

CONSTRUCTION AGREEMENT

BETWEEN

GREAT LAKES WATER AUTHORITY, A MICHIGAN MUNICIPAL AUTHORITY

AND

CONTRACT NO. _____

CONTRACT DESCRIPTION _____

MONTH/YEAR

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CONSTRUCTION AGREEMENT

This Construction Agreement (“Agreement”) is made by and between the Great Lakes Water Authority, a Michigan municipal authority and public body corporate organized pursuant to Act 233 of 1955, with its principal place of business located at 735 Randolph, Detroit, Michigan 48226 (“GLWA”), and _____ a _____, with offices located at _____ (“Contractor”).

Recitals

Whereas, GLWA desires to retain the Contractor for purposes of securing from the Contractor certain labor, equipment and/or materials (“Work”) generally described in Exhibit A, “General Description of Work and Project”, relating to the project generally described in Exhibit A and as otherwise set forth in this Agreement; and

Whereas, the Contractor desires to perform the Work in accordance with this Agreement; and

Accordingly, in consideration of the promises, the mutual undertakings and benefits to accrue to the parties and to the public, the parties agree as follows:

Article I

Employment of Contractor

1.01 GLWA engages the Contractor and the Contractor agrees to faithfully and diligently perform the Work in accordance with the terms and conditions contained in this Agreement. This Agreement shall be administered by GLWA and the Contractor shall perform the Work at the direction of GLWA as set forth in this Agreement.

1.02 If all or portions of the Work will be funded by the State Revolving Loan Fund as defined in, and in accordance with the U.S. Environmental Protection Agency (“EPA”) regulations as administered by the Michigan Department of Environmental Quality, it must be noted that (i) neither the United States, the U.S. Environmental Protection Agency, the State of Michigan, nor the Michigan Department of Environmental Quality is a party to this Agreement and (ii) this Agreement is subject to regulations contained in 40 CFR 35.936, 35.938, and 35.939 in effect on the date of execution of this Agreement. GLWA’s rights and remedies provided in these clauses are in addition to any other rights and remedies provided by law or under this Agreement.

Article II

Contracting Officer

2.01 The Contracting Officer shall be the CEO of GLWA or an employee of GLWA named as such by the CEO. The Contracting Officer has the rights and authority assigned to the Contracting Officer as set forth in this Agreement. The term “Contracting Officer” shall include certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

Article III
The Contract Documents

3.01 This Agreement is comprised of multiple exhibits and documents each of which is identified in Exhibit B, "Contract Documents". Each such exhibit and document identified in Exhibit B is incorporated fully by reference into this Agreement and shall collectively be referred to as the Contract Documents.

Article IV
Commencement and Completion; Schedule

4.01 The Contract Time shall commence to run on the date specified in the Notice to Proceed and the Work shall be substantially complete on or before the date specified for Substantial Completion and finally complete on or before the date specified for Final Completion. Completion of the Work by the Contractor within the specified Substantial and Final Completion dates (and by the dates specified for designated portions of the Work) is of the essence. The Contractor shall prosecute the Work diligently to satisfactorily complete the Work in accordance with the Contract Documents and Contract Time.

4.02 The Contractor recognizes that GLWA shall suffer financial loss for which the Contractor shall be liable if the Work is not completed within the specified Contract Time and by the dates specified for Substantial and Final Completion plus any permitted extensions expressly allowed for herein or otherwise approved by GLWA in writing. The Contractor and GLWA also recognize the delays, expense and difficulties involved in proving the actual loss suffered by GLWA if the Work is not completed on time. Accordingly, instead of requiring any such proof, GLWA and the Contractor agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay GLWA the sum of _____ and 00/100 Dollars (\$0.00) per day for each day that expires after the date for Substantial Completion has passed and said payment shall continue until the entire Work is substantially complete in accordance with this Agreement. GLWA and the Contractor also agree that as liquidated damages for delay (but not as a penalty) the Contractor shall pay GLWA the sum of _____ and 00/100 Dollars (\$0.00) per day for each day that expires after the date for Final Completion has passed and said payment shall continue until the entire Work is finally complete in accordance with this Agreement.

Article V
General Conditions

5.01 The general conditions of this Agreement shall be as set forth in Exhibit C, "General Conditions".

Article VI
Contract Price; Terms of Payment

6.01 Subject to the performance by the Contractor of its obligations under this Agreement, GLWA agrees to pay the Contractor for the performance of the Work the sum of _____ Thousand and 00/100 Dollars (\$0.00) ("Contract Price"), payable as set forth below. The Contract Price is summarized in Exhibit D, "Costing Summary".

6.02 The Contractor acknowledges that the Contract Price may include certain Provisionary Allowances and Cash Allowances, which have been established by GLWA and shall be administered by the Contracting Officer as provided in this Agreement.

6.03 Subject to other provisions of this Agreement, provided that the Contractor has submitted to the Contracting Officer an Application for Payment in a form acceptable to the Contracting Officer on or before the 15th day of the month for work completed through the last day of the previous month, GLWA shall make payment of the amounts properly due the Contractor on or before the 45th day following receipt of the relevant Application for Payment. Reasonable efforts shall be made to make payment within thirty (30) days after the final date of any Engineer's Estimate and Certificate.

6.04 Applications for Payment shall be in conformance with this Agreement and show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed or (2) the share of the Contract Price allocated to that portion of the Work in the Detailed Cost Breakdown and Schedule of Values.

6.05 Subject to the provisions of this Agreement, the amount of each Progress Payment shall be computed as follows:

6.05 a Take that portion of the Contract Price properly allocable to completed Work, as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Price allocated to that portion of the Work in the Detailed Cost Breakdown and Schedule of Values, less retainage of ten percent (10%);

6.05 b Add that portion of the Contract Price properly allocable to materials and equipment delivered and safely and suitably stored at the site for subsequent incorporation of the Work, less retainage of ten percent (10%), provided, however, that the Contractor provides evidence to GLWA that said materials and equipment are insured against damage, theft or other hazards for their full value;

6.05 c Subtract the aggregate of previous payments made by GLWA; and

6.05 d Subtract amounts that are (i) determined to have been improperly paid to the Contractor pursuant to previous Applications for Payment as a result of errors subsequently discovered by GLWA or (ii) chargeable to the Contractor pursuant to the provisions of this Agreement, including, without limitation, any liquidated damages then due or that would become due based on the Contracting Officer's estimate of late completion of the Work by the Contractor.

Article VII Notices

7.01 Except as otherwise specified by GLWA, all notices, consents, approvals, requests and other communications (collectively, "Notices") required or permitted under this Agreement shall be given in writing and mailed by first class mail, addressed as follows:

If to GLWA:

Chief Executive Officer
Great Lakes Water Authority
735 Randolph, Suite 1900
Detroit, Michigan 48226
ATTN: Construction and Contract Services Procurement Manager

If to the Contractor:

See Exhibit E, "Designation of Notice Address"

7.02 All Notices shall be deemed given on the day of deposit in the U.S. Mail, first class postage prepaid. Any Notice given by a party hereunder must be signed by an authorized representative of such party.

7.03 Notwithstanding the requirement above as to the use of first-class mail, change of address notices, termination notices, and other Notices of a legal nature, shall be sent by certified first-class mail, postage prepaid, return receipt requested.

Article VIII Insurance and Bonds

8.01 The Contractor shall provide the insurance and bonds required in Exhibit F, "Insurance and Bonds", at no additional cost to GLWA.

Article IX Miscellaneous Provisions

9.01 No failure by GLWA to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right, term or remedy consequent upon its breach shall constitute a waiver of such covenant, agreement, term, condition, or breach.

9.02 If any provision of this Agreement or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

9.03 This Agreement and all Contract Documents referenced herein contain the entire agreement between the parties and all prior negotiations and agreements are merged into this Agreement. Neither GLWA nor its agents have made any representations except those expressly set forth in this Agreement, and no rights or remedies are, or shall be, acquired by the Contractor by implication or otherwise unless expressly set forth in this Agreement.

9.04 Unless the context otherwise expressly requires, the words "herein", "hereof", and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or subdivision

9.05 Unless explicitly stated otherwise in this Agreement, the rights and remedies set forth in this Agreement are not exclusive and are in addition to any of the rights and remedies provided by law or equity.

9.06 The headings of the sections of this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of this Agreement or in any way affect the same.

9.07 This Agreement and all actions arising under it shall be governed by, subject to, and construed according to the laws of the State of Michigan. The Contractor agrees, consents and submits to the personal jurisdiction of any competent court in Wayne County, Michigan, for any action arising out of this Agreement. The Contractor agrees that service of process at the address and in the manner specified in Article VII "Notices" will be sufficient to put the Contractor on notice and waives any and all claims relative to such Notice. The Contractor also agrees that it will not commence any action against GLWA because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Agreement, in any courts other than those in Wayne County, Michigan, unless original jurisdiction can be had in the United States District Court, Eastern District, Southern Division, the Michigan Court of Appeals, or the Michigan Supreme Court.

9.08 If any Subcontractor shall take any action which, if done by a party, would constitute a breach of this Agreement, the same shall be deemed a breach by the Contractor with right legal effect.

9.09 It is understood that this is not an exclusive service contract and that, during the term of this Agreement, GLWA may contract with other consulting firms and contractors. It is also understood that the Contractor is free to render the same or similar services to other clients, provided however, that the Contractor's obligations to GLWA contained in this Agreement will not be affected in any manner.

9.10 The Contractor warrants that all of the prices, terms, warranties and benefits granted to GLWA are comparable to or better than the equivalent terms presently being offered by the Contractor to any other customer for the performance of the Work.

9.11 The Contractor covenants that it is not, and will not become in arrears to GLWA upon any contract, debt, or other obligations to GLWA. The Contractor agrees to include this provision in any Subcontracts.

9.12 This Agreement may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Agreement. Promptly after the execution of this Agreement, GLWA shall provide a copy to the Contractor.

9.13 As used in this Agreement, the singular shall include the plural, and the plural shall include the singular.

9.14 This Agreement shall not be construed to create any rights in any third party.

9.15 No part of this Agreement may be waived except by the written agreement of the parties. Forbearance in any form from demanding performance is not a waiver of performance. Until complete performance under this Agreement, the party owed performance may invoke any remedy under the Agreement or under law, despite its past forbearance.

9.16 The Contractor shall not assign all or any part of this Agreement, nor any Work, nor any payments due or to become due under this Agreement, without first obtaining consent in writing from GLWA, which consent may be withheld in GLWA's sole and absolute discretion.

9.17 Nothing contained in this Agreement shall be construed as to create a relationship of employment, principal and agent, or joint venture between GLWA and the Contractor. It is agreed and understood that the Contractor is an independent contractor with respect to the Work to be performed under this Agreement.

9.18 The Contractor represents and warrants that this Contract has been duly authorized and executed by an individual authorized to bind the Contractor to its terms and conditions in accordance with the Contractor's requirements and procedures and constitutes a legal, valid and binding obligation of the Contractor.

9.19 Capitalized terms in this Agreement shall have the meanings defined throughout the Agreement and as ascribed in Exhibit G, "Glossary".

9.20 GLWA shall be permitted to assign this Contract to any successor in interest without the prior consent of the Contractor. As soon as practicable thereafter, GLWA shall provide written notice to the Contractor of the assignment.

9.21 When the Work includes the installation of certain equipment and/or products, Contractor is required to review the proposed equipment/products to ensure that they are, at a minimum, "Energy Star" rated. All proposed equipment/product choices must be reviewed by a qualified GLWA Energy Manager for approval only as to the sufficiency of the "Energy Star" rating and/or other applicable energy efficiency ratings; GLWA assumes no responsibility for the adequacy, capability or appropriateness of the equipment/product selected by Contractor as it relates to successful completion of the Work. Contractor must supply all required documentation that will qualify GLWA for energy program incentives offered by other utilities provided, however, that the process of applying for energy program incentives will be the responsibility of the GLWA Energy Manager.

(Signatures appear on next page)

Accordingly, GLWA and the Contractor by and through their duly authorized officers and representatives have executed this Agreement as of the dates of their respective signatures below.

[Insert Contractor name]:

Signature: _____

Print Name: _____

Title: _____

Dated: _____

Great Lakes Water Authority:

Signature: _____

[Type in name]

Title: _____

[Type in title]

Dated: _____

APPROVED BY GLWA
BOARD OF DIRECTORS ON: _____

APPROVED AS TO FORM BY
GLWA GENERAL COUNSEL:

Signature

Date

EXHIBIT A

GENERAL DESCRIPTION OF WORK AND PROJECT

The Project:

The Work:

Key Dates:

Substantial Completion:

Final Completion:

(End Exhibit A – General Description of Work and Project)

EXHIBIT B

CONTRACT DOCUMENTS

Except as otherwise amended by specific written notation and initialed by the Contracting Officer and the Contractor, the Contract Documents on the date of signature of the Agreement shall consist of the following documents explicitly designed in this Exhibit B:

The Agreement

Exhibit A General Description of Work and Project

Exhibit B Contract Documents

Exhibit B.1 Specifications and Drawings

Exhibit C General Conditions

Exhibit D Contract Forms

Exhibit E Designation of Address

Exhibit F Insurance and Bonds

Exhibit G Glossary

The Contractor's Detailed Work Plan

Notice to Proceed

The Bulletin(s) indicated below:

Number	Date	Pages
1		
2		
3		

(End Exhibit B – Contract Documents)

EXHIBIT B.1

SPECIFICATIONS AND DRAWINGS

EXHIBIT C

GENERAL CONDITIONS

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ARTICLE 1
CONTRACT DOCUMENTS

1.1 DEFINITIONS.

Unless the context expressly requires otherwise, defined terms used herein shall have the meanings set forth in the Glossary.

1.2 EXECUTION, CORRELATION AND INTENT.

1.2.1 The Agreement shall be signed in not less than duplicate by GLWA and the Contractor.

1.2.2 By executing the Agreement, the Contractor represents that it is financially solvent; that it is qualified to do business in the State of Michigan, that it has all required licenses and permits necessary in connection with performance by the Contractor hereunder (all such licenses and permits shall be at the Contractor's sole cost and expense); that it has the expertise and authority to perform its obligations under the Agreement; that it has inspected the Project and the Work and familiarized itself with the local conditions (including, both all physical conditions and all applicable local codes, laws and regulations) under which the Work is to be performed; that it is familiar with all federal, state, municipal and county laws, ordinances and regulations which may, in any way, affect the Work or those employed therein, including, but not limited to, those particularly applicable to the Project; and that the Contract Price is the agreed amount for all the Work, including all risks, hazards, and difficulties in connection therewith assumed by the Contractor under the Agreement. Each Subcontractor shall review the foregoing representations and shall be deemed to have made the same representations to GLWA in performing any Work on the Project.

