

Livonia Public Schools

Business Services Office

Date: July 15, 2015

To: Randy Liepa, PhD., Superintendent

From: Lisa Abbey, Director of Business Services

Re: Recommendation to Appoint Owner's Representative's for Sinking Fund Projects

We would like to place the recommendation to appoint the Owner's Representative Plante Moran Cresa for Sinking Funds Projects on the Building and Site agenda for Monday, July 20, 2015.

The district's Sinking Fund has been a vital part of the District's long term facility planning, and provided the resources to repair and upgrade the facilities. With the bond planning completed and the work in progress on that plan, we believe it would be effectual to appoint the district's Owner's Representative Plante Moran Cresa to manage major sinking fund projects.

Plante Moran Cresa will be available at the meeting to discuss the details of the management work they have proposed. Their fee will be based on a monthly amount and the term of the agreement would be through 2020. At that time we could mutually agree to renew the agreement. A draft of the proposal from Plante Moran Cresa is attached for your review.

Please contact me if you have any questions.

LA/kp

c: Board of Education

Attachment



June 3, 2015

Ms. Lisa Abbey
Director of Business Services
Livonia Public Schools
15125 Farmington Road
Livonia, MI 48154

RE: Proposal for Sinking Fund Program Management

Dear Lisa,

Thank you for the opportunity to allow Plante Moran CRESA, LLC (PMC) to present our proposal to provide consulting services to Livonia Public Schools (LPS). We appreciate the confidence you are placing in us and if engaged, we will strive to provide you with outstanding consulting services.

PMC agrees on behalf of itself and each of its employees that no such person or entity shall represent the products or services of any architect, engineer, property owner, landlord, contractor or any related vendor.

ENGAGEMENT

It is our understanding that this engagement generally will involve Owner's Representation Services for Livonia Public Schools, relative to Projects undertaken through its Sinking Fund. The consulting services to be provided by the PMC team for this engagement are more particularly described in the Scope of Services attached as Exhibit A and will be performed subject to the Terms and Conditions attached as Exhibit B.

In preparing this proposal, PMC has made the following key assumptions regarding this engagement. These key assumptions have been relied upon by PMC in determining the required Scope of Services designated on Exhibit A, PMC's compensation for services, and the terms of this engagement:

- The volume of Projects will be approximately \$22,000,000 over the term of this engagement
 - LPS will provide PMC with access to facilities and administrative personnel as needed
 - Prior building/facility/technology studies and floor plans are available for review by PMC
 - PMC will commence its services beginning July 1, 2015, and the term of PMC's engagement will continue until December 31, 2020.
-

COMPENSATION

Our fee for Scope of Work outlined in Exhibit A will be a Lump Sum Fee of Six Hundred and Sixty Thousand Dollars (\$660,000.00). PMC will invoice LPS in Sixty Six (66) monthly installments in the amount of Ten Thousand Dollars (\$10,000.00), plus actual reimbursable expenses, such as mileage, printing, etc., invoiced at cost without mark-up. Reimbursable expenses shall not exceed Five Hundred Dollars (\$500.00) per month.

ACCEPTANCE

PMC will commence its services upon execution of this proposal, and the term of PMC's engagement will continue through December 31, 2020 and include a final report and presentation to LPS Administration and Board of Education.

To accept this proposal including the terms of this letter and Exhibits A and B attached hereto, please sign the Accepted and Agreed acknowledgement below and return it to me. Upon execution below, this proposal (including Exhibits A and B) will become a binding agreement (Agreement) between LPS and PMC. Should you have any questions please contact Greg VanKirk at (248) 223-3395 or Paul Theriault at (248) 223-3380.

Sincerely,

PLANTE MORAN CRESA, LLC



Paul Theriault, PE LEED AP
Vice President



Greg VanKirk, CPA
Partner

We accept this proposal, including Exhibits A and B attached hereto, which sets forth the entire agreement between LPS and PMC for the services specified herein. We acknowledge that such acceptance creates a binding Agreement between LPS and PMC.

