant or any of its Sub-consultants in its normal course of business that are included in the Consultant's Documents. The Consultant grants to the Owner an irrevocable, non-exclusive, perpetual, freely assignable, and royalty-free license to copy, reproduce, distribute, and otherwise use those standard details and specifications for all Project-related purposes such as but not limited to owning, financing, constructing, testing, commissioning, decommissioning, using, operating, maintaining, repairing, modifying, selling, obtaining insurance for, and obtaining permits for the Project before, during, and after termination or completion of this Agreement.

9.1.3 The Consultant must execute and deliver and cause its employees and agents and all Sub-consultants to execute and deliver, to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of all of the Consultant's Documents and the Contract Documents under Section 9.1.1 and the license described under Section 9.1.2.

9.1.4 The Consultant may retain copies, including reproducible copies of Consultant's Documents and the Contract Documents for information, reference, and the performance of the Services. The Owner grants to the Consultant and its Sub-consultants a non-exclusive, royalty-free license to copy, reproduce, distribute, and otherwise use the Consultant's Documents and the Contract Documents in relation to the performance of the Services, including any Additional Services.

9.1.5 The submission or distribution of Consultant's Documents and the Contract Documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights in the Consultant's Documents and the Contract Documents. Any unauthorized use of the Consultant's Documents and the Contract Documents will be at the sole risk of the entity making the unauthorized use of the Consultant's Documents and the Contract Documents.

9.1.6 Should the Owner desire to use any of the Consultant's Documents for an addition to, remodeling or rehabilitation of, or change to any one or more of the Project improvements built on the basis of the Consultant's Documents, Owner shall engage one or more suitable licensed design professionals under terms that require each of those design professionals to independently evaluate any design or related features in the Consultant's Documents without reliance on any information in the Consultant's Documents that would be inconsistent to the standard of care applicable to that design professional.

9.2 Public Relations

9.2.1 Publicity prior to completion of the Project. Prior to completion of the Project, public relations or publicity about the Project shall be solely within the control, and with the consent of, the Owner.

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9.2.2 Publicity after completion of the Project. After completion of the Project, the Consultant may exercise reasonable public relations and marketing efforts related to the Project, provided the Consultant properly identifies the Owner, and its participation in the Project.

9.3 Application and Governing Law

9.3.1 This Agreement and the rights of the parties hereunder shall be governed by the laws of the state of Ohio and only Ohio courts shall have jurisdiction over any action or proceeding hereunder or related to the Project. The Consultant irrevocably consents to such jurisdiction.

9.3.2 The parties to the Agreement shall comply with Applicable Law.

9.4 Written Notice

9.4.1 Notice under this Agreement shall be validly given if: (1) delivered personally to a member of the organization for whom the notice is intended; (2) delivered, or sent by registered or certified mail, to the last known business address of the organization; or (3) sent by facsimile, email, or web-based project management software, provided the original, signed document is delivered within 3 business days after the date of the electronic transmission.

9.4.2 When the Owner, the Consultant, or a Contractor gives notice to one of the other 2, it shall also simultaneously send a copy of that notice to the others.

9.4.3 A copy of all notices, certificates, requests, or other communications to the Owner shall be sent to the Project Manager.

9.4.4 In the event of an emergency involving the Project, including, but not limited to, a fatality, serious injury, fire, collapse, flood, utility, or power loss to occupied facilities, explosion, or environmental damage, the Consultant shall immediately notify the Owner by telephone.

9.4.5 The Owner or the Consultant may, by written notice given hereunder, designate addresses, telephone numbers, email addresses, or facsimile numbers to which notices, certificates, requests, or communications shall be sent.

9.5 Project Schedule

9.5.1 By signing the Agreement, the Consultant acknowledges they understand the anticipated project schedule, the Consultant has reviewed the schedule listed in Exhibit B, and that appropriate time has been allocated in the Cost Estimate to cover the anticipated inspection and material testing services on this Project.

9.5.1.1 The Consultant acknowledges that the Owner will enter into other contracts based upon the Consultant properly providing the Services in a timely manner.

9.5.1.2 The Consultant shall perform the Work in a reasonable, efficient, and economical sequence, and in the order and time as provided in the Project Schedule.

9.5.1.3 The Consultant acknowledges that it may be subject to interference, disruption, hindrance, or delay in the progress of the Services from any cause. The sole remedy for such interference, disruption, hindrance, or delay shall be an extension of the time for performance of the Services, unless otherwise required by ORC Section 4113.62.