1.2.3 The intention of the Agreement is that all labor, materials, facilities, utilities, equipment, insurance, taxes and all other items necessary for the proper execution and completion of the Work are included in the Contract Price. It is intended that all work required for the construction and administration of the Project shall be supplied including all such work that is in the Contract Documents or is reasonably inferable from the Drawings and Specifications and the Contract Documents. Lists of "Work Included," "Scope" or "Description of Work" are not intended to enumerate each and every item of Work or appurtenances required. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

1.2.4 The Agreement is intended to constitute a single agreement and every effort shall be made to construe such documents as being consistent and not contradictory. In the event of any conflict among the Contract Documents, the Contract Documents shall be construed according to the following priorities:

Highest Priority:	Change Orders and Construction Change Directives
Second Priority:	The Agreement
Third Priority:	Supplementary General Conditions
Fourth Priority:	General Conditions

Fifth Priority: Drawings and Specifications

1.2.5 Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of the Agreement, except where otherwise indicated.

1.2.6 Where no explicit quality or standards for materials or workmanship are established for work, such work is to be of new, high quality for the intended use and workmanship shall be consistent with the best practices of that particular trade, skill and function.

1.2.7 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

1.2.8 The relationship between the Contractor and GLWA shall be that of an independent contractor. The Agreement shall not be construed to create any third party beneficiaries or to create any rights in any third parties.

1.2.9 If any provision of the Agreement shall be, to any extent, invalid or unenforceable, the remainder of the Agreement shall remain in full force and effect.

1.3 OWNERSHIP AND USE OF DOCUMENTS.

1.3.1 GLWA will furnish the Contractor with one set of reproducible Drawings and Specifications. The Contractor shall be responsible for all additional copies necessary for the execution of the Work.

1.3.2 The organization of the Specifications into divisions, sections and articles, and the arrangement of Drawings shall not be construed to plan, schedule, sequence, coordinate, divide, or otherwise control the Contractor's work or responsibility in dividing the Work among its Subcontractors or in establishing the extent of Work to be performed by any trade.

1.3.3 The Drawings show the general arrangement, design intent and extent of the Work to be completed by the Contractor. The Contractor is responsible for verifying existing conditions and facilities, taking detailed field measurements and other responsibilities as necessary for the Contractor to complete the Work in accordance with this Agreement.

1.3.4 Drawings and Specifications are complementary and what is called for by one shall be as binding as if called for by both. Should the Drawings, Specifications and/or other instructions be contradictory in any particular manner or should there be any doubt as to the meaning of either, the Contractor shall refer the matter to the Contracting Officer who may refer the request to the Engineer for an initial decision, whose decision thereon shall be conclusive if approved by the Contracting Officer. The Engineer's costs and expenses in connection with reviewing and answering requests for information submitted by the Contractor or any Subcontractor will be charged to the Contractor and offset against amounts otherwise due to the Contractor in any case where the information requested is reasonably available from a careful review of the Contract Documents.

1.3.5 The Drawings and Specifications shall have equal authority and priority. In the event of any conflict between the Drawings and Specifications, the appropriate Work shall be determined by the Contracting Officer whose decision thereon shall be conclusive.

ARTICLE 2 CONTRACTING OFFICER

2.1 GENERAL PROVISIONS.

2.1.1 The Contracting Officer shall have access to the Work at all times for inspection thereof. The Contractor shall provide proper and safe facilities for such access and inspection. The Contractor shall cooperate with the Contracting Officer with regard to the conduct and scheduling of all necessary inspections.

2.1.2 The Contracting Officer will have authority to act on behalf of GLWA only to the extent provided in the Contract Documents, unless otherwise modified by the CEO in writing.

2.1.3 The Contracting Officer's interpretations in matters relating to aesthetic effect shall be final if consistent with the intent of the Contract Documents.

2.1.4 The Contracting Officer will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples. The Contracting Officer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.1.5 The Contracting Officer will prepare supporting documentation for Requests for Change Orders, Construction Change Directives and Change Orders to be issued to the Contractor in connection with proposed changes in the Work.

2.1.6 The Contracting Officer will inspect the Work to determine that it is completed in accordance with the Contract Documents. During the construction phase through Final Completion, the Contracting Officer will conduct periodic on-site reviews of the Project. The Contracting Officer will not be a guarantor of, or surety with respect to, the Contractor's obligations to perform the Work in accordance with the Contract Documents and the Contractor may not rely on the Contracting Officer's inspections and reports as indicative of the lack of defects or non-conforming work.

2.1.7 If the Contracting Officer determines that the Work is not performed in accordance with the Contract Documents, the Contracting Officer will notify the Contractor. Upon receipt of such a notice from the Contracting Officer, the Contractor shall, at no additional expense to GLWA, correct the non-conforming or defective Work within seven (7) days or, if such non-conforming or defective Work cannot be corrected within such period, the Contractor shall commence the corrective Work and submit its Drawings therefor within such period and shall report its progress with respect thereto whenever requested by the Contracting Officer. Corrections shall be accomplished without affecting the date of Substantial Completion or Final Completion as set forth on the CPM Schedule or the Contract Price.

2.1.8 The Contracting Officer will review corrective action proposed by the Contractor (without assuming the Contractor's responsibility for the corrective Work). The Contracting Officer will review the progress of corrective Work by the Contractor.

2.1.9 Based on the Contracting Officer's observations and on evaluations of the Contractor's Applications for Payment, the Contracting Officer shall approve or reject payment to the Contractor. Based on the Contracting Officer's observations at the Project site and on evaluations of the Contractor's Applications for Payment, the Contracting Officer shall issue Certificates for Payment in such amounts as determined by the Contracting Officer.

2.1.10 Upon written notice from the Contractor that the Contractor believes the Work to be Substantially Complete, the Contracting Officer will inspect the Work and will prepare a Punch List of items, materials or systems that require completion, correction, replacement or additional work. Upon written notice from the Contractor that the Punch List work is complete, the Contracting Officer will again inspect the Work to determine whether all Punch List work has been satisfactorily completed. When all close-out requirements of the Contract Documents have been completed, the Contracting Officer will approve Final Payment to the Contractor in accordance with Paragraph 9.8 below.

2.1.11 The Contracting Officer will not have control or charge of, and will not be responsible for, construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work nor shall it, be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Contracting Officer will not be responsible for or have control over the acts or omissions of the Contractor, Subcontractors, or any of their agents or employees or any other persons performing any of the Work.

2.1.12 In the event of the death, resignation, refusal or inability to act of the Contracting Officer, the CEO may designate another representative, as the Contracting Officer for purposes of the Agreement. Such designation must be in writing and shall be effective when delivered to the Contractor and thereafter the Contracting Officer named herein shall no longer be the Contracting Officer for the Project, and the Contracting Officer named in the designation shall be the Contracting Officer for the Project.

2.1.13 GLWA shall not be estopped, bound, or precluded by any determination, return, decision, approval, order, letter, payment or certificate made or given by the Contracting Officer or any other officer, employee, representative or agent of GLWA, at any time, either before or after Final Completion and acceptance of the Work and payment therefore from: (i) showing the true and correct amount, classification, quality, and character of the Work completed and materials furnished by the Contractor or any other person or entity performing the Work under the Agreement, or from showing at any time that any determination, return, decision, approval, order, letter, payment, or certificate is untrue and incorrect, or improperly made in any particular, or that the Work or the materials or any parts thereof, do not in fact conform to the Contract Documents; or (ii) from demanding the recovery of any overpayments made to the Contractor, or such damages as GLWA may sustain by reason of failure to strictly perform each and every term, provision or condition of the Agreement.

ARTICLE 3
GLWA

3.1 INFORMATION AND SERVICES REQUIRED OF GLWA.

Information or services under GLWA's control shall be furnished by GLWA with reasonable promptness after written request to avoid delay in the orderly progress of the Work. The furnishing of such information by GLWA shall not relieve the Contractor from its duties under the Contract Documents, specifically as to inspection of the Project site and the Contract Documents. GLWA makes no representation or warranty with respect to subsurface conditions, or any reports provided by or on behalf of GLWA to the Contractor regarding subsurface conditions.

3.2 GLWA'S RIGHT TO STOP THE WORK.

If the Contractor fails to correct defective Work or fails to carry out the Work or to supply labor, materials and equipment in accordance with the Contract Documents, GLWA may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of GLWA to stop the Work shall not give rise to any duty on the part of GLWA to exercise this right for the benefit of the Contractor or any other person or entity. Should GLWA elect to order the Contractor to stop the Work, the Contractor shall be responsible for whatever measures are necessary to maintain the CPM Schedule once the cause for such order has been eliminated and for all costs and expenses associated therewith.

3.3 GLWA'S RIGHT TO CARRY OUT THE WORK.

If the Contractor:

3.3.1 Fails to properly respond to notices issued by the Contracting Officer pursuant to Subparagraph 2.1.7 or 3.2 hereof; or

3.3.2 The Contractor has failed to make payments to its Subcontractors, Sub-subcontractors, laborers or materialmen or for material or labor used in the Work; or

3.3.3 Fails to supply the quantity of properly skilled workmen necessary to complete the Work in accordance with the critical path activities as set forth in the CPM Schedule; or

3.3.4 Fails to supply materials and equipment as necessary to complete the Work in accordance with the CPM Schedule; or

3.3.5 Fails to properly coordinate the work of any of its Subcontractors, vendors, materialmen and equipment lessors; or

3.3.6 Fails to maintain any insurance coverage required under the Agreement; or

3.3.7 Fails to pay workers' compensation or other employee benefits; or

3.3.8 Fails to pay withholding or other taxes; or

3.3.9 Fails to perform any other material obligation under the Agreement; then GLWA may, after seven (7) days written notice to the Contractor and without prejudice to any other remedy GLWA may have, make good such deficiencies or otherwise rectify such situations to the satisfaction of GLWA unless the Contractor shall have commenced corrective action within said seven (7) day period. In such case, the cost of correcting such deficiencies or otherwise rectifying such situations to the satisfaction of GLWA, including compensation for GLWA's separate contractors' or consultants' additional services made necessary by such default, neglect or failure, shall be offset against any amounts otherwise due to the Contractor. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to GLWA.

3.4 GLWA'S RIGHT TO WITHHOLD PAYMENT.

GLWA may withhold payment or, because of subsequently discovered evidence or subsequent observations, it may nullify the whole or any part of any payment previously issued, to such extent as it may be necessary in its opinion to protect GLWA from loss because:

3.4.1 The Contractor fails to properly respond to notices issued by GLWA or the Contracting Officer pursuant to Subparagraphs 2.1.7 or 3.2 hereof; or

3.4.2 The Contractor is in default of any of its material obligations under the Agreement or otherwise is in material default under any of the Contract Documents; or

3.4.3 Any part of such payment is attributable to Work which is defective or not performed in accordance with the Drawings and Specifications, as determined by the Contracting Officer; provided, however, such payment shall be made as to the part thereof attributable to Work which is performed in accordance with the Drawings and Specifications and is not defective, reserving, however, such amount as may be reasonably necessary to protect GLWA with respect to defective Work; or

3.4.4 The Contractor has failed to make payments in accordance with law or the Subcontract documents to Subcontractors, Sub-subcontractors, Suppliers, laborers or materialmen or for material or labor used in the Work; or

3.4.5 Any part of such payment is attributable to Work with respect to which any party has filed an un-discharged claim against any payment or performance bonds; or

3.4.6 Third party claims have been filed or there is reasonable evidence indicating the probable filing of such claims; or

3.4.7 GLWA has reasonable indication that the Work will not be completed within the Contract Time or in accordance with CPM Schedule; or

3.4.8 If GLWA determines that the portion of the Contract Price then remaining unpaid will not be sufficient to complete the Work in accordance with the Contract Documents, whereupon no additional payments will be due the Contractor hereunder unless and until the Contractor, at no cost to GLWA, performs, and pays in full for, a sufficient portion of the Work

so that such portion of the Contract Price then remaining unpaid is determined by GLWA to be sufficient to so complete the Work.

ARTICLE 4 CONTRACTOR

4.1 REVIEW OF CONTRACT DOCUMENTS.

4.1.1 The Contractor acknowledges that it has reviewed the Contract Documents and that it is familiar with the Contract Documents. The Contractor hereby specifically acknowledges and declares that the Contract Documents are full and complete and that the Drawings and the Specifications are sufficient to enable it to construct the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations, and otherwise to fulfill all of its obligations under the Agreement. The Contractor further acknowledges that it has visited the Project site, examined all conditions affecting the Work, is fully familiar with all of the conditions thereon and affecting the same, and, having carefully examined all Drawings, Specifications and documents that there are no discrepancies or omissions in the Contract Documents. Accordingly, GLWA makes no representation, expressed or implied that the Drawings and Specifications are constructible or adequate; the Contractor expressly waives any right to assert claims based on the constructability of the Drawings and Specifications; and no such claim shall be valid. The foregoing shall not imply any requirement that the Contractor assume responsibility for design, for checking the Engineer's calculations, for determining performance criteria and standards or for determining that all of GLWA's requirements have been included in the Drawings and Specifications.

4.1.2 Each Subcontractor shall review the Contract Documents and shall be deemed to have made the same waiver set forth in Subparagraph 4.1.1 above in performing any work on the Project.

4.1.3 Before starting the Work, and at frequent intervals during the progress thereof, the Contractor shall carefully study and compare the Agreement, General Conditions, Drawings, Specifications, and other Contract Documents and shall at once report to the Contracting Officer any error, inconsistency or omission the Contractor may discover. Any necessary change shall be ordered as provided in Article 12, subject to the other provisions of the Contract Documents. If the Contractor proceeds with the Work without such notice to the Contracting Officer, having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents the Contractor could have discovered such, the Contractor shall bear all costs arising therefrom.

4.2 SUPERVISION AND CONSTRUCTION PROCEDURES.

4.2.1 The Contractor shall provide competent supervision, coordination and related services for construction of, and shall cause to be constructed, the Project. The Contractor shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work. The Contractor shall engage workers who are skilled in performing the Work, and all Work shall be performed with care and skill and in a good workmanlike manner. The Contractor shall be liable for all property damage, including repairs

and replacements of the Work and economic losses, which proximately result from the breach of this duty.

4.2.2 The Contractor shall be responsible to GLWA for the acts and omissions of its employees. The Contractor shall be as fully responsible to GLWA for the acts of its Subcontractors, Sub-Subcontractors, their agents and persons directly or indirectly employed by them, and other persons performing any of the Work as it is for the acts and omissions of persons directly employed by the Contractor.

4.2.3 The Contractor shall not be relieved from its obligations to perform the Work in accordance with the Contract Documents either by the activities or duties of the Contracting Officer in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Contractor. No inspection performed or failed to be performed by GLWA hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

4.2.4 The Contractor shall attend meetings scheduled by the Contracting Officer to discuss such matters as procedures, progress, problems, scheduling and safety.

4.2.5 At all times the Contractor shall provide a Project Manager approved by the Contracting Officer who (a) will have full responsibility for the prosecution of the Work, (b) will act as agent and be a single point of contact in all matters on behalf of the Contractor, (c) will be present (or its approved designee will be present) at the Project site at all times that the Work is performed and (d) will be available to execute instructions and directions from the Contracting Officer.

4.2.6 The Contractor shall maintain daily field reports recording the labor force and equipment employed by the Contractor and Subcontractors, materials and equipment received at the Project site or another location, visits by Suppliers, significant progress in the Work and completed trade Work within the major Work areas, and other pertinent information. Daily field reports shall be furnished by the Contractor promptly upon request by the Contracting Officer. The Contracting Officer's review of any daily field report shall not be construed as agreement with any information contained in such report.