Accepted and Agreed:

LIVONIA PUBLIC SCHOOLS

Date: _____

By: Ms. Lisa Abbey
Its: Director of Business Services

EXHIBIT A

SCOPE OF SERVICES

Upon execution of the Proposal dated June 3, 2015, this Exhibit A shall be incorporated into the Agreement between LPS and PMC.

Owner's Representation for Design and Construction of the Sinking Fund Project(s)

1. Project Planning/Evaluation and Programming

Development of the Project program that clearly identifies the size, cost, delivery method(s), operational costs and financing of the proposed Sinking Fund Project(s) and establishment of a capital improvement and replacement program. Activities may include:

- a. Development of a final space program.
- b. Development of final Project scope.
- c. Development of final standards and budget for furnishings, equipment, and maintenance.
- d. Development of the phasing/delivery plan.
- e. Development of a final Project budget.
- f. Development of a final Project schedule.
- g. Development of final site program.
- h. During all Phases of the Project serve as the key liaison between LPS, the commissioned architect, contractors, vendors, and technology designer. This service shall include, but shall not be limited to, the coordination of activities, resolution of any resulting problems, attendance and reporting of progress issues to the Board at their meetings as necessary.
- i. Provide input for the Project in all design stages as required. This service shall include, but shall not be limited to, input regarding product/material selections, construction methodology to assure quality levels established by monitoring of budget established to address all possible cost savings while not reducing the Scope of Project or quality of design. Input regarding all cost estimates prepared by the architect and/or construction manager, if any, and technology designer, as required by LPS.

2. Architect, Contractor, and Vendors Selection for Design Process

Selection of an architect, contractor, and vendors using a criteria-based selection. Activities may include:

- a. Assist LPS in selection of architect, contractor and vendors to determine the most effective approach for the Project, keeping in mind criteria, guidelines of the LPS Board policies, and the State of Michigan.
- b. Review the qualifications of the architect, contractors, and vendors through evaluation of comparable work experience, staff credentials, reference checks, financial credibility and any prior relationship with LPS.
- c. Participate as an advisor to LPS in pre-bid conferences.
- d. Conduct tours as necessary of past school projects, if needed.
- e. Participate as an advisor to LPS in interviews of the firms.

-
- f. Analyze proposals and qualifications and prepare executive summary in a comparative format.
 - g. Provide a recommendation to LPS of architect, contractor, and vendors relative to the Project.
 - h. Assist LPS and legal counsel with development of the contract for architect, contractor, and vendors outlining the following:
 - Architect's responsibilities
 - Scope changes
 - Payments/invoicing
 - Instruments of service
 - Standard of care
 - Reimbursable expenses
 - Budget evaluation
 - Sole sourcing
 - Schedules
 - Terms/conditions

3. Design Process

Provide professional expertise and leadership by reviewing, analyzing, and presenting options for the design of LPS facilities through the schematic and design development process. PMC will continue working with the selected team and provide professional expertise to LPS during the design development and construction documentation process. Activities shall include the following as reasonably required to complete the project:

- a. Confirm the Project schedule, arranging the time required for the design development, bidding, construction, and start-up phases.
- b. Monitor engineer's progress through the design process.
- c. Schedule and attend all progress meetings and produce meeting minutes.
- d. Assist in the selection of finishes (carpeting, wall coverings, and lighting).
- e. Compare budget of preliminary design to Project budget.
- f. Review design to ensure consistency with original Project scope.
- g. Assist the architect and other vendors, including the construction manager, technology designer and interior designer, if selected, in the ongoing value-engineering process to identify alternative construction methods or materials, reducing cost and/or construction time.
- h. Assist in providing multiple constructability reviews and assist the architect, construction manager and technology designer, if selected, in the process of preparing cost analyses.
- i. Update budget and schedule to reflect the impact of a particular design.
- j. Assist in defining the scope for phased construction for the Project to ensure that specifications for needed site development, structure, mechanical, electrical, and safety systems are developed.
- k. Assist in determining specifications for major long lead equipment such as air handling units, emergency generators, electrical transformers and switchgear.
- l. Monitor trade, labor and construction market trends that could impact the cost or schedule for the Project.
- m. Assess material and labor availability in the local marketplace and evaluate alternative systems and building products.
- n. Identify material and assist in the preorder of items requiring long lead times for delivery.
- o. Review invoices of the architect, construction manager, general contractor and technology designer, as applicable, on behalf of LPS and make recommendations for payment.

-
- p. Develop and update final Project budget and schedule.
 - q. Review final drawings and bid package.

4. Contractor Selection Process

PMC will assist and advise in the Contractor Selection Process for LPS Projects as part of the LPS Sinking Fund:

- a. Assist LPS with establishing a prequalification process including, pre-qualify contractors through evaluation of comparable work experience, staff credentials, reference checks, financial credibility and any prior relationship with LPS.
- b. Assist LPS with drafting and delivery of Request for Proposals (RFPs) to pre-qualified contractors.
- c. Assist LPS in preparing general conditions and terms, favorable to LPS, for inclusion in contractor's contract.
- d. Participate as an advisor to LPS in a pre-bid conference.
- e. Participate as an advisor to LPS in interviews of the finalist firms.
- f. Analyze contractor bids and qualifications and prepare executive summary in a comparative format.
- g. Provide a recommendation as to the appropriate contractor for the projects.
- h. Assist LPS with development of the construction contract per the following:

Pre-construction

Construction

- | | | |
|----------------------------|-------------------------|---------------------|
| • Scheduling/work load | • Supervision | • Allowances |
| • Payment terms | • Change order process | • Safety procedures |
| • Dispute resolution terms | • Concealed conditions | • Warranties |
| • Final payment terms | • Permits | • Shop drawings |
| • Work by team | • Correction of work | • Testing/surveying |
| • Termination fee | • Sub-contractors | • Alternatives |
| • Fees | • Indemnification | • Unit pricing |
| • QA/QC Program | • Reimbursable expenses | • Labor relations |

5. Construction Oversight Process

In order to have high predictability in the outcome, it will be necessary to have competent contractor(s) that are best suited for the Project. Once the contractor(s) is selected, PMC activities shall include the following as reasonably required to complete the Project:

- a. Assist and advise the team through construction process to meet Project objectives.
- b. Assist in obtaining permits.
- c. Define, schedule, attend and produce meeting minutes for weekly construction progress meetings.
- d. Assist in the setup of the Project cost accounting and budget tracking process.
- e. Assist with the tracking of Project expenditures to ensure that the proposed budget is being met.
- f. Review of payment applications, waivers, sworn statements, insurance certificates, and surety bond requirements for contract compliance.

- g. Provide change order tracking and facilitate issue resolution, including developing an accountability log that will be used for all change orders issued for the LPS capital improvement (bond) program that will indicate the source and cost of any and all change orders (e.g., field condition, owner-initiated, architect-initiated, construction manager-initiated, etc.).
- h. Update major milestone schedule for Project and identify conflicts.
- i. Assist with the tracking of Project budget including expenses to date versus total budget and remaining Project cost estimates.
- j. Prepare periodic Project status reports for LPS planning team's use.
- k. Assist in developing RFP and evaluate bids for furniture and furnishings, equipment, signage, security systems, voice/data systems, carpeting, wall and window coverings, and any other RFP required for completion of the Project; all in accordance with competitive bidding laws, if applicable.
- l. Coordination of other vendor activities with architect, construction manager, general contractor, technology designer, if selected, and the contractors.
- m. Review of payment applications from contractors to ensure the same is in accordance with contractual arrangements and make recommendations for payment.