9.6 Successors and Assigns

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9.6.1 The Owner and the Consultant, each bind themselves, their successors, assigns, and legal representatives, to the other party to this Agreement and to the successors, assigns, and legal representatives of the other party with respect to all terms of this Agreement.

9.6.2 The Consultant shall not assign, or transfer any right, title, or interest in this Agreement without the Owner's prior written consent of the Owner.

9.7 Extent of Agreement

9.7.1 Entire Agreement. This Agreement, including the attached documents, and the Contract Documents represent the entire and integrated agreement between the Owner and the Consultant and supersede all prior negotiations, representations, or agreements, either written or oral.

9.7.1 Multiple Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

9.7.2 Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or sections hereof.

9.7.3 Precedence. If there are any inconsistencies between the provisions of the Contract Documents and the provisions of the Announcement or this Agreement, the provisions of this Agreement shall prevail.

9.8 Severability

9.8.1 If any term or provision of this Agreement, or the application thereof to any Person or circumstance, is finally determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement or the application of such term or provision to other Persons or circumstances, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by Applicable Law.

9.9 Electronic and Facsimile Signatures

9.9.1 Any party hereto may deliver a copy of its counterpart signature page to this Agreement via electronic signature software, fax, e-mail, or web-based project management software. Each party hereto shall be entitled to rely upon an electronic, scanned, or facsimile signature of any other party delivered in such a manner as if such signature were an original.

9.10 No Third-Party Interest

9.11.1 Except as expressly provided under Article 3, (1) no person or entity, other than the Owner and the Consultant, will have any right or interest under the Agreement, and (2) the Agreement does not create a contractual relationship of any kind between any people or entities other than the Owner and the Consultant.

9.11 No Waiver

9.11.1 The failure of the Owner or the Consultant to insist in any one or more instances upon the strict performance of any one or more of the provisions of the Agreement or to exercise any rights under the Agreement or provided by law will not be construed as a waiver or relinquishment of that provision or right or of the right to subsequently demand strict performance or exercise the right and the rights will continue unchanged and remain in full force and effect.

9.12 Rights and Remedies

9.12.1 The duties, obligations, rights, and remedies under the Agreement are in addition to and not a limitation of the duties, obligations, rights, and remedies otherwise imposed by or available under Laws and Regulations.

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9.13 Survival of Obligations

9.13.1 All representations, indemnity obligations, warranties, guarantees, and necessarily continuing obligations under the Agreement, will survive final payment, completion and acceptance of the Work, and termination or completion of the Agreement.

9.14 Independent Contractor Status

9.14.1 Consultant shall be and remain an independent contractor with respect to all services performed hereunder and shall accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance, old age retirement benefits, pensions, or annuities now or hereafter imposed under any State or federal law which are measured by the wages, salaries, or other remuneration paid to persons employed by Consultant for work performed under the terms of this Agreement. Contractor shall obey all rules and regulations which are now or hereafter may be issued or promulgated under said respective laws by a duly authorized State or Federal officials. Contractor shall indemnify and save harmless the Owner from any such contributions or taxes or liability therefore.

9.14.2 The relationship created by this Agreement is one of independent contractor, and neither party shall under any circumstances be deemed agents, representatives, partners, joint venturers or employees of the other party, and, except as explicitly set forth in this Agreement, neither party shall have any right to enter into any contracts or commitments or make any representations or warranties, whether express or implied, in the name of or on behalf of the other or to use the other party's name, tradename, trademark or logo in any fashion without the prior written consent of the other party.

9.15 Safety

9.15.1 The Consultant shall comply with all applicable federal, state, and local safety laws, rules, and regulations in relation to the professional services provided by the Consultant.

9.15.2 Personal protective clothing and equipment shall be furnished and maintained by the Consultant and worn while performing services on Site for their activity.

9.15.2 Prior to the commencement of work, a Consultant and Site specific Health & Safety plan shall be developed by the Consultant and submitted to the Owner. This plan shall contain an emergency action plan, identify potential project hazards and risk mitigations, a list of project contacts, site specific security protocols, and steps needed to coordinate the Consultant's work in a safe manner.

ARTICLE 10 - DEFINED TERMS AND ABBREVIATIONS

10.1 For the purposes of this Agreement, the words, terms, and abbreviations set forth below have the following meanings:

10.1.1 "Consultant" means the Person identified in the Agreement responsible for providing professional consulting services for the Project.

10.1.2 "Consultant's Documents" means all Project-related documents, including those in electronic form, prepared by the Consultant or Sub-consultants.