4.2.7 The Contractor shall maintain at the Project site a record copy of the Agreement and its Contract Documents in good order and annotated in a neat and legible manner using a contrasting, reproducible color to show (a) all revisions made, (b) dimensions noted during the execution of the Work, (c) all deviations between the as-built installation and the Contract Documents, all approved Submittals and all clarifications and interpretations.

4.2.8 The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times in GLWA. The Contractor's right to entry and use thereof arises solely from the permission granted by GLWA under the Contract Documents. Unless otherwise provided in the Contract Documents, all entrances to all buildings and areas of the Project site that are occupied by GLWA shall be provided with safe, secure and convenient access at all times.

4.2.9 If the Work involves modifications to and/or expansion of an existing occupied and/or operating facility, the Contractor acknowledges and agrees that GLWA will continue its operation of the facilities in which the Work is to be performed and that the Contractor will conduct its work so as to cause a minimum of interference with GLWA's operation of the existing facilities. The welfare of GLWA's employees, guests and invitees is to be considered at all times. If the Work involves modifications to and/or expansion of an existing occupied and/or operating facility, all shut downs/outages of building systems, utilities and equipment shall be approved in advance by the Contracting Officer. The Contractor shall provide the Contracting Officer with reasonable prior notice of any required shutdowns of building systems, utilities and/or equipment, such amount of prior notice to be agreed upon between the Contractor and the Contracting Officer. The Contractor will, at the request of the Contracting Officer, schedule any work which otherwise may have an adverse impact upon the health, safety or welfare of GLWA's employees, guests or invitees or the normal facility operations during those times in which said adverse consequences may be minimized and there shall be no increase in the Contract Price as a result of such work or scheduling.

4.2.10 The Contractor shall retain a competent registered professional engineer or registered land surveyor, acceptable to the Contracting Officer, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the Project site and shall establish sufficient lines and grades for the construction of associated work. The Contractor shall certify as to the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries. The Contractor shall establish the building grades, lines, levels, column, wall and partition lines required by the various Subcontractors in laying out their work.

4.3 LABOR AND MATERIALS.

4.3.1 Unless otherwise specifically noted in the Contract Documents, the Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, insurance, taxes, transportation, and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Contractor shall be responsible, at its sole cost and expense, for the cost of hook-up of temporary systems to existing systems, distribution of utilities from existing systems to all areas of the Work, and disconnection of temporary systems at completion of the Work. The Contractor must obtain advance written approval from the Contracting Officer for any tie-ins to, and disconnections from, existing GLWA systems.

4.3.2 The Contracting Officer may, in writing, require the Contractor to remove from the Project any employee or Subcontractor or employee of a Subcontractor that the Contracting Officer deems incompetent, careless or uncooperative and may require the Contractor to replace any such employee or Subcontractor or employee of a Subcontractor with suitable personnel. The Contractor shall at all times enforce strict discipline and good order among its employees and Subcontractors and shall not employ on the Project any unfit person or anyone not skilled in the task assigned to him. All services required under the Contract Documents shall be performed in a competent and professional manner. The Contractor shall develop and administer an effective labor relations program for the Project; and the Contractor shall employ, and require its Subcontractors and Sub-Subcontractors to employ, only compatible labor. In its labor analysis,

the Contractor shall take into consideration scheduled work by GLWA with the objective of eliminating strikes, picketing, hand billing and other similar activities which would disrupt the Project.

4.3.3 The Contractor covenants that all Work shall be done in a good and workmanlike manner and that all materials furnished and used in connection therewith shall be new and approved by the Contracting Officer, except as otherwise expressly provided for in the Agreement and its Contract Documents. The Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The Contracting Officer may require the Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Contracting Officer, would lead to a reasonable certainty that any material used, or proposed to be used, in the Work meets the requirements of the Contract Documents. All such data shall be furnished at the Contractor's expense.

4.3.4 Deviations from the Drawings and Specifications shall not be permitted except for substitutions approved by the Contracting Officer in accordance with this Paragraph 4.3.4. Substitutions recommended by the Contractor for the purpose of reducing the Contract Price or Contract Time shall be subject to Paragraph 4.3.4.1 hereof. Substitutions recommended by the Contractor or a Subcontractor for the purpose of reducing cost to the Subcontractor or Contractor or off-setting delays for which the Contractor or Subcontractor is responsible shall be subject to Paragraph 4.3.4.2. The Contracting Officer shall determine whether the procedures of Paragraph 4.3.4.1 or 4.3.4.2 shall apply to a specific request for a substitution. No other substitutions or variations from the Drawings and Specifications will be permitted after the Subcontract covering the Work in question is awarded by the Contractor, except that where "or approved equal" is used, the Contractor shall have the right, after the Agreement has been executed, to request the Contracting Officer's approval of a substitute material generally considered to be equal to that named in the Drawings and/or Specifications. The Contracting Officer, however, shall have no obligation to accept any substitute.

4.3.4.1 On-going value engineering recommendations of the Contractor shall be reviewed by the Contracting Officer in its sole discretion.

4.3.4.2 Requests from the Contractor or a Subcontractor for approval of any substitution for the benefit of the Contractor or such Subcontractor, as determined by the Contracting Officer, must be submitted in writing to the Contracting Officer, together with all necessary supporting data. Unless the Contracting Officer agrees otherwise, all such requests shall be submitted prior to the execution of the Subcontract covering the portion of the Work for which a substitution or variation is proposed. Requests for approval of any substitute shall be accompanied by an analysis of any changes in the Work of other trades or Subcontractors, redesign, other changes in the Contract Documents or additional costs that will result from the proposed substitute or a statement that no such matters will result and the analysis of whether the proposed substitute is inferior, equal or superior to the product specified.

(i) If a substitution recommended by the Contractor requires changes in the work of other trades or Subcontractors, redesign, other changes in the Contract Documents or results in any additional costs whatsoever, the Contractor shall be solely responsible for such costs.

(ii) By making a recommendation for a substitution, the Contractor shall be deemed to represent and warrant that:

(a) The Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to the product specified;

(b) The Contractor will provide the same warranty for the proposed substitute product as for the specified product; and

(c) The Contractor will waive all claims for additional costs related to the proposed substitute product including any which may subsequently become apparent.

(iii) By making a recommendation for a substitution involving redesign by the Contractor or any Subcontractor, the Contractor shall also be deemed to represent and warrant that such redesign:

(a) Will be free from errors and omissions;

(b) Will be fit for the purpose specified and will fully satisfy and perform as represented;

(c) Will properly interface with the design and Drawings and Specifications provided by the Engineer and other Subcontractors (if any); and

(d) Will comply with all applicable laws, regulations, ordinances and requirements of, and conditions of any approvals, certifications or permits given by, any and all governmental authorities having jurisdiction over the design, construction, existence or use of the Project.

(iv) Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by the Contractor, notwithstanding approval or acceptance of such substitution by the Contracting Officer.

4.4 WARRANTY.

4.4.1 All materials furnished or installed shall be subject to a guaranty of the longer of (a) one (1) year from the date of Substantial Completion or (b) such longer period as may be provided in the Contract Documents. All rights acquired by GLWA through guarantees by the

Contractor shall inure to the benefit of GLWA, its successors and assigns. In addition to the foregoing, any equipment warranties and warranties from Subcontractors or Suppliers, secured by the Contractor, including those in excess of one (1) year, and any additional bond or guaranty which may be required under the Contract Documents, shall also inure to the benefit of GLWA, its successors and assigns. The Contractor shall require that each Subcontractor provide a similar warranty and guaranty for the benefit of the Contractor and GLWA. The Contractor shall acquire, catalog and deliver to GLWA all bonds and guarantees under Subcontracts and from material suppliers. The Contractor shall render assistance and cooperate with GLWA in enforcing those warranties from Subcontractors and Suppliers which extend beyond the Contractor's warranties.

4.4.2 The Contractor's express warranty herein shall be in addition to, and not in lieu of, any other warranties, guaranties or remedies GLWA may have under the Agreement and its Contract Documents, at law, or in equity for defective work.

4.5 TAXES.

The Contractor shall pay all consumer, use, sales and other similar taxes on supplies, materials, machinery, tools, utilities and other equipment and services used or incorporated in the construction of the Project which are required by law to be paid at the time the Agreement is executed, whether or not yet effective.

4.6 PERMITS, FEES AND NOTICES.

4.6.1 The Contractor shall secure and pay for all permits, and pay all fees necessary for the proper execution and completion of the Work which are legally required at the time the Agreement is executed. If any of the Work is required to be inspected or approved by any public authority other than GLWA, the Contractor shall, at its sole cost and expense, cause such inspection or approval to be sought and obtained.

4.6.2 The Contractor shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Work.

4.6.3 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority having jurisdiction for the safety of persons or property or to protect them from damage, injury or loss. The Williams-Steiger Occupational Safety Act of 1970, administered by the United States Department of Labor, is specifically applicable. The Contractor shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards for safety and protection, including barriers and the posting of danger signs and other warnings against hazards, promulgate safety regulations and notify owners and users of adjacent utilities.

4.6.4 If the Contractor performs, or allows any Subcontractor to perform, any of the Work knowing such Work to be subject to an error, inconsistency or omission in the Contract Documents, or contrary to applicable laws, ordinances, rules, regulations, codes or orders of any public authority, and fails to give GLWA notice thereof prior to performance thereof, the Contractor shall bear all costs arising therefrom.

4.7 ALLOWANCES.

4.7.1 The Contractor shall obtain the Contracting Officer's written consent before furnishing materials, equipment or any other designated item covered by Cash Allowances. Payments under Cash Allowances shall be on an actual cost basis, except that (a) payments shall exclude any associated supervision, unloading, handling, storage, installation, testing, etc. costs that the Contractor incurs, however caused, and (b) payments within the limits of the Allowances shall also exclude any fees payable to the Contractor under Article 12, insurance or bonding costs.

4.7.2 The Contractor shall complete Work covered by a Provisionary Allowance only as directed in writing by the Contracting Officer. The cost of work authorized under any Provisionary Allowance shall be determined pursuant to the procedures set forth in Article 12, except that payment within the limits of Allowances shall exclude bond and insurance costs.

4.8 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES.

4.8.1 Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data which are prepared for the Work by the Contractor or any Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work. Shop Drawings are not Contract Documents.

4.8.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor or any Subcontractor, manufacturer, Supplier or distributor to illustrate a material, product or system for some portion of the Work. Product Data are not Contract Documents.

4.8.3 Samples are physical examples furnished by the Contractor or any Subcontractor, manufacturer, supplier or distributor which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Samples are not Contract Documents.

4.8.4 The Contractor shall review, utilizing personnel who are qualified, knowledgeable and experienced in the area of expertise required, approve and only then submit, with reasonable promptness, in orderly sequence so as to cause no delay in the Work or in the work of GLWA or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents or subsequently required by the Contracting Officer.

4.8.4.1 Shop Drawings, Product Data and Samples shall be properly identified as specified, or as the Contracting Officer may require.

4.8.4.2 At the time of submission, the Contractor shall clearly inform the Contracting Officer in writing of any deviation in the Shop Drawings, Product Data or Samples from the requirements of the Contract Documents.

4.8.4.3 Shop Drawings and other Submittals which are not approved by the Contractor will be returned un-reviewed.

4.8.4.4 Shop Drawings and other Submittals may not be submitted with disclaimers or other exculpatory language inasmuch as it is the responsibility of the Subcontractor or Supplier originating such submission to properly prepare the submittal and the responsibility of the Contractor to verify that the submittal has been properly prepared. Shop Drawings and other Submittals containing disclaimers or other exculpatory language will be returned un-reviewed.

4.8.5 By approving and submitting Shop Drawings, Product Data and Samples, the Contractor thereby represents that it has (i) determined and verified all materials, field measurements, field construction criteria, catalog numbers and similar data; (ii) checked and coordinated such Shop Drawing, Product Data and Samples with the requirements of the Work and of the Contract Documents; and (iii) clarified any discovered design ambiguity with the Contracting Officer in writing.

4.8.6 The Contracting Officer will review and approve or take other appropriate action upon Shop Drawings, Product Data and Samples with reasonable promptness so as to cause no delay.

4.8.6.1 The Contractor shall provide all Submittals as required by the CPM Schedule. The Contractor shall allow for a minimum period of fourteen (14) days for the Contracting Officer's review and approval of any submittal not covered by the CPM Schedule.

4.8.6.2 The Contracting Officer's approval of a separate item shall not indicate approval of an assembly in which the item functions.

4.8.6.3 The Contracting Officer's review and approval of Shop Drawings and other Submittals that deviate from the requirements of the Contract Documents shall not constitute approval of deviations unless the same are clearly called out as required by Subparagraph 4.8.4 hereof.

4.8.6.4 The Contractor shall not be relieved from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples by the Contracting Officer's approval thereof.

4.8.7 The Contractor shall, at its sole cost and expense, make any corrections required by the Contracting Officer and shall resubmit the required number of corrected copies of Shop Drawings, Product Data or new Samples until approved.

4.8.7.1 The Contractor shall direct specific attention in writing on resubmitted Shop Drawings, Product Data or Samples to revisions other than the corrections requested by the Contracting Officer on previous submissions and the Contracting Officer's review and approval of resubmitted submissions will not constitute approval of any changes other than those specifically noted.

4.8.7.2 The fees and expenses of the Contracting Officer in reviewing and approving resubmitted submissions shall be charged to the Contractor and off-set against amounts otherwise due and payable to the Contractor if resubmission is required because

the original submittal was not correct and complete. All time consumed by the resubmissions and re-reviews of a particular Submittal shall constitute time required to furnish the particular item, or delays not meeting the requirements for increases to Contract Time or Contract Price, or both.

4.8.7.3 The Contractor shall submit to the Contracting Officer final Shop Drawings, as used for construction, marked as such for the Contracting Officer's records.

4.8.8 The Contracting Officers review of the Shop Drawings, Product Data or Samples shall not relieve the Contractor of responsibility for a deviation from the requirements of the Contract Documents unless Contractor has informed the Contracting Officer in writing of such deviation at the time of submission and the Contracting Officer has given written approval to the specific deviation, nor shall the Contracting Officer's review relieve the Contractor from responsibility for errors or omissions in the Shop Drawings, Product Data or Samples.

4.8.9 Except as specifically authorized by the Contracting Officer in writing, no portion of the Work requiring a Shop Drawing, Product Data or Sample submission shall be commenced until the submission has been reviewed and approved by the Contracting Officer. All such portions of the Work shall be in accordance with such reviewed and approved Shop Drawings, Product Data and Samples.

4.9 USE OF SITE.

The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, the Contract Documents and directions of the Contracting Officer and shall not unreasonably encumber the Project site with any materials or equipment. The Contractor shall abide by and enforce the Contracting Officer's instructions, if any, regarding signs, traffic circulation and patterns, advertisements, fires and smoking at the Project site. The Contractor may utilize only such access routes as may be designated by the Contracting Officer from time to time.