6. Building Start-up & Project Close-out

Ensure that the architect, construction manager, general contractor, technology designer, if selected, and contractors complete their contractual obligations. Post construction services typically commence after construction is substantially complete. PMC will continue to advocate on behalf of LPS to ensure the close-out procedures are completed in a timely manner. Activities shall include the following as reasonably required to complete the Project:

- a. Identification of punch list items.
- b. Monitor the completion of punch list activities for architect, construction manager, general contractor, and technology designer, if selected.
- c. Conduct final Project walk-throughs/inspections with the architect, construction manager, general contractor and technology designer, if selected, to review compliance with the contract documents for quality of finished construction.
- d. Coordination of the delivery of warranty and guarantee certificates.
- e. Submittal of release waivers of liens and sworn statements.
- f. Coordination of building systems testing.
- g. Assistance in obtaining occupancy permit.
- h. Coordination of as-built drawings, and operational manuals
- i. Assistance in scheduling of training staff on building systems.

EXHIBIT B
TERMS AND CONDITIONS

Upon execution of the Proposal dated June 3, 2015, 2015, this Exhibit B shall be incorporated into the Agreement between LPS and PMC.

1. PMC'S SERVICES:

- 1.1. PMC's services (the Services) include the consulting services designated on Exhibit A to the Agreement and additional services, if any, performed by PMC in connection with its engagement under the Agreement. PMC shall perform the Services in accordance with the Terms and Conditions in this Exhibit B.

If PMC determines that additional services are necessary or advisable in the interest of LPS, PMC shall notify LPS and clearly describe such services in writing, including a cost estimate for the performance of same. If accepted by LPS, PMC and LPS shall mutually agree in writing to an increase in PMC's compensation for such additional services before the work is performed.

- 1.2. PMC and LPS acknowledge that PMC shall have no authority, express or implied, to enter into written or oral agreements on behalf of LPS, to take any other actions with respect to LPS's Project or the business affairs of LPS, or to commit or otherwise obligate LPS in any manner whatsoever, without the prior written approval of LPS. The Services provided by PMC are inherently advisory in nature. PMC shall have no responsibility for management decisions or management functions.

2. LPS'S RESPONSIBILITIES:

- 2.1. LPS shall designate a representative with authority to act on LPS's behalf to be the contact person for purposes of the communications between LPS and PMC regarding PMC's Services. The Superintendent of LPS and Paul Theriault and Greg VanKirk of PMC will be the Representatives unless notified otherwise. If LPS reasonably believes that the Representative assigned by PMC to supervise this Project is not performing his responsibilities on a satisfactory and competent basis thereby jeopardizing the timely successful completion of the Project, LPS shall have the right to have PMC provide an alternative Representative to provide supervision of this Project. In all cases of decision, such requests shall be reasonable in nature. In the event that PMC is unable to provide LPS with a competent and reliable Representative who is acceptable to LPS, LPS shall have the right to terminate this Agreement upon seven (7) days written notice and, upon such termination, LPS shall be released of any and all further obligations hereunder.
- 2.2. LPS shall provide full information to PMC regarding LPS's requirements as necessary for the performance of PMC's Services.
- 2.3. LPS shall provide information, review documents provided by PMC, and render decisions relating to PMC's Services on a timely basis so as not to delay the performance of PMC's Services.

- 2.4. LPS shall engage third parties to provide services, including by way of example, surveyors, testing consultants, engineers, attorneys and risk management consultants, as reasonably required for the performance of PMC's Services.
- 2.5. LPS shall obtain all governmental approvals required for LPS's use and operation of the project facilities and systems which are the subject of this engagement.
- 2.6. LPS shall pay PMC for Services in accordance with payment terms in the Agreement and these Terms and Conditions.
- 2.7. LPS agrees to report promptly in writing to PMC any default or defect in PMC's services or non-conformance with any provision of this agreement.
- 2.8. LPS covenants and agrees during the term of this Agreement and for the period of one year after its completion or termination not to solicit for employment, on behalf of LPS or any other entity, any PMC staff member or members working on the engagement under this Agreement, including former PMC staff members.