10.1.3 "Contractor" means a Person, which is party to a contract for the performance of Work on the Project in cooperation with Separate Contractors and Persons, and in accordance with the Contract Documents. As used in the Agreement, the term Contractor may include a Construction Manager at Risk or a Design-Builder.

10.1.4 "Direct Personnel Expense" means the portion of direct salaries and wages of all personnel of the Consultant or any Sub-consultants, as applicable, including professional, technical, management, administrative

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and clerical employees, and principals engaged on the Project related to their time devoted to the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto such as employment taxes and other statutory employee benefits, social security contributions, insurance, sick leave, holidays, vacations, pensions, profit sharing, and similar benefits related to their time devoted to the Project.

10.1.5 “Reimbursable Expenses” means actual expenditures incurred by the Consultant or its Sub-consultants in the interest of the Project, approved by the Owner for reproduction of Contract Documents for distribution to Bidders, plan approval fees, building permits, field investigations, equipment charges, and, if requested by the Owner, reformatting Project Record Submittals to a computer medium different than the computer medium used by the Consultant.

10.1.6 “Services” includes all of the Consultant’s obligations, individually or collectively, under the Agreement including all items reasonably inferable from the Agreement, whether provided or to be provided by the Consultant, a Sub-consultant, or any other entity for whom the Consultant is responsible. The Services include both Basic Services and Additional Services as defined in the Agreement.

10.1.7 “Sub-consultant” means a Person engaged by the Consultant to provide or perform a portion of the Services.

10.1.9 “Submittals” means Shop Drawings, Product Data, Samples, and other items for the Consultant’s review and action provided by a Contractor for any item required by the Contract Documents, but not fully described in the Contract Documents.

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Exhibit B - Consultant Scope of Services

ARTICLE 1 - PROJECT CRITERIA

1.1 Description

1.1.1 The project consists of the following:

1.1.1.1 Professional services in the form of bulkhead condition assessment surveying above and below the waterline and associated data gathering, organizing, and report development for the Cuyahoga River Navigation Channel. For additional information related to the Consultant's Scope of Services, please see the information included in Article 2-Scope of Services.

1.1.2 A detailed Scope of Services has been prepared by the Owner and reviewed by the Consultant based upon the initial Request for Statement of Qualifications issued by the Owner, the Consultant's submitted Proposal (Exhibit C), and subsequent meetings between the Consultant and the Owner.

1.1.3 The project delivery method for this Project shall include an electronic copy of the file geodatabase (.gdb) of the bulkhead condition assessment ratings on a parcel-by-parcel basis, an ArcGIS Online web map configured to allow for future assessments via ArcGIS Field Maps or other mobile data collection application, a comprehensive final report, and all survey data, notes, photographs, and other data collected during inspections and used to finalize condition ratings.

1.1.4 The Project Budget is \$X.

ARTICLE 2 - SCOPE & SCHEDULE OF SERVICES

2.1 Basic Fee Scope of Services:

2.1.1 The Consultant shall provide the Owner with a comprehensive above and below the waterline inspection of all bulkheads and/or retaining structures along the Cuyahoga River federal navigation channel and assess ratings on a parcel-by-parcel basis using the Owner's existing condition assessment rating system. Ratings and accompanying data collected in the field shall be organized and delivered in a file geodatabase format with associated metadata and incorporated into an ArcGIS Online web map configured to allow for future updating via ArcGIS Field Maps or other mobile data collection application.

2.1.2 The Consultant shall be responsible for preparing and submitting to the Owner a Project Health & Safety Plan in accordance with the requirements of this Agreement (Exhibit A Section 9.15.2).

2.1.3 The Consultant shall be responsible for familiarizing themselves with the navigation channel and conducting the inspection in a manner so as not to conflict with river maritime operations.

2.1.4 The Consultant shall be responsible for familiarizing themselves with all of the Contract documents and all historic information available, including previous inspection reports. The Consultant shall be responsible for researching and keeping a record of any permits, historic photographs or aerial imagery, or other resources used in designating condition ratings.

2.1.5 The Consultant shall use the findings from the field inspections to prepare a comprehensive written report detailing methodology, summarizing results, and making recommendations regarding areas of priority that pose a risk to the safety and security of the navigation channel. The Owner shall have the opportunity to review and make comments before final report issuance.

2.1.6 The Consultant shall plan and attend, at a minimum, a pre- and post-Project meeting with the Owner.

2.2 Schedule of Services:

2.2.1 The anticipated target dates for the Project are as follows:

Phase 1: Data Collection & Field Inspection: 11/30/2021

Phase 2: Evaluation & Draft Report: 1/14/2022

Phase 3: Final Report & Deliverables: 1/31/2022

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