4.10 CUTTING AND PATCHING OF WORK.

4.10.1 The Contractor shall be responsible for all cutting, fitting or patching that may be required to complete the Work or to make its several parts fit together properly and, to the extent required by the Contract Documents, for all cutting, fitting, or patching required in connection with work done by GLWA or any separate contractor. GLWA shall not be responsible for any costs arising out of cutting, fitting and patching the work of the various Subcontractors and no claims on account thereof will be considered.

4.10.2 The Contractor shall not, and shall not permit any Subcontractor to, damage or endanger any portion of the Work or the work of GLWA or any separate contractor by cutting, patching or otherwise altering any work, or by excavation. The Contractor shall not cut or otherwise alter the work of GLWA or any separate contractor except with the written consent of the Contracting Officer and of such separate contractor. The Contractor shall not unreasonably withhold from GLWA or any separate contractor its consent to cutting or otherwise altering the Work.

4.11 CLEANING UP.

4.11.1 The Contractor, at all times, shall keep the Project site free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, it shall (i) remove all its waste materials and rubbish from and about the Project, as well as all tools, construction equipment, machinery, surplus materials and temporary installations and facilities; and (ii) clean and protect all finished surfaces and areas in accordance with the Specifications.

4.11.2 If the Contractor fails to clean up after request from GLWA, GLWA may do so and the cost thereof shall be charged to the Contractor. In the case of unidentifiable debris, GLWA's allocation of the cost thereof shall be conclusive and binding on the Contractor.

4.12 ROYALTIES AND PATENTS.

The Contractor shall pay all royalties and license fees. The Contractor shall indemnify, hold harmless and defend, with counsel reasonably acceptable to GLWA, all suits or claims for infringement of any patent rights or copyrights and shall defend, indemnify and save GLWA harmless from all loss, cost or expense (including attorney's fees) on account thereof. Notwithstanding the foregoing, the Contractor shall not be responsible for infringement of patent rights where a particular design process or product of a particular manufacturer is specified by GLWA and the Contractor has no reason to believe that such design process or product specified is an infringement of a patent.

4.13 INDEMNIFICATION.

4.13.1 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless GLWA and its respective directors, officers, employees, agents and representatives (the "Indemnitees") from and against claims, damages, losses, and expenses (including but not limited to attorney fees) arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. The Contractor shall not be required to defend or indemnify GLWA for damages caused by the sole negligence of GLWA. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 4.13.1.

4.13.2 To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Indemnitees from and against all claims, liability, cost and expense (including, without limitation, attorney's fees) resulting from claims against the Indemnitees attributable to bodily injury in connection with the Project by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not caused in whole or in part by the negligence of the Contractor, excepting only claims caused by the sole negligence of the Indemnitees hereunder. In any and all claims against the Indemnitees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the

indemnification obligation under this Paragraph 4.13.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.13.3 The obligations of the Contractor under this Paragraph 4.13 shall survive the termination of the Contract as to all matters arising prior to the date of termination and shall be fulfilled at no cost or expense to GLWA.

ARTICLE 5 SUBCONTRACTORS

5.1 THIRD PARTY BENEFICIARY.

Nothing contained in the Agreement and its Contract Documents shall create any contractual relation between GLWA or any Subcontractor or Sub-subcontractor.

5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.

5.2.1 Prior to executing any Subcontracts or utilizing any Subcontractors for the Work, the Contractor shall provide GLWA with a list of proposed Subcontractors for GLWA's prior review and approval (the "Subcontractor List"). GLWA may object, for any reason, to any proposed Subcontractor within a reasonable time after its receipt of the Subcontractor List. The Contractor shall not award any portion of the Work to a Subcontractor that was not nominated before execution of the Agreement, without first obtaining the Contracting Officer's written consent. If GLWA objects to any Subcontractor without cause, and such objection causes an increase in the Contract Price, GLWA shall, pursuant to Article 12, order any adjustments in the Contract Price required to make up the difference in cost between the proposed Subcontractor and the Subcontractor approved by GLWA, or the Contractor's cost to self-perform, that part of the Work involved, whichever is applicable. The Contractor shall make no substitution for any Subcontractor, person or entity previously approved by GLWA without first obtaining GLWA's written consent.

5.2.2 The Contractor shall promptly deliver to the Contracting Officer a complete executed copy of each Subcontract awarded.

5.2.3 Upon award of a Subcontract, the Subcontractor shall identify its job-site staff and agree that such job-site staff may not be changed or reassigned (except where an individual leaves the employ of the Subcontractor or any affiliate) without the prior written consent of the Contractor. The Contractor shall consult with the Contracting Officer prior to giving consent to any proposed substitution.

5.3 SUBCONTRACTUAL RELATIONS.

5.3.1 By an appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the portion of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Agreement and its Contract Documents, and to

assume toward the Contractor all the obligations and responsibilities which the Contractor, by the Agreement and its Contract Documents, assumes toward GLWA. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with its Sub-Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Agreement and its Contract Documents to which the Subcontractor will be bound by this Paragraph 5.3, and identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Agreement and its Contract Documents. Each Subcontractor shall similarly make copies of the Agreement and its Contract Documents available to its Sub-Subcontractors.

5.3.2 The Contractor shall cause all Subcontractors, Suppliers, laborers and vendors to agree to indemnify GLWA and hold it harmless from all claims that may arise from such Subcontractor's operations to the same extent as the Contractor has indemnified GLWA pursuant to subparagraph 4.13 hereof. Such provisions shall be in a form reasonably satisfactory to GLWA.

5.3.3 The agreement between the Contractor and the Subcontractors (and, where appropriate, between Subcontractors and Sub-Subcontractors) shall include, without limitation:

5.3.3.1 The provisions required by Subparagraphs 1.2.2, 4.2.2, 5.2.3, 7.3, 8.3.7, 8.4.5, 8.5.2, 9.6.2, 9.7 and 15.1.2 hereof;

5.3.3.2 The preservation and protection of the rights of GLWA under the Contract with respect to the Work to be performed under the Subcontract so that the subcontracting thereof will not prejudice such rights;

5.3.3.3 That such Work be performed in accordance with the requirements of the Contract Documents;

5.3.3.4 Submission to the Contractor of sworn statements and waivers of claim under each Subcontract and Sub-subcontract, in reasonable time to enable the Contractor to comply with the Agreement, all such documents to be in the form approved by the Contracting Officer and in compliance with all requirements of applicable law;

5.3.3.5 That all claims for additional costs or extensions of time with respect to subcontracted portions of the Work shall be submitted to the Contractor (via any Subcontractor or Sub-subcontractor where appropriate) in sufficient time so that the Contractor may comply in the manner provided, if any, in the Agreement for a like claim by the Contractor upon GLWA. To the extent the Contractor is liable to any Subcontractor, any such pass-through claim raised by the Contractor against GLWA shall first be liquidated between the Contractor and Subcontractor pursuant to the terms of a liquidation agreement under which (i) the Contractor acknowledges its liability to the Subcontractor and remains obligated to pay the Subcontractor regardless of the outcome of the Contractor's claim against GLWA, (ii) the Contractor's liability is liquidated to the extent of its recovery, if any, against GLWA; and (iii) the Contractor agrees to pass its recovery, if any, to the Subcontractor. The Contractor shall deliver the executed liquidation agreement to the Contracting Officer as a pre-requisite to pursuing any claims on behalf of the Subcontractor or Sub-Subcontractor;

5.3.3.6 A waiver all rights the contracting parties may have against one another and against GLWA for damages caused by fire or other perils covered by the property insurance required under the Agreement; and

5.3.3.7 The obligation of each Subcontractor specifically to consent to the provisions of this Paragraph 5.3.

5.3.4 The Contractor shall bear the risk of any inconsistencies between the terms and conditions of the Agreement and its Contract Documents and the terms and conditions of its Subcontract, purchase orders and similar documentation.

5.3.5 The Contractor shall coordinate and supervise the work performed by Subcontractors to the end that the Work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the Work. The Contractor and all Subcontractors shall at all times afford each trade, any separate contractor, or GLWA, every reasonable opportunity for the installation of work and the storage of materials.

5.4 COMMUNICATIONS WITH SUBCONTRACTORS.

5.4.1 The Contractor shall be responsible for the communication of information between the Subcontractors or Suppliers and the Contracting Officer and shall ensure that all communications from the Subcontractors and Suppliers are properly routed to the Contractor.

5.4.2 Where, for purposes of clarity, direct communications between GLWA and Subcontractors or Suppliers are necessary, the Contractor shall have a representative present.

ARTICLE 6 WORK BY GLWA OR BY SEPARATE CONTRACTORS

6.1 GLWA'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS.

6.1.1 This is not an exclusive services contract. GLWA reserves the right to (i) perform work related to the Project with his own forces; and (ii) to award separate contracts in connection with other portions of the Project or other work on the Project.

6.1.2 The Contractor will provide for the coordination of the work of GLWA's forces and of each separate contractor with the Work of the Contractor, who shall cooperate therewith as provided in Paragraph 6.2 hereof.

6.2 MUTUAL RESPONSIBILITY.

6.2.1 The Contractor shall afford GLWA and GLWA's separate contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work related to the Project, and shall properly connect and coordinate its Work with theirs as required by the Contract Documents.

6.2.2 If any part of the Work depends for proper execution or results upon the work of GLWA or any separate contractor, the Contractor shall, prior to proceeding with such portion of the Work, inspect and promptly report to the Contracting Officer any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of the Contractor to inspect and report shall constitute an acceptance of GLWA's or GLWA's separate contractors' work as fit and proper to receive its work, except as to defects which may develop or become apparent in GLWA's or separate contractor's work after the execution of the Work.

6.2.3 Should the Contractor cause damage to the work or property of GLWA, or to other work on the Project site, the Contractor shall promptly remedy such damage as provided in Subparagraph 10.2.5 hereof.

6.2.4 Should the Contractor cause damage to the work or property of any separate contractor, the Contractor shall upon due notice promptly settle with such other contractor by agreement, if it will so settle. If such separate contractor sues or initiates an arbitration proceeding against GLWA on account of any damage alleged to have been caused by the Contractor, the Contracting Officer shall notify the Contractor who shall defend such proceedings at the Contractor's expense, and if any judgment or award against GLWA arises therefrom, the Contractor shall pay or satisfy it and shall reimburse GLWA for all attorneys' fees and court or arbitration costs which GLWA has incurred.

6.3 GLWA'S RIGHT TO CLEAN UP.

If a dispute arises between the Contractor and GLWA as to the Contractor's responsibility for cleaning up as required by Paragraph 4.11 hereof, GLWA may clean up and charge the cost thereof to the Contractor upon 48 hours written notice if the Contractor does not commence reasonable action.

ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 TESTS.

7.1.1 The Contractor shall, at its sole cost and expense, provide and pay for testing and inspections required by the Contract Documents or laws, ordinances, rules, regulations or orders of any public authority having jurisdiction over the Work. The Contractor shall give the Contracting Officer timely notice of its readiness and the date arranged so they may observe such inspection, testing or approval.

7.1.2 If the Contracting Officer determines that any Work requires special inspection, testing, or approval which Subparagraph 7.1.1 hereof does not include, the Contracting Officer will instruct the Contractor to order such special inspection, testing or approval, and the Contractor shall give notice as provided in Subparagraph 7.1.1 hereof. If such special inspection or testing reveals a failure of the Work to comply with (i) the requirements of the Contract Documents; or (ii) laws, ordinances, rules, regulations or orders of any public authority having jurisdiction, the Contractor shall bear all costs thereof; otherwise GLWA shall bear such costs, and an appropriate Change Order shall be issued.

7.1.3 Certificates of inspection, testing or approval required to be obtained by the Contractor or Subcontractors in connection with construction permits, shall be secured by the Contractor, cataloged, indexed, bound (in removable form) and promptly delivered by it to the Contracting Officer.

7.2 OTHER PROJECTS.

Nothing set forth in the Contract Documents shall constitute an agreement between GLWA and the Contractor with respect to services other than those included in the Contract Documents.

7.3 NONDISCRIMINATION.

The Contractor shall comply with Titles VI and VII of the Civil Rights Act of 1964 (Public Law 88-352, 78 STAT.266), U.S. Department of Justice Regulations (28 CFR Part 42), the Michigan Civil Rights Act (Public Act No. 453 of 1976), the Michigan Handicappers Civil Rights Act (Public Act No. 220 of 1976) and all other fair employment practices and equal opportunity laws. The Contractor shall furnish and file compliance reports within the times and in form prescribed by GLWA. Compliance reports may also elicit information as to the practices, policies, programs, and employment statistics of the Contractor and Subcontractors. The Contractor will permit access to Contractor's records and accounts by GLWA and/or its agent for purposes of investigation to ascertain compliance with the Agreement and its Contract Documents. The Contractor agrees that it will not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment because of religion, race, color, national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular assignment or position. The Contractor hereby recognizes the right of the United States, the State of Michigan and GLWA to seek judicial enforcement of the foregoing covenants against discrimination, against itself or its Subcontractors connected directly or indirectly with the performance of the Agreement.

ARTICLE 8 TIME

8.1 DEFINITIONS.

8.1.1 Unless otherwise provided, the Contract Time is the period of time allotted in the Contract Documents for Final Completion of the Work as defined in Subparagraph 8.1.4 hereof, including authorized adjustments thereto.

8.1.2 The date of commencement of the Work is the date established in a Notice to Proceed. If there is no Notice to Proceed, it shall be the date of the Agreement or such other date as may be established therein.

8.1.3 The date of Substantial Completion of the Work or designated portion thereof is the date upon which the Contracting Officer shall have certified that construction is sufficiently complete, in accordance with the Agreement and its Contract Documents, so GLWA can utilize the Work or designated portion thereof for the use for which it is intended and shall include (i) completion of all specified training, (ii) receipt by the Contracting Officer of acceptable, specified O & M manuals (i.e., 90% O & M manuals in the case of Substantial Completion of the entire

Work), (iii) all systems have been successfully tested and demonstrated by the Contractor for their intended use, and (iv) the Contracting Officer having received all required certifications and/or approvals from the State of Michigan and any other political bodies having jurisdiction over the Work.

8.1.4 The date of Final Completion of the Work is the date on which the Work shall be fully, completely and finally completed in accordance with the Agreement and its Contract Documents and:

8.1.4.1 The Contractor has completed all Punch List items to the satisfaction of the Contracting Officer, including providing the Contracting Officer with the results of any and all tests that may be required;

8.1.4.2 The Contractor has delivered to the Contracting Officer:

8.1.4.2.1 All 100% complete maintenance and operating manuals; if any;

8.1.4.2.2 Marked sets of working Drawings reflecting “as built” conditions and upon which the Contractor shall have transferred all changes in the location of any concealed utilities, mechanical or electrical systems and components;

8.1.4.2.3 Any special guarantees or warranties required by the Contract Documents;

8.1.4.2.4 An assignment and/or transfer of all guarantees and warranties from Subcontractors, vendors, Suppliers and manufacturers;

8.1.4.2.5 A list of the names, addresses and phone numbers of all Subcontractors and other persons providing guarantees or warranties;

8.1.4.2.6 The Subcontractor close-out logs; and

8.1.4.2.7 All required sworn statements and waivers of claim and other documentation required by the Contract Documents.

8.1.4.3 The Contractor has otherwise complied with all close-out requirements of the Contract Documents.

8.1.5 The term “day” as used in the Agreement and its Contract Documents shall mean calendar day unless otherwise specifically designated.