3. PMC'S RESPONSIBILITIES:

- 3.1. PMC shall perform the Services in accordance with the standard of professional skill and care exercised by other consultants performing similar services under similar circumstances.
- 3.2. PMC does not warrant or guarantee the outcome of project pro formas, budgets or other financial projections developed by PMC for use in connection with its Services. Budgets, cost estimates, schedules, and financial projections prepared by PMC represent PMC's best professional judgment as a consultant. It is recognized, however, that neither PMC nor LPS has control over the cost of labor, materials or equipment, market conditions, contractors' methods of determining bid prices or other competitive bidding or negotiating conditions. PMC cannot and does not warrant or represent that the outcome of bids or negotiated prices will not vary from any project budget proposed, established or approved by LPS, or from any cost estimate, projection or evaluation prepared by PMC.
- 3.3. PMC shall not be responsible for the failure of engineers, architects, general contractors, subcontractors, vendors, attorneys, or other consultants to carry out their respective duties and obligations to LPS. PMC is not responsible for the performance of any party not employed directly by PMC, and PMC is not responsible for the performance of consultants engaged by PMC in connection with PMC's Services under this Agreement.
- 3.4. PMC's Services do not include professional architectural or engineering services. PMC shall not be responsible for the design of any project, for any errors, omissions or other deficiencies in the construction drawings and specifications for a project, for any other error or omissions of architects or other design professionals, if any, in connection with a project, or for the failure of the construction drawings and specifications for a project to comply with the requirements of LPS or LPS's landlord or subtenants or with applicable codes or legal requirements. It shall be the responsibility of LPS's architect, not PMC, to identify building code and other legal requirements pertaining to the design of a project for LPS.

- 3.5. PMC shall not be responsible for construction means, methods, techniques, sequences and procedures, and safety programs and measures employed by contractors or others in the performance of their contracts, and shall not be responsible for the failure of any contractor or supplier to carry out work in accordance with the construction drawings and specifications or other contract requirements.
- 3.6. Any acts of PMC in providing consultation, advice and/or recommendations to LPS regarding the performance or the default of LPS's architect, contractor(s), vendors or other consultant(s), shall not be deemed to be the assumption by PMC of management or control of the architect, contractor(s), vendors or consultants or of LPS's project.
- 3.7. PMC is not an attorney at law, and the Services provided by PMC exclude professional legal services. If the scope of PMC's Services includes assistance with the negotiations of agreements on behalf of LPS, such agreements shall be subject to LPS's approval. LPS shall provide for the review of such agreements by LPS's attorneys and insurance consultants as deemed to be appropriate by LPS.
- 3.8. PMC shall indemnify, defend, and hold harmless LPS, its Board of Education and its Members in their official and individual capacities and its employees from and against any and all liability, damages, losses, claims, demands, actions, causes of action, costs including attorneys' fees and expenses, or any of them, arising out of any negligent acts pertaining to the Services which PMC has provided or will provide to LPS under this Agreement, except as caused by the acts, omissions, negligence or misconduct of LPS.