8.2 PROGRESS AND COMPLETION.

8.2.1 All time limits stated in the Contract Documents are of the essence of the Agreement. The construction and completion of the Project shall be undertaken and completed in accordance with the CPM Schedule described in the Contract Documents. The parties shall use the CPM Schedule for planning and monitoring the progress of the Work.

8.2.2 The Contractor shall begin the Work on the date of commencement as defined in Subparagraph 8.1.2 hereof. It shall carry the Work forward expeditiously with adequate forces, shall at all times adhere to the CPM Schedule and shall achieve Substantial Completion and Final Completion within the time limits set forth in the CPM Schedule.

8.2.3 The Contractor shall be responsible to maintain daily records that will enable the Contractor to accurately update the CPM Schedule as required in Subparagraph 8.2.4 hereof.

8.2.4 At the end of the first month following issuance of the approved CPM Schedule and every month thereafter (or at such lesser intervals if deemed necessary by the Contracting Officer), the Contractor shall prepare an updated CPM Schedule showing the actual status of the Project as of the date of the updated CPM Schedule. The updated CPM Schedule shall be related to the original CPM Schedule to facilitate identification of variances therefrom (activity descriptions shall not be redefined on such updated CPM Schedule).

8.2.5 Extensions of the Contract Time shall not be granted except as expressly provided for in this Article 8.

8.2.6 In the event (i) Construction Change Directives or Change Orders are issued by the GLWA; (ii) the Contractor receives a notice of a change in the Agreement or extra work to be performed; or (iii) the Contractor becomes aware of any conditions which are likely to cause or are actually causing delays, the Contractor shall notify the Contracting Officer in writing of the effect, if any, within any specific time limits set forth in the Agreement (and if no specific time limits are set forth, within ten (10) days) and shall state in what respects, if any, the CPM Schedule should be revised with the reasons therefor. If the Contractor shall fail to provide the Contracting Officer with written notice within the specified time period that an adjustment to the CPM Schedule is necessary, then any claims by the Contractor for an extension of the Contract Time shall be waived.

8.2.7 If the Contractor shall fail to adhere to the CPM Schedule, as revised pursuant to the Agreement, it must promptly work such additional time over regular hours, including Saturdays, Sundays and holidays and/or supply such additional workmen as may be required to bring the Work on schedule, without additional cost or expense to GLWA, including claims for inefficiency due to the use of overtime.

8.3 SUSPENSION BY GLWA.

8.3.1 The Contracting Officer may order the Contractor in writing to suspend, delay or interrupt all or any part of the Work for such period of time as it may determine to be appropriate for the convenience of GLWA.

8.3.2 If the performance of all or any part of the Work on the Project is suspended, delayed or interrupted at the direction of the Contracting Officer:

8.3.2.1 If such act causes delays in the critical path activity, then the CPM Schedule shall be adjusted as determined by the Contracting Officer.

8.3.3 Any claims for extension of time pursuant to Subparagraph 8.3.2 hereof shall be made in writing to the Contracting Officer no more than five (5) days after the commencement of the delay; otherwise they shall be waived. In the case of a continuing cause of delay, only one claim is necessary. Any delay of less than twenty-four (24) hours duration shall not be justification for adjusting the CPM Schedule or Contract Price.

8.3.4 To the extent practical, the Contractor shall reduce the size of its Project staff upon notice from the Contracting Officer of any GLWA caused delay or interruption which is likely to exceed thirty (30) days to reduce costs and expenses to GLWA. Upon the termination of the delay or as otherwise directed by GLWA, the Contractor shall restore the Project staff to its former size.

8.3.5 No adjustments to the Contract Price or Contract Time shall be made under this Paragraph 8.3 for any suspension, delay or interruption (i) to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor; or (ii) for which an equitable adjustment is provided or excluded under any other provision of the Agreement. GLWA's exercise of any of its rights under the Agreement, or GLWA's requirement of correction or re-execution of any defective Work shall not, under any circumstances, be construed as interference with the Contractor's performance of the Work.

8.3.6 NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, CONTRACTOR ACKNOWLEDGES THAT NO EXTENSIONS OF THE CONTRACT TIME OR INCREASE TO THE CONTRACT PRICE SHALL BE PERMITTED EXCEPT AS APPROVED IN ADVANCE AND IN ACCORDANCE WITH THE GLWA PROCUREMENT POLICY.

8.3.7 Each Subcontractor shall be bound by the foregoing provisions.

8.4 DELAYS AND EXTENSIONS OF TIME.

8.4.1 If the Contractor shall be delayed by: (1) the combined action of workmen (either those employed on the Work or in any industry essential to the conduct of the Work) in no way caused by or resulting from default or collusion on the part of the Contractor; (2) by strikes, lockouts, embargoes, fire, unavoidable casualties, unusual delays in transportation, national emergency, unusually severe and adverse weather conditions not reasonably anticipatable; or (3) by any other causes which the Contractor could not reasonably control or circumvent, and if such delay affects the critical path activity, then the CPM Schedule shall be adjusted as necessary to compensate for such delay (but the total extension of all critical path activities may not exceed the length of the delay).

8.4.2 Extension of the Contract Time shall be the Contractor's sole remedy for any delay. GLWA's exercise of any of its rights under the Agreement and its Contract Documents, including requirement of correction or re-execution of the Work, regardless of the extent, number or frequency of GLWA's exercise of such rights or remedies, shall not under any circumstances be construed to as providing grounds for the Contractor to seek damages for delay of the Project. In no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any delay, including, without limitation, consequential damages, lost opportunity

costs, impact damages or other similar remuneration. The Contractor hereby expressly waives and covenants and agrees not to assert any claims against GLWA for any damages, costs, losses or expenses of any nature whatsoever which the Contractor, any Subcontractor or Sub-Subcontractor may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any act or omission of GLWA, its representatives or agents, it being understood and agreed that the Contractor's sole remedy in such event shall be an extension of the Contract Time.

8.4.3 All claims for extension of time pursuant to Subparagraph 8.4.1 hereof shall be made in writing to the Contracting Officer no more than ten (10) days after the commencement of the delay, except in connection with weather delays which shall be made on a monthly basis within five (5) days from the end of each month; otherwise they shall be waived. In the case of a continuing cause of delay only one claim is necessary. Any delay of less than twenty-four (24) hours duration shall not be justification for adjusting the CPM Schedule.

8.4.4 No adjustments shall be made under this Paragraph 8.4 for any suspension, delay or interruption (i) to the extent that performance would have been so suspended, delayed or interrupted by any other cause including due to the fault or negligence of the Contractor; or (ii) for which an equitable adjustment is provided or excluded under any other provision of the Agreement. GLWA's exercise of any of its rights under the Agreement, or GLWA's requirement of correction or re-execution of any defective Work shall not, under any circumstances, be construed as interference with the Contractor's performance of the Work.

8.4.5 Each Subcontractor shall be bound by the foregoing provisions.

8.5 ACCELERATION OF PERFORMANCE.

8.5.1 If GLWA shall desire the Work of the Contractor hereunder to be performed with greater speed than is herein contracted for, the Contractor shall, without affecting or abridging the rights of GLWA under the Agreement, upon receipt of a written order from the Contracting Officer, specifically setting forth a request pursuant to this Section 8.5, employ overtime work as so ordered. Only the premium cost of such overtime work, as shown on the time slips checked and approved each day by the Contracting Officer shall be paid by GLWA to the Contractor as additional compensation, and no overhead, profits, costs, commissions, claims for inefficiencies or otherwise, or other costs or claims shall be charged or due with respect to use of overtime work or the acceleration of performance. This provision shall not apply to acceleration of performance caused by the Contractor's default, the cost of which shall be borne solely by the Contractor.

8.5.2 Each Subcontractor shall be bound by the foregoing provisions.

8.6 PREREQUISITES FOR START OF CONSTRUCTION.

8.6.1 The Contractor shall not commence construction (or recommence construction following any suspension) of any portion of the Work prior to occurrence of all the following events except with the prior written consent of the Contracting Officer in his/her sole discretion, and the Contractor shall promptly commence such construction promptly following the occurrence of such events:

8.6.1.1 The Contracting Officer shall have delivered to the Contractor a Notice to Proceed for the relevant phase of the Work; and

8.6.1.2 The Contracting Officer has reviewed and approved the CPM Schedule; and

8.6.1.3 The Contracting Officer has convened and conducted a kick-off meeting.

8.7 USE OF FLOAT.

8.7.1 Total Float and Contract Float, whether expressly disclosed or implied by the use of float suppression techniques, are not for the exclusive benefit of the Contractor or GLWA, and shall be available to the Contractor and GLWA.

8.7.2 If the Contracting Officer determines that the Contractor is utilizing unreasonable float suppression techniques and preferential sequencing (including, but not limited to late starts of follow-on trades, unreasonably small crews, extended durations, imposed dates, or scheduling Work not required) in violation of the float sharing provisions of the Contract Documents, the Contractor shall not be entitled to any changes in Contract Price or Contract Time.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1 CONTRACT PRICE.

The Contract Price is stated in the Contract and, including authorized adjustments thereto strictly in accordance with the terms hereof, is the total amount payable by GLWA to the Contractor for the performance of the Work, including all risks, hazards and difficulties therewith assumed by the Contractor under the Agreement.

9.2 SCHEDULE OF VALUES; DETAILED COST BREAKDOWN.

During Bid Evaluation and prior to receipt of the Notice to Proceed, the Contractor shall prepare, and submit to the Contracting Officer for approval, a Schedule of Values and Detailed Cost Breakdown showing the allocation of the Contract Price among the various components of the Work and in sufficient detail as the Contracting Officer may require. The Contractor shall revise the Schedule of Values as required by the Contracting Officer. The Schedule of Values, and Detailed Cost Breakdown when approved by the Contracting Officer, shall be used as a basis for Applications for Payment and Progress Payments to the Contractor. The Contractor represents and warrants to GLWA that the final Schedule of Values and Detailed Cost Breakdown is an accurate and correct allocation of the Contract Price.

9.3 APPLICATIONS FOR PAYMENT.

9.3.1 The issuance of an Application for Payment will constitute a representation by the Contractor to GLWA that the Work has progressed to the point indicated; that the quality of the Work is in accordance with the Contract Documents; that all as-built Drawings are accurate and up-to-date; and that Contractor is entitled to payment in the amount certified.

9.3.2 Payments will be made on account of materials or equipment not incorporated in the Work but delivered and suitably stored at the Project or at some other location, only with the prior written approval of the Contracting Officer. Payment for materials stored off-site shall be conditioned upon submission by the Contractor of the following: (1) the notarized bill of sale to GLWA executed by an officer of the selling corporation; (2) a certificate of insurance covering the material for fire, theft and vandalism naming GLWA as the insured party; (3) an affidavit from an officer of the selling corporation stating that he is an officer and giving the complete address of the specific location where the material is stored; (4) a certification authorizing inspection by GLWA or its representative at the storage location; and (5) such other evidence as the Contracting Officer may reasonably require demonstrating that it is the owner of such material free and clear of all rights in others. Except to the extent covered by the insurance required under the Agreement, the Contractor shall have full responsibility for all stored materials and shall bear the risk of all loss, damage of theft thereof or thereto.

9.3.3 The Contractor warrants and guarantees that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to GLWA upon the receipt of payment by the Contractor, free and clear of all liens, claims, security interests, encumbrances or rights in others, hereinafter referred to in this Article 9 as "liens"; and that no portion of the Work, materials or equipment covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials or equipment for the Project, subject to a choate or inchoate lien or an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.3.4 At a minimum, each Application for Payment shall (i) be accompanied by the Contractor's sworn statements and waivers of claim, which sworn statement and waiver shall cover all work, labor and materials, including equipment and fixtures of all kinds done, performed or furnished as of the date of the request for payment; (ii) be accompanied by properly completed sworn statements and waivers of claim from each Subcontractor, Sub-subcontractor, laborer and materialmen, which sworn statements shall cover all work, labor and materials, including equipment and fixtures of all kinds done, performed or furnished as of the date of the previous request for payment, and which waivers shall cover all work, labor and materials, including equipment and fixtures of all kinds, done, performed or furnished as of the previous request for which payment has been received; and (iii) such other evidence necessary to satisfy the Contracting Officer that the Work for which payment is requested has been completed in conformance with the Agreement, and that all amounts which have previously been paid for Work have been properly distributed to the various Subcontractors, Sub-subcontractors, laborers and materialmen. In the event of any discrepancy, the Contractor shall furnish a written explanation to the Contracting Officer.

9.3.5 The Contracting Officer will, with reasonable promptness, either approve payment in the amount the Contracting Officer determines is properly due, or notify the Contractor in writing of its reasons for withholding payment.

9.4 PROGRESS PAYMENTS.

9.4.1 GLWA shall make payment upon, and only upon the Contracting Officer's receipt and approval of an Application for Payment which complies with all requirements of the Agreement.

9.4.2 The Contracting Officer may, on request and at his/her discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by the Contractor and the action taken thereon by the Contracting Officer on account of Work done by such Subcontractor.

9.4.3 GLWA shall have no obligation to pay or to see to the payment of any moneys to any Subcontractor.

9.4.4 No Application for Payment, or any Progress Payment, or any approval of either by the Contracting Officer, or any partial or entire use of the Project by GLWA, shall constitute an acceptance of any Work not in accordance with the Contract Documents. Nor shall any prior estimate of completed units made by the Contracting Officer in connection with a Progress Payment constitute a certification or acceptance of the amount of actual quantities which shall be determined by the Contracting Officer upon Final Completion which determination shall be final and binding.

9.5 PAYMENTS WITHHELD.

9.5.1 In addition to and not in limitation of the rights granted to GLWA under Paragraph 3.4 hereof, GLWA may withhold payment because of subsequently discovered evidence or subsequent observations, or it may nullify the whole or any part of any payment previously issued, to such extent as may be necessary in its opinion to protect GLWA from loss because of any of the causes listed in Subparagraphs 9.5.1.1 through 9.5.1.7 below.

9.5.1.1 An Application for Payment is incorrectly completed or is not accompanied by properly completed supporting documentation; or

9.5.1.2 The Contractor is in default of any of its material obligations under the Agreement or otherwise is in default under any of the Contract Documents; or

9.5.1.3 Any part of such payment is attributable to Work which is defective or not performed in accordance with the Drawings and Specifications, as determined by the Contracting Officer; provided, however, such payment shall be made as to the part thereof attributable to Work which is performed in accordance with the Drawings and Specifications and is not defective, reserving, however, such amount as the Contracting Officer shall determine reasonably necessary to protect GLWA with respect to defective Work; or

9.5.1.4 The Contractor has failed to make payments promptly to Subcontractors, Sub-Subcontractors, laborers or materialmen or for material or labor used in the Work in accordance with the Subcontract documents; or

9.5.1.5 Any part of such payment is attributable to Work with respect to which GLWA has been notified of a claim or dispute or has received reasonable evidence indicating the existence of such a claim or dispute, provided GLWA has paid the Contractor in accordance with the Agreement and its Contract Documents; or

9.5.1.6 GLWA has reasonable indication that the Work will not be completed within the Contract Time or in accordance with the CPM Schedule; or

9.5.1.7 If GLWA determines that the portion of the Contract Price then remaining unpaid will not be sufficient to complete the Work in accordance with the Drawings and Specifications, whereupon no additional payments will be due the Contractor hereunder unless and until the Contractor, at no cost to GLWA, performs, and pays in full for, a sufficient portion of the Work so that such portion of the Contract Price then remaining unpaid is determined by GLWA to be sufficient to so complete the Work.

9.5.2 Until the Work is fifty percent (50%) completed as determined by the Contracting Officer, GLWA shall hold ten percent (10%) of each Progress Payment as retainage. After the Work is fifty percent (50%) completed, further retainage shall not be withheld, unless the Contracting Officer determines that the Contractor is not making satisfactory progress or is not in compliance with the terms of the Contract Documents.

9.5.3 As provided by MCL 125.1563(3), all retainage shall be held in an interest bearing account with a regulated financial institution in the State of Michigan unless the retained funds are to be provided under a state or federal grant and the retained funds have not been paid to GLWA. The interest shall belong to the Contractor. The retainage plus interest shall be paid to the Contractor with the Final Payment and upon fulfillment of the conditions set forth in Section 9.8.2 below.

9.6 FAILURE OF PAYMENT.

9.6.1 Unless otherwise directed by the Contracting Officer, the Contractor shall carry on the Work and maintain its progress during the existence of any disputes and GLWA shall continue to make payments to the Contractor over which there is no good faith dispute.

9.6.2 Each Subcontractor shall be bound by the foregoing provision.

9.7 SUBSTANTIAL COMPLETION.

When the Contractor considers that the Work, or a designated portion thereof which is acceptable to the Contracting Officer, is substantially complete as defined in Subparagraph 8.1.3 hereof, the Contractor shall prepare for submission to the Contracting Officer a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Contracting Officer, on the basis of an inspection, determines that the Work or designated portion thereof is substantially complete, it will then prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall state the responsibilities of GLWA and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein.

9.8 FINAL COMPLETION, FINAL PAYMENT AND RELEASE OF RETENTION.

9.8.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Contracting Officer will promptly make such inspection and, when he/she finds the Work acceptable under the Contract Documents, all items on the Contracting Officer's Punch List completed to the Contracting Officer's satisfaction and the Agreement fully performed, the Contracting Officer will promptly issue a final Certificate for Payment, which shall set forth his/her final determination of the actual quantities and measurements of the completed work, and stating that to the best of his/her knowledge, information and belief, and on the basis of its observations and inspections, the Work has been completed in accordance with the terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor, and noted in said final Certificate of Payment, is due and payable.

9.8.2 Neither the Final Payment nor the retained percentage shall become due until the Contractor submits to the Contracting Officer (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which GLWA or its property might in any way be responsible, have been paid or otherwise satisfied; (2) consent of surety, if any, to final payment and release of retention; and (3) final, unconditional general releases and final sworn statements and waivers of claim from Contractor and all Subcontractors, Sub-Subcontractors, laborers and material suppliers in the forms required by the Contracting Officer. Notwithstanding the foregoing, the Contractor's final waiver and unconditional release is not required to be submitted in advance of Final Payment but may be exchanged for Final Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS.

The Contractor shall develop a comprehensive project safety program and require each separate Subcontractor to adhere to such program. The Contractor shall appoint a safety officer who shall be responsible for administering the comprehensive safety program. This person shall be the Contractor's Project Manager unless otherwise designated by the Contractor in writing to the Contracting Officer. The person designated shall not be changed unless notice is given to the Contracting Officer. The Contractor shall assume responsibility for full and violation free compliance with all applicable laws, rules and regulations pertaining to job and project safety.

10.2 SAFETY OF PERSONS AND PROPERTY.

10.2.1 The Contractor shall take all reasonable precautions for the safety of, and shall provide all reasonable protection to prevent damage, injury or loss to:

10.2.1.1 All employees on the Work and all other persons who may be affected thereby;

10.2.1.2 All of the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Project site, under the care, custody or control of the Contractor or any of its Subcontractors or Sub-Subcontractors or others;

10.2.1.3 Other property at the Project site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

10.2.1.4 GLWA's equipment and employees, agents and separate contractors; provided that GLWA's equipment and employees, agents and separate contractors comply with applicable state and federal safety regulations and the Contractor's written safety program.

10.2.2 The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the safety of persons or property or their protection from damage, injury or loss, including without limitation the Confined Space Entry policy promulgated by the GLWA. The Williams-Steiger Occupational Safety Act of 1970, as amended, administered by the United States Department of Labor, is specifically applicable as are parallel state statutes.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including barriers and the posting of danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities.

10.2.4 When the use or storage of explosives or other hazardous materials or equipment is necessary for the execution of the Work, the Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel.

10.2.5 All damage or loss to any property referred to in Subparagraphs 10.2.1.2, 10.2.1.3, and 10.2.1.4 hereof caused in whole or in part by the Contractor, any Subcontractor, any Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, shall be remedied by the Contractor, except damage or loss attributable solely to the acts or omissions of GLWA or anyone employed by GLWA or for whose acts GLWA may be liable and not attributable, at least in part, to the fault or negligence of the Contractor; provided that such loss is not otherwise covered by insurance as required of any party (other than Contractor) pursuant to the terms of the Agreement.

10.2.6 The Contractor shall not load or permit any part of the Work to be loaded so as to endanger its safety.

10.2.7 The Contractor shall at all times protect excavations, trenches, buildings and materials, from rain water, ground water, back-up or leakage of sewers, drains and other piping, and from water of any other origin and shall remove promptly any accumulation of water. The Contractor shall provide and operate all pumps, piping and other equipment necessary to this end.

10.2.8 The Contractor shall remove snow and ice which might result in damage or delay.

10.2.9 The Contractor shall take all precautions necessary to prevent loss or damage caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of property of GLWA, whether or not forming part of the Work, located within those areas of the Project to which the Contractor has access. The Contractor shall have full responsibility for the security of such

property of GLWA located in such areas and shall reimburse GLWA for any such loss, damage or injury, except such as may be directly caused by agents or employees of GLWA.

10.3 EMERGENCIES.

In any emergency affecting the safety of persons or property, the Contractor shall act, at its discretion, to prevent threatened damage, injury or loss. Any additional compensation or extension of time claimed by the Contractor on account of emergency work, not occasioned in whole or in part by Contractor's acts or omissions or by other causes which are Contractor's responsibility or indemnity obligation hereunder, shall be determined as provided in Article 12 hereof.

10.4 ENVIRONMENTAL.

10.4.1 The Contractor shall not, at any time, cause or permit any Hazardous Materials to be brought upon, stored, manufactured, blended, handled, or used in, on, or about the Work or the Project site for any purpose, except any Hazardous Materials as may be specifically called for in the Contract Documents and except as specifically identified in writing by the Contractor. Any material change and/or addition to the Hazardous Materials or uses so identified must be approved in writing in advance by the Contracting Officer, which approval shall not be unreasonably withheld.

10.4.2 The Contractor shall at all times be in material compliance with all applicable state, federal, and local environmental and safety laws and regulations; shall, at its sole cost and expense, obtain and maintain all permits, licenses, and authorizations required for the Contractor's business, equipment, and operations on and in connection with the Work; shall comply with all material terms and conditions of such permits, licenses, and authorizations, and shall comply with all material and applicable requirements, orders, and directives of governmental agencies (collectively, the "Applicable Laws"), including, without limitation, the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.), all applicable fire and municipal building codes, and any amendments thereto and any applicable guidelines or regulations promulgated thereunder.

10.4.3 The Contractor shall certify with each Application for Payment, that (i) the Contractor, its agents, employees, Subcontractors, Sub-Subcontractors and their agents and employees, are in material compliance with the requirements of all Applicable Laws; (ii) to the Contractor's best knowledge, no disposal of Hazardous Materials has occurred on, in, under, or about the Work or the Project site; (iii) to the Contractor's best knowledge, no release of Hazardous Materials (except as otherwise reported to the Contracting Officer pursuant to subsection 10.4.6) has occurred on, in, under, or about the Work or the Project site; (iv) to the Contractor's best knowledge, no soil or surface or ground water contamination of the Work or the Project site has occurred; and (v) no Hazardous Materials have been used on the Work or the Project site except as provided under Paragraph 10.4.1 hereof.

10.4.4 The Contractor shall indemnify, defend, and hold GLWA, and its directors, officers, employees, agents and representatives, harmless from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses, and costs and expenses (including

reasonable attorney's fees, and court costs) which arise at any time during or after the completion of the Work as a result of or in connection with (i) the Contractor's breach of any prohibition or requirement set forth in this Section 10.4; and (ii) any Hazardous Materials present or occurring in the soil or surface or ground water in, on, under, or about the Work, the property or other properties as a result of the Contractor's, its agents', employees', Subcontractors', Sub-Subcontractors' and their agents and employees', activities on or in connection with the Work. This obligation by the Contractor to indemnify, defend, and hold harmless includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by GLWA or any federal, state, or local governmental agency or political subdivision because of any Hazardous Materials occurring or present in the soil or surface or ground water in, on, under, or about the Work or the Project site, diminution in value of the Work or the Project site, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Work or the Project site, and sums paid in settlement of claims, penalties, attorney's fees, court costs, consultant and laboratory fees, and expert's fees as a result of the Contractor's, its agents', employees', subcontractors', and their agents and employees' activities on or in connection with the Work or the Project site. Without limiting the foregoing, if any Hazardous Materials attributable to the Contractor, its agents, employees, subcontractors, or their agents or employees, or the activities of any of them, are found in the soil or surface or ground water in, on, under, or about the Work or the Project site, Contractor shall promptly take all actions, at its sole expense, necessary to return the Work or the Project site (as the case may be) to the condition existing prior to the introduction of Hazardous Materials to the Work or the Project site in accordance with Applicable Laws: provided (i) that, except in emergency situations (in which case notice shall be given to the Contracting Officer as soon as practicable), the Contracting Officer's written approval of such actions shall first be obtained, which approval shall not be unreasonably withheld; and (ii) if it is impossible to return the Work or the Project site to such condition, as determined by the Contracting Officer, then the Contractor may substitute an alternative action which will achieve and maintain the safe condition of the Work or the Project site, if such alternative is acceptable to the Contracting Officer in his/her sole discretion. Notwithstanding anything to the contrary set forth in the Contract Documents, the Contractor shall not be liable for any damages or costs suffered or incurred by GLWA as a result of encountering Hazardous Materials which were present at the Project site prior to commencement of the Work (except Hazardous Materials encountered in the removal and disposal of the Hazardous Materials included in the scope of the Work under the Agreement) even if the Contractor's activities contributed or caused the Hazardous Materials to be disturbed or discharged unless the Contractor had actual knowledge of the presence of the Hazardous Materials and nevertheless proceeded to cause such Hazardous Materials to be disturbed or discharged. The Contractor shall not under any circumstances be liable to GLWA for any consequential damages as a result of discovery of or disturbing any Hazardous Materials which were present at the Project site prior to the Contractor's commencement of the Work.

10.4.5 GLWA may conduct any testing, sampling, borings, and analyses it deems necessary. The Contractor, upon request, shall be given split samples of such test samples or borings; such testing shall be at the Contractor's expense if the Contractor, its agents, employees, subcontractors or their agents and employees have caused Hazardous Materials to be on the Work or the Project site, or if GLWA has a reasonable basis for suspecting the presence of Hazardous Materials in the soil or surface or ground water in, on, under, or about the Work or the Project site which has been caused by or resulted from the activities of the Contractor, its agents, employees,

subcontractors, or their agents or employees. In addition to any other right granted by law or the Agreement, if the Contractor is in material noncompliance with any Applicable Law, GLWA may make a reasonable demand for action upon the Contractor. If the Contractor does not respond within seven (7) days (unless an emergency is involved, in which case Contractor shall respond as soon as is practicable), GLWA may, at its option, take whatever action it deems necessary and appropriate at the Contractor's sole expense, which sums shall be immediately due and payable to GLWA. Upon termination of the Agreement, or abandonment of the Work by the Contractor for any reason, the Contractor shall remove all of its equipment, materials, and other items which may cause, contribute to, or result in contamination and investigate, remedy, and clean up any contamination caused by the Contractor, its agents, employees, Subcontractors, Sub-Subcontractors or their agents or employees, in compliance with all Applicable Laws. At all times during the performance of the Work, the Contractor shall if required by the Contracting Officer, or any governmental agency, promptly take whatever steps are necessary to stop any and all equipment, materials, and other items which may cause, contribute to, or result in contamination from causing, contributing to, or resulting in such contamination, and shall investigate, remedy, and clean up any contamination caused by the Contractor, its agents, employees, subcontractors, or their agents or employees.

10.4.6 The Contractor shall promptly notify the Contracting Officer in writing of any release of Hazardous Materials on the Project site, specifying the nature and quantity of the release, the location of the release, and the measures taken to contain and clean up the release and ensure that future releases do not occur.

10.4.7 As used herein, the term "Hazardous Materials" means any hazardous, toxic, flammable, or explosive substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Michigan, or the United States Government. The Contractor shall be given a reasonable period of time within which to come into compliance with future-enacted laws or regulations. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1317); (ii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, (42 U.S.C. §§ 6901 et seq.); (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. §§ 9601 et seq.); (iv) defined as a "hazardous" or "toxic" substance in any law similar to or in any amendment of any of the foregoing laws; or (v) petroleum or petroleum by-products.

ARTICLE 11 WAIVER OF SUBROGATION

11.1 SUBROGATION.

GLWA and the Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance required under the Agreement or any other insurance actually carried by GLWA or the Contractor, respectively. The Contractor shall require similar waivers by Subcontractors and Sub-Subcontractors in accordance with Article 5 hereof. All insurance policies required hereunder shall permit and recognize such waivers of subrogation.

ARTICLE 12 CHANGES IN THE WORK

12.1 GENERAL.

12.1.1 The Contractor acknowledges that (i) that GLWA may, without invalidating the Agreement, order changes in the Work (including extra Work, less Work or alterations) at any time and (ii) that changes in the Work, regardless of their scope or number, are within the contemplation of the parties. Changes in the Work may be ordered only by Change Order or Construction Change Directive. Changes in the Work may be made without notice to any Sureties, and absence of such notice shall not relieve such Sureties of any of their obligations to GLWA.

12.1.2 A Change Order shall be based upon agreement among the Owner and the Contractor. A Change Order may result from a Construction Change Directive. Agreement on any Change Order shall constitute a final settlement of and waiver of and permanent bar to all claims and matters relating to the change in the Work which is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Price and Contract Time. The Contractor shall include the Work covered by such Change Orders in its Applications for Payment as if such Work were originally part of the Contract Documents.