4. COMPENSATION:

- 4.1. For the performance of Services, LPS shall compensate PMC as provided in the Agreement. Unless provided otherwise in the Agreement, PMC shall submit invoices for Services rendered by PMC to LPS. All invoices shall be prepared in accordance with the compensation terms in the Agreement and LPS agrees to pay invoice within thirty (30) days after receipt thereof; provided, however, that in the event LPS disputes the accuracy for any invoice prepared and presented, payment for the portion which is disputed by LPS may be withheld until such dispute is resolved.
- 4.2. Should PMC be required to provide evidence, prepare for hearings, evaluate claims, assist in the review or preparation of claims or defenses, or otherwise participate or assist in the resolution of legal disputes either: (i) on behalf of LPS, or (ii) resulting from PMC's role as consultant or Project Management (unless caused by PMC's gross negligence or intentional misconduct), PMC will be reimbursed on a "Time and Materials" basis, which is defined to mean the numbers of hours of Services performed by PMC's personnel multiplied by PMC's then current standard hourly rates ("Standard Hourly Rates") plus the direct cost incurred by PMC in performance of such services.
- 4.3. In the event LPS fails to pay PMC any amount due to PMC under this Agreement, and if such failure to pay continues for a period of fifteen (15) days following written notice of non-payment, PMC may, without prejudice to any other remedy PMC may have, suspend all or some of PMC's Services until all amounts due to PMC have been paid by LPS.

- 4.4. Any taxes or fees, enacted by local, state or federal government subsequent to the date of this agreement, and based on gross receipts or revenues will be added to the amounts due under this agreement, in accordance with any such fees or taxes.

5. ENVIRONMENTAL CONDITION OF SITE:

- 5.1 LPS has disclosed to PMC in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, hazardous substances, and other similar conditions (Constituents of Concern) located at or adjacent to all property owned or controlled by LPS which is the subject of this engagement (Sites), including type, quantity, and location.
- 5.2 LPS represents to PMC that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to PMC, exist at any Site.
- 5.3 If PMC becomes aware of an undisclosed Constituent of Concern, then PMC shall notify (1) LPS and (2) appropriate governmental officials if PMC reasonably concludes that doing so is required by applicable laws.
- 5.4 It is acknowledged and agreed by LPS and PMC that PMC's scope of services do not include any services related to Constituents of Concern. If PMC or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then PMC may, at its option and without liability for consequential or any other damages, suspend performance of Services related to the Site(s) affected thereby until LPS: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the specific site is in full compliance with applicable laws.
- 5.5 If the presence at any Site of undisclosed Constituents of Concern affects the performance of PMC's Services under this Agreement, then PMC shall have the option of (1) accepting an adjustment in its compensation and in the time for completion of its Services, or both; or (2) terminating this Agreement.
- 5.6 LPS acknowledges that PMC is performing professional Services for LPS and that PMC is not and shall not be required to be an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or adjacent to any Site in connection with PMC's activities under this Agreement.

6. MISCELLANEOUS:

- 6.1 Nothing contained in this Agreement shall create a contractual relationship or a cause of action in favor of a third party against either LPS or PMC. The Services performed by PMC under this Agreement are for the sole benefit of LPS, and shall not be relied upon by other parties.
- 6.2 PMC and LPS may not assign its rights under this Agreement without the prior written consent of the other.