12.1.3 A Construction Change Directive may be issued by the Contracting Officer and may or may not be agreed to by the Contractor.

12.1.3.1 The Contract Time and Contract Price shall be adjusted appropriately when changes in the Work are ordered via a Construction Change Directive. However, the Contract Time shall be adjusted only if the Contractor demonstrates to the Contracting Officer that the changes in the Work required by the Construction Change Directive adversely affect the critical path of the Work.

12.1.3.2 A Construction Change Directive may be used in absence of total agreement on the terms of a Change Order.

12.1.3.3 If the Construction Change Directive provides for an adjustment to the Contract Price, it shall state the method that shall be used for the adjustment. The decision of the Contracting Officer with respect to the determination of the method for adjustment to the Contract Price shall final and binding on the Contractor.

12.1.3.4 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement with all of its terms, including adjustment in the Contract Price and the Contract Time or the method for determining them. Such agreement shall be effective immediately and shall have the same legal effect of and be recorded as a Change Order.

12.1.4 Changes in the Work shall be performed under the applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive. Any change in the Contract Price or Contract Time must result from the provisions of this Section 12.1. Accordingly, no verbal instructions,

course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that GLWA has been unjustly enriched by an alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall in the absence of a written Change Order or Construction Change Directive be the basis for any claim to an increase in any amounts due under the Contract Documents or a change in the time period provided for in the Contract Documents. All such claims are hereby waived by the Contractor and are forever barred. Notwithstanding the foregoing, when time does not permit the processing of a Change Order in advance of commencing the change in the Work, upon receipt of a Construction Change Directive from the Contracting Officer, the Contractor shall proceed with a change in the Work, and the parties shall concurrently proceed with the preparation and submission of a proposed Change Order.

12.1.5 Without invalidating this Agreement and without notice to any surety, GLWA may, by Change Order approved in accordance with the GLWA Procurement Policy, or Construction Change Directive signed by the Contracting Officer (a) order changes in the Work consisting of additions, deletions or other revisions (within the general scope of the Work) in the requirements of the Contract Documents and (b) unilaterally make or provide the basis for making an adjustment in Contract Price or Contract Time. Upon receipt of any such unilateral order, the Contractor shall promptly proceed or continue with the Work involved. Any such adjustment made by Change Order or authorized by Construction Change Directive shall be final and binding on the Contractor.

12.2 PROCESSING GLWA-INITIATED CHANGES IN THE WORK.

12.2.1 Notwithstanding anything contained herein to the contrary, GLWA may negotiate changes in the Work with the Contractor by submitting a Request for Proposal to the Contractor describing the change being considered and requesting that the Contractor submit its proposal for the corresponding adjustment in Contract Price or Contract Time, if any.

12.2.2 If a change in the Work is required, the Contracting Officer may issue a Construction Change Directive. Even though the Contractor shall cause the changes in the Work therein described to be performed immediately, it shall, while the changed Work is being performed, also develop pricing for the change as required in Section 12.2.3 below.

12.2.3 Within ten (10) days of its receipt of a Request for Proposal or Construction Change Directive, the Contractor shall provide the Contracting Officer with the amount of any change to the Contract Price or Contract Time and including an itemization of all costs of material and labor with extensions listing quantities and total costs, and a substantiation of any claim for an extension to the Contract Time by preparing a detailed schedule depicting the change's impact upon the Work's critical path. If GLWA wishes to proceed with the changes in the Work based upon the pricing quotation, the Contracting Officer shall submit a proposed Change Order to the Contractor, together with the revised Drawings and Specifications that will become part of the Contract Documents setting forth the exact amount of any adjustment in the Contract Price or the Contract Time.

12.2.4 Upon the Contractor's acceptance of a proposed Change Order, it shall be executed by GLWA and the Contractor, and the Contract Price or the Contract Time or both shall be adjusted to the extent provided in the Change Order.

12.2.5 Nothing contained herein shall limit the right of GLWA to order changes in the Work. No payments will be made in respect of changed Work unless and until a Change Order has been signed by GLWA and the Contractor. In the case of disagreement as to the amount to be adjusted, credited, or paid for changed Work, the Contractor shall nevertheless promptly comply with the Construction Change Directive or Change Order, as the case may be, and payment or credit shall be made in accordance with the Agreement payment provisions up to the reasonable estimated value of the change as determined by GLWA.

12.2.6 Where any changed Work is ordered by GLWA, the Contractor shall, for such purposes, permit GLWA to audit its books as they relate to the Project and shall require all Subcontractors to permit GLWA and the Contractor to audit their books as they relate to the Project. The Contractor shall produce, and shall cause any Subcontractors to produce, any and all data which GLWA may reasonably request for the purpose of determining the correctness of the charges. The Contractor shall keep, and shall cause all Subcontractors to keep, such full and detailed accounts as may be necessary to reflect its operations with respect to such charges and extras, and the system adopted shall be such as is satisfactory to GLWA. GLWA, and its respective directors, officers, employees, agents and representatives, shall be afforded access at all reasonable times to the Contractor's books, correspondence, instructions, receipts, vouchers, memoranda and records of all kinds, relating to all changed Work under the Agreement as well as to such charges and extras. In regard to the foregoing and generally, the Contractor hereby authorizes GLWA, and shall require all Subcontractors to authorize the Contractor and GLWA, to check directly with its suppliers of labor and materials the charges for such labor, material and other items appearing in the Contractor's bills rendered to GLWA, to confirm balances due and obtain sworn statements and waivers of claim.

12.3 PRICING FOR CHANGED WORK.

12.3.1 GLWA shall, at all times, have the right to order changes in the Work to be performed on the basis of (i) a Lump Sum Proposal as provided in Section 12.3.3; (ii) a Unit Price Basis as provided in Section 12.3.4 below; or (iii) Actual Cost of the Changes, plus a fee to the Contractor for overhead and profit, as provided in Section 12.3.5 below. The Contractor warrants that all costs in proposals and claims for adjustments in Contract Price shall not exceed those allowed under the Contract Documents, and that proposals and claims for adjustments to Contract Price shall grant prices, terms and warranties comparable to or better than prices, terms and warranties offered to others for similar work.

12.3.2 Credits for deductions from the Work shall be determined on the same basis as charges for additions to the Work except that a reasonable amount shall be deducted for overhead and profit in the case of deletions from the Work and the affected Subcontractor shall be allowed any restocking or material and equipment cancellation charges payable to suppliers and vendors for the purpose of computing the credit resulting from deductions from the Work.

12.3.3 Lump Sum Proposal: Should GLWA elect to have changed Work performed on a Lump Sum Proposal, it will so indicate in the Construction Change Directive or Request for Proposal and the Contractor will, with reasonable promptness but in any event within the time periods set forth in Subparagraph 12.2.3 hereof, transmit its Lump Sum Proposal detailing the proposed adjustment to the Contract Price (and the various components thereof). The Lump Sum

Proposal shall be based solely upon the affected Subcontractors' estimated net cost for labor (including union fringe benefits, insurance, employment insurance, Social Security and taxes paid on labor) and materials and excluding increased bond premiums, plus the percentages for overhead and profit as hereinafter set forth. The Lump Sum Proposal shall be itemized (itemized costs will not be from Section 00300, Article 7, Schedule of Change Order prices in the bid document) and segregated by labor and material for the various components of the changed Work and no aggregate figures for labor and material will be acceptable. The Contractor shall furnish, with its Lump Sum Proposal, supporting data consisting of Contractor (self-performing), Subcontractor, Sub-Subcontractor and vendor executed proposals. The Contractor (self-performing), Subcontractor or Sub-Subcontractor actually performing the changed Work shall be permitted to include in the estimate not more than fifteen (15%) percent for overhead and profit; The Contractor and Subcontractors of a higher tier shall be permitted to include in the estimate a handling charge of not more than five (5%) percent. The Subcontractors may include in their labor proposal only those workmen directly involved in the changed Work. All other supervision is included in the percentages for overhead and profit allowed the Subcontractors, unless (i) additional foremen are required in connection with the changed Work who were not otherwise on the Project site; or (ii) the total Contract Time is extended as a result of the changed Work, in which event an equitable amount shall be allowed for supervision during the extended period. Subcontractor's material costs will include invoiced costs, transportation and applicable sales or use taxes. Use of small tools is included in the overhead and profit. Equipment rental may be included only if the equipment will be required on the Project site for a longer duration solely because of the changed Work. Overhead and profit, as outlined above, includes all other costs whatsoever beyond those enumerated. If any of the changed Work included in the Lump Sum Proposal is covered by Unit Prices, GLWA may elect to use these Unit Prices within the Lump Sum Proposal. No overhead and profit may be applied to Unit Prices. No person performing any portion of the change in the Work will be allowed a fee for overhead and profit on the premium time wages paid for overtime, shift time or other similar types of work conditions on which premium time wages may be paid. Also, the overhead and profit of the Contractor, Subcontractor, Sub-Subcontractor shall always be calculated on the cost of performing the work. Markups for the upper tier Contractor/Subcontractor/Sub-Subcontractor will not be calculated on the lower tier Subcontractor/Sub-Subcontractors' markups.

12.3.4 Unit Prices: Should GLWA elect to have changed Work performed on a Unit Price Basis, the Contractor will submit, with reasonable promptness but in any event within the time periods set forth in Subparagraph 12.2.3 hereof, a written proposal itemizing the quantities of each item of changed Work for which there is an applicable Unit Price contained in the Agreement, Contract Documents or applicable Subcontracts. The quantities must be itemized in relation to each specific item in the Contract Documents. The Unit Prices will also be applied to net increases in quantities of the same item. The Unit Prices will also be applied to net decreases in quantities of the same item. There shall be no adjustment (equitable or otherwise) to Unit Prices established in Subcontracts. Unit Prices, if any, shall be established through the bidding process and strictly adhered to thereafter, even if a change in quantity is made.

12.3.5 Time and Material: Should GLWA elect to have any changed Work performed on an Actual Cost of the Changes basis, the affected Subcontractors shall perform such changed Work at "actual cost of the changes" as defined in Subparagraph 12.3.6 hereof, plus the percentages for overhead and profit set forth in Subparagraph 12.3.3 hereof. The Contractor will submit to GLWA

daily time and material tickets for all changed Work, including changed Work performed by Subcontractors. These tickets will include the identification number assigned to this Work, the location and description of the changed Work, the classification of labor employed including the applicable Subcontractor, workers' names and social security numbers, the materials used, the equipment rented (not tools) and any other information ordered by the Contracting Officer.

12.3.6 The term "Actual Cost of the Changes" means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the changed Work. All such costs shall be in amounts no higher than those prevailing in the locality of the Work. The following costs shall constitute recoverable Actual Cost of the Changes to which the Contractor is entitled when performing extra or change Work, or making any other claim for an adjustment to the Contract Price. These costs will also form the basis for the Contractor's recoverable costs which are associated with extensions of the Contract Time caused by extra or changed Work, or other cause solely within the control of the Contracting Officer, and which are further substantiated by the Contractor in accordance with the requirements of Section 12.3.6.7 below:

12.3.6.1 Payroll costs for employees of the Contractor directly employed in the physical performance of the Work. Payroll costs for employees not directly employed in the physical performance of the Work, such as superintendents and foremen, are recoverable only to the extent that additional supervision or staffing is specifically required to be added for the proper execution of the Work. Percentage add-ons, or other costs, for employees not directly employed in the physical performance of the Work shall not be allowed unless the Contractor establishes to the Contracting Officer's satisfaction that such employees are or were required for the proper execution of the Work and further that such employees were actually added to the Contractor's staff, or their time on the Work was extended as a result of the extra or changed Work. Payroll costs shall include salaries or wages paid plus the cost of itemized fringe benefits, including social security contributions, unemployment and workers' compensation insurance, and vehicle parking costs. The payroll costs associated with premiums paid for performing the Work after regular hours, on weekends or holidays shall be allowed only to the extent that these costs have been approved in writing by the Contracting Officer.

12.3.6.2 Overtime, when specifically authorized in writing by the Contracting Officer for reasons other than the failure of the Contractor to perform the Work in accordance with the CPM Schedule or otherwise in conformity with the Contract Documents shall be paid for by the Owner solely on the basis of the overtime rates established in the Contract Documents.

12.3.6.3 Costs of all materials and equipment furnished and incorporated into the Work by the Contractor, including costs of transportation, and storage where applicable. All trade discounts, rebates, refunds and all returns from sales of surplus materials and equipment shall accrue to the benefit of the GLWA. Use of small tools is included in the overhead and profit. Equipment rental may be included only if the equipment will be required on the Project site for a longer duration solely because of the changed Work.

12.3.6.4 Payments made by the Contractor to Subcontractors for Work performed. All Subcontractor recoverable costs shall be determined in the same manner as the Contractor's recoverable costs. If requested by the Contracting Officer, the Contractor shall obtain competitive bids from the Subcontractors who are acceptable to the Contracting Officer, and the Contractor will contract with those accepted by the Contracting Officer.

12.3.6.5 Sales, consumer, use or similar taxes related to the Work, and for which the Contractor is liable, or are otherwise imposed by laws and regulations.

12.3.6.6 Construction equipment costs of the Contractor's equipment or rental costs from others; hourly, daily, weekly or monthly rates will be applied where appropriate.

12.3.6.7 Other supplemental costs which are substantiated by the Contractor as specifically being required for the proper execution of the extra or changed Work, unless specifically prohibited by Section 12.3.7 below.

12.3.7 The Contractor's recoverable Actual Cost of the Changes shall not include any of the following costs when performing extra or changed Work, or in making any other claim for an increase to the Contract Price or extension of the Contract Time:

12.3.7.1 Payroll costs and other compensation of the Contractor's officers, executives, principals, general managers, project managers, construction managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing or contracting agents, expeditors, clerks, or any other employees or agents who are not specifically employed full-time on the Work. Those employees or agents not employed full-time on the Work are to be considered administrative costs which are covered by the Contract Price. Exceptions to this requirement will only be made on a case-by-case basis, each of which shall require prior written authorization and approval by the Contracting Officer.

12.3.7.2 Expenses of the Contractor's principal and branch offices other than the Contractor's office located at the Project site.

12.3.7.3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments.

12.3.7.4 Costs associated with the Work arising from one year correction of the Work period, warranties, or guarantees which are required by the Contract Documents.

12.3.7.5 Additional vehicle parking costs which exceed the parking reimbursement allowable within the payroll cost as provided in Section 12.3.6 above.

12.3.7.6 Any other supplemental costs which are not substantiated by the Contractor as specifically being required for the proper execution of the extra or changed Work.

12.3.8 Unless and until GLWA shall elect either the Lump Sum Proposal, the Unit Price Basis or the Time and Material Basis, the Contractor shall maintain and submit daily records of labor, material and equipment used in the changed Work which have been acknowledged thereon daily by the Contracting Officer. In any event, GLWA shall have the right to order such changes in the Work to proceed promptly prior to the submission of a Lump Sum Proposal and/or GLWA's election of the method by which the cost of the changed Work shall be determined. The Contractor shall certify all time and records and invoices and keep and present in such form as the Contracting Officer may direct, an itemized accounting, together with supporting date and vouchers, of all actual costs associated with the extra or changed Work.