- 6.3 PMC shall be entitled to use LPS's name, photographs, renderings, narrative descriptions and similar materials relating to PMC's Services in connection with publications, awards, press releases, and marketing materials.
- 6.4 Provided that LPS has paid all amounts due to PMC under this Agreement, LPS shall be entitled to use all studies, reports, summaries, cost estimates, budgets, and other documents prepared by PMC in the performance of its Services; provided, however that LPS shall not disclose or permit other parties to use such information and documents. PMC shall be entitled to retain copies of such documents for PMC's files. Notwithstanding the foregoing, PMC shall retain all ownership and intellectual property rights in, and LPS shall not use or permit the use by others of, all standard contract provisions and modifications, financial analysis programs and similar tools developed by PMC for PMC's use generally and not developed solely for purposes of this engagement.
- 6.5 Prior to the initiation of any legal proceedings, Client and PMC agree to submit all claims, disputes, or controversies to each other in writing. For a period of fourteen (14) days after the dispute is presented, discussions shall be held between the principal decision maker(s) of Client and PMC (as designated by the respective parties) in an effort to resolve the dispute. If the dispute is not resolved and reduced to a written settlement agreement within such fourteen (14) day period, then the parties shall submit the dispute to arbitration.
- 6.6 Any disputes between LPS and PMC relating to PMC's Services or this Agreement shall be governed by the laws of the State of Michigan. Any claim, dispute or other matter in question arising out of or relating to this Agreement or breach thereof shall be settled exclusively by final and binding arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. This does not restrict either party from filing a claim or charge with any state, federal or other governmental administrative agency. Rather, this arbitration provision applies only to local, state or federal court proceedings. Each claim or dispute shall be determined by one (1) arbitrator selected by mutual agreement of the parties. Demand for arbitration shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim; dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations. Arbitration shall include, by consolidation, joinder or in any other manner, an additional person or entity not a party to this Agreement, including, without limitation, contractors, contractors' employees, and contractors' sub-contractors, and any other person or entity sought to be joined.
- 6.7 PMC and LPS shall each maintain insurance coverage as deemed by each to be necessary for its own protection; provided, however, that LPS shall include PMC as an additional insured under LPS's general liability insurance policy with respect to claims and losses related to this engagement only. In addition, if PMC provides Services under this Agreement in connection with the construction of a project for LPS, the following shall apply: (i) LPS's general contractor's general liability insurance for such project shall include PMC as an additional insured; and (ii) PMC and LPS shall each waive all rights against each other and the contractors, consultants, agents and employees of the other for any loss or damage, for which property insurance is

maintained by the injured party, and PMC and LPS each shall require appropriate similar waivers from their contractors, consultants and agents.

- 6.8 No failure by LPS or PMC to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right, term or remedy for a breach of this Agreement, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition.

7. TERMINATION:

- 7.1 This Agreement may be terminated by LPS after December 31, 2015 upon thirty (30) days prior written notice if PMC is in default under this Agreement and fails to cure such default within such thirty day period. In addition, provided that LPS is acting in good faith, LPS shall be entitled to terminate this Agreement after December 31, 2015, without cause upon thirty (30) days prior written notice to PMC.
- 7.2 This Agreement may be terminated by PMC upon thirty (30) days prior written notice in the event of any of the following defaults by LPS and failure of LPS to cure such default within such thirty (30) day period: LPS fails to make payment of amounts due to PMC under this Agreement; LPS fails to follow the advice or recommendations of PMC; or LPS otherwise is in default under this Agreement.
- 7.3 If PMC's Services are suspended for more than thirty (30) consecutive days, PMC may terminate this Agreement upon thirty (30) days prior written notice to LPS.
- 7.4 In the event this Agreement is terminated for any reason, PMC shall be compensated on an equitable basis for services performed as of the effective date of termination in accordance with this Agreement. Upon any such termination and payment of amounts due to PMC, the parties hereto shall be released of any and all further liability hereunder.
- 7.5 This Agreement shall commence upon execution of the Agreement between PMC and LPS and shall continue in effect for the term described in the Agreement, as may be extended by agreement of the parties, unless terminated sooner under the terms of this Section.

8. THIS AGREEMENT:

- 8.1 LPS and PMC accept the obligations of good faith and fair dealing towards each other with respect to this engagement.
- 8.2 This Agreement includes the proposal executed by PMC and LPS, Exhibit A Scope of PMC's Services, Exhibit B Terms and Conditions, and other documents, if any, listed in the Agreement. This Agreement sets forth the entire, integrated agreement between PMC and LPS, supersedes all prior proposals, negotiations, representations and agreements, whether written or oral, between PMC and LPS, and shall govern the relationship between PMC and LPS with respect to all Services provided by PMC to LPS in connection with the engagement described in the Agreement. This Agreement may be amended only by written instrument signed by both PMC and LPS.

8.3 Neither this Agreement nor PMC's performance of Services shall be deemed to create a partnership or joint venture between LPS and PMC.