12.3.9 The Cash Allowances and Provisionary Allowances shall not be subject to change in connection with Change Orders.

12.4 CONCEALED CONDITIONS.

12.4.1 The Contractor shall promptly notify the Contracting Officer in writing, if it discovers that (a) actual subsurface conditions or latent physical conditions encountered at the Project site differ materially from those shown or indicated in the Contract Documents, (b) unknown physical conditions are encountered at the Project site, of an unusual nature, differ materially from those ordinarily encountered and recognized as inherent in work similar in character to the Work, or (c) any reference points need correction to enable the Contractor to proceed with the Work.

12.4.2 If the Contractor wishes to make a claim for an increase in the Contract Price or extension of the Contract Time pursuant to this Paragraph 12.4, it shall give the Contracting Officer written notice thereof prior to the end of the second (2nd) business day after discovery of the conditions. This notice shall be given by the Contractor before proceeding to execute further Work, except in an emergency endangering life or property in which case the Contractor shall proceed in accordance with Paragraph 10.3. No such claim shall be valid for any work performed prior to delivery of written notice to the Contracting Officer. In the case of a tunnel or subsurface boring collapse, Contractor shall endeavor to protect its equipment and the completed Work without endangering the safety of any person.

12.4.3 No proposal or claim by Contractor due to differing site conditions shall be allowed (a) if the Contractor knew of the existence of those conditions before proceeding with the Work, or (b) if those conditions could have been discovered by the types of reasonable explorations and examinations for which the Contractor was made responsible under the Contract Documents.

12.5 MINOR CHANGES IN THE WORK.

GLWA shall have the authority to order minor changes in the Work provided that such changes will not (i) involve an adjustment to the Contract Price or extension of the Contract Time, or (ii) render the Drawings and Specifications, as so revised, not in material conformance with the Work as set forth in the Drawings and Specifications prior to such change. Such changes shall be effected by written order by the Contracting Officer and shall be binding on the Contractor. The Contractor shall carry out such orders promptly.

12.6 REQUESTS FOR CHANGE ORDERS.

12.6.1 Subject to the other terms of the Agreement, if the Contractor believes that any act, error, or omission of GLWA constitutes a change in the Work entitling it to additional compensation, it shall within twenty (20) days after the date on which the Contractor discovers, or should with the exercise of appropriate diligence have discovered, the pertinent act, error or omission of GLWA (provided that the necessity of extra cost and/or time is already determinable, even if such extra cost and/or time has not yet been incurred), submit a Request for Change Order to the Contracting Officer stating the amount of the additional compensation or additional time to which it is entitled and justifying the request. The Contracting Officer shall evaluate the Request for Change Order within a reasonable period of time and advise the Contractor whether GLWA will grant, grant in part, or deny the Request for Change Order. Any additional compensation granted shall be recorded in the form of a Change Order. Failure of the Contractor to timely submit a Request for Change Order strictly (not substantially) in accordance with the requirements of this Section 12.6.1 shall constitute a waiver of and shall forever bar any recovery arising out of the pertinent act, error or omission of GLWA, even if GLWA was not prejudiced thereby.

12.6.2 No proposal or claim by the Contractor on account of changes to the Work shall be allowed for any costs or delay incurred more than twenty (20) days before the Contractor gives written notice as required.

12.7 CHANGE ORDER PROCEDURE.

12.7.1 NO CHANGE IN THE WORK, WHETHER BY WAY OF ALTERATION OR ADDITION TO THE WORK, SHALL BE THE BASIS OF AN ADDITION TO THE CONTRACT SUM OR A CHANGE IN THE CONTRACT TIME UNLESS AND UNTIL SUCH ALTERATION OR ADDITION HAS BEEN AUTHORIZED BY A CHANGE ORDER EXECUTED AND ISSUED IN ACCORDANCE WITH AND IN STRICT COMPLIANCE WITH THE REQUIREMENTS OF THE CONTRACT DOCUMENTS.

12.7.2 ANY CLAIM FOR INCREASED COST FOR DELAY SHALL BE ASSERTED IN ACCORDANCE WITH THE PROVISIONS OF THE AGREEMENT UNLESS THE TIME IS EXTENDED IN WRITING BY GLWA. THIS REQUIREMENT IS OF THE ESSENCE OF THE CONTRACT DOCUMENTS. ACCORDINGLY, NO COURSE OF CONDUCT OR DEALINGS BETWEEN THE PARTIES, NOR EXPRESS OR IMPLIED ACCEPTANCE OF ALTERATIONS OR ADDITIONS TO THE WORK, AND NO CLAIM THAT GLWA HAS BEEN UNJUSTLY ENRICHED BY ANY ALTERATION OR ADDITION TO THE WORK, WHETHER OR NOT THERE IS IN FACT ANY SUCH UNJUST ENRICHMENT, SHALL BE THE BASIS FOR ANY CLAIM TO AN INCREASE IN THE CONTRACT PRICE OR CHANGE IN THE CONTRACT TIME.

12.7.3 CONTRACT PRICE AND CONTRACT TIME SHALL BE CHANGED ONLY BY CHANGE ORDER APPROVED IN ADVANCE AND IN ACCORDANCE WITH THE GLWA PROCUREMENT POLICY.

ARTICLE 13
UNCOVERING AND CORRECTION OF WORK

13.1 UNCOVERING OF WORK.

13.1.1 If any portion of the Work should be covered contrary to the request of the Contracting Officer or to requirements specifically expressed in the Contract Documents, it must, if required by either, promptly be uncovered for observation and shall be replaced at the Contractor's sole cost and expense. In such event, the Contractor shall not be entitled to any increase to the Contract Price or extension of the Contract Time.

13.1.2 If any other portion of the Work has been covered which the Contracting Officer specifically requested to observe prior to being covered, the Contracting Officer may request to see such Work and it shall be promptly uncovered by the Contractor. If such Work be found in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Construction Change Directive or Change Order, be charged to GLWA. If such Work be found not in accordance with the Contract Documents, the Contractor shall correct the Work at its sole cost and expense and maintain the CPM Schedule.

13.2 CORRECTION OF WORK.

13.2.1 The Contractor shall correct all Work rejected by the Contracting Officer as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion or Final Completion and whether or not fabricated, installed or completed. Such correction shall be accomplished within seven (7) days after notice from the Contracting Officer unless such work cannot be accomplished within such period, in which case the Contractor shall commence the correction and submit its Drawings therefor within seven (7) days. The Contractor shall bear all costs of correcting such rejected Work and maintaining the CPM Schedule. Correction shall be accomplished without affecting the Final Completion date or the CPM Schedule. Nothing set forth in this Subparagraph shall be construed as extending any statute of limitations or statute of repose for any defects in materials and workmanship whether patent or latent.

13.2.2 If, within one (1) year after Substantial Completion or within such longer period of time as may be prescribed by law or by the terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the Contract Documents, the Contractor agrees to make any and all repairs or replacements and further agrees to commence such repair or replacement and the replacement of any and all damage caused thereby at any time or times during the guarantee period, within seven (7) days from receipt of written notice from the Contracting Officer and to faithfully and diligently prosecute the same to conclusion, without cost to, and to the satisfaction of, the Contracting Officer. This obligation shall survive termination of the Agreement. The Contracting Officer shall give such notice promptly after discovery of the condition.

13.2.3 The Contractor shall remove from the Project site all portions of the Work which are defective or non-conforming and which have not been corrected under Subparagraph 13.2.1

hereof, unless removal is waived in writing by the Contracting Officer and the Work shall be corrected to comply with the Contract Documents without cost to GLWA.

13.2.4 If the Contractor fails to correct defective or nonconforming Work, GLWA may correct it in accordance with Paragraph 3.3 hereof.

13.2.5 If the Contractor does not remove defective or nonconforming Work within a reasonable time fixed by written notice from the Contracting Officer, GLWA may remove it and may store the materials or equipment at the expense of the Contractor. If the Contractor does not pay the cost of such removal and storage within ten days (10) thereafter, GLWA may sell such Work at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs that should have been borne by the Contractor. If such proceeds of sale do not cover all costs which the Contractor should have borne, the difference shall be charged to the Contractor and an appropriate Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to GLWA.

13.2.6 The Contractor shall bear the cost of making good all of the Work, the work of the GLWA or separate contractors and any other facilities destroyed or damaged by such deficiencies and their removal or correction.

13.2.7 Nothing contained in this Paragraph 13.2 shall be construed to establish a period of limitation with respect to any other obligation which the Contractor might have under the Contract Documents. The establishment of the time period of one year after Substantial Completion or such longer period of time as may be prescribed by law or by the terms of any warranty required by the Contract Documents relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the Contractor's obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

13.3 ACCEPTANCE OF DEFECTIVE OR NON-CONFORMING WORK.

If GLWA prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order will be issued to reflect a reduction in the Contract Price, or, if the amount is determined after Final Payment, it shall be paid by the Contractor.

ARTICLE 14 TERMINATION OF THE AGREEMENT

14.1 TERMINATION FOR CAUSE.

14.1.1 GLWA shall have the right, without prejudice to any other right or remedy it may have to terminate the Agreement and take possession of the Project site and of all materials, tools and appliances thereon and finish the Project by whatever method GLWA may deem expedient upon five (5) business days' prior written notice to the Contractor upon the occurrence of any of the following events of default:

14.1.1.1 The Contractor breaches a material term of the Agreement; or

14.1.1.2 The Contractor shall make an assignment for the benefit of creditors; or make an admission in writing of its inability to pay its debts generally as they become due; or

14.1.1.3 The Contractor shall voluntarily make any unauthorized changes in the personnel previously approved by GLWA; or

14.1.1.4 The filing of claims with GLWA by third parties alleging failure to pay any amount due (except disputed claims).

14.1.2 In such case, the Contractor shall not be entitled to receive any further payment until the Project is finished. If the unpaid balance of the Contract Price shall exceed the expense of finishing the Project, including compensation for GLWA's additional services, such excess shall be paid to the Contractor but only to the extent of the costs incurred by the Contractor prior to the termination of the Agreement. If the expense of finishing the Project shall exceed the unpaid balance of the Contract Price, the Contractor shall pay such excess to GLWA.

14.2 TERMINATION FOR CONVENIENCE.

GLWA may also terminate the Agreement for its convenience at any time upon five (5) calendar days' written notice of termination to the Contractor. In such case, the Contractor shall be entitled to receive, as total compensation for all services performed hereunder, (i) payment for all Work properly performed prior to the effective date of termination, including payment of the appropriate retainage, plus (ii) any restocking or material and equipment cancellation charges payable to Suppliers and vendors (unless the Contractor shall have assigned to GLWA, at the request of GLWA, the agreements pursuant to which such material and equipment was ordered and GLWA shall have indemnified the Contractor in connection therewith); plus (iii) the Contractor's reasonable demobilization costs. Payment of such compensation is the sole and exclusive remedy of the Contractor for a termination of the Agreement by GLWA without cause and the Contractor shall not be entitled to, and hereby waives, claims for lost profits and all other damages and expenses. The Contractor shall execute a waiver and general release of claim as a condition of payment. At GLWA's option, the Contractor shall assign to GLWA all approved Subcontracts and GLWA shall indemnify and defend the Contractor against all claims for payment thereunder in respect of work performed after the date of termination. On the date that the Contractor receives the written notice of termination, the Contractor shall not order any additional products, materials or equipment and shall immediately cancel any previously submitted orders for products, materials and equipment.

ARTICLE 15 AUDIT

15.1 GLWA'S ACCESS TO CONTRACTOR'S RECORDS.

15.1.1 The Contractor agrees that GLWA or any of its duly authorized representatives shall, until the expiration of three (3) years after Final Payment under the Agreement, have access

to and the right to examine and audit any directly pertinent books, documents, papers and records of the Contractor involving transactions related to the Agreement.

15.1.2 The Contractor shall include in the Subcontracts a provision to the effect that the Subcontractor agrees that GLWA or any of its duly authorized representatives shall, until the expiration of three (3) years after final payment under the Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of such Subcontractor, involving transactions related to the Agreement. The term "Subcontracts," as used in this clause only, excludes (1) purchase orders not exceeding Two Thousand Five Hundred (\$2,500.00) Dollars and (2) subcontracts or purchase orders, for public utility services at rates established for uniform applicability to the general public.

15.1.3 The periods of access and examination described in this Section 15.1 for records which relate to (1) under the "Claims" clause of the Agreement, (2) litigation or the settlement of claims arising out of the performance of the Agreement, or (3) costs and expenses of the Agreement as to which exception has been taken by GLWA or any of his duly authorized representatives, shall continue until such appeal, litigation, claim or exception has been disposed of.

ARTICLE 16 CONFLICT OF INTEREST

16.1 The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the Work. The Contractor further covenants that, in the performance of the Agreement, no person having any such interest shall be employed. The Contractor further covenants that no officer, member or employee of GLWA and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Agreement has any personal or financial interest, direct or indirect, in the Agreement or in the proceeds thereof.

16.2 The Contractor also hereby warrants that it has not and will not employ any person to solicit or secure the Agreement upon any agreement or arrangement for payment of a commission, percentage, brokerage, or contingent fee, either directly or indirectly. The Contractor further agrees that if this warranty is breached, GLWA may, at its option, terminate the Agreement without penalty, liability or obligation, or may at its election, deduct from any amounts owed to the Contractor hereunder any amounts of such commission, percentage, brokerage, or contingent fee.

16.3 The Contractor agrees that neither it nor its employees will endeavor to influence GLWA's employees to seek employment with the Contractor within the duration of the Agreement and shall not for a period of one (1) year thereafter employ any of GLWA's employees without prior written approval from GLWA. Proof of such activity as determined by GLWA may cause immediate termination of the Agreement.

16.4 The Contractor shall include the provisions of this Article in any Subcontract it enters into pursuant to the Agreement.

ARTICLE 17 CONFIDENTIAL INFORMATION

17.1 In order that the Contractor may effectively fulfill its covenants and obligations under the Agreement, it may be necessary or desirable for GLWA to disclose confidential and proprietary information to the employees pertaining to GLWA's past, present and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the Contractor shall instruct its employees and all Subcontractors to regard all information gained by each such person as a result of the Work to be performed hereunder as information which is proprietary to GLWA and not to be disclosed to any organization or individual without the prior consent of GLWA.

17.2 The Contractor agrees to take appropriate action with respect to its employees, Subcontractors and agents to insure that the obligations of non-use and non-disclosure of confidential information of the Agreement can be fully satisfied.

ARTICLE 18 CLAIMS

18.1 CLAIMS.

18.1.1 A "Claim" is a demand or assertion by the Contractor seeking adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the Agreement or any of the Contract Documents that (ii) the procedure for resolution of which is not specifically provided for in the Agreement. The term "Claim" also includes all other disputes, controversies and matters in question between or among GLWA and the Contractor arising out of or in any way relating to the Agreement, the Project or the Work. Claims must be made by written notice to the Contracting Officer containing as much detail as reasonably possible. The burden for substantiating any Claim shall rest with the Contractor.

18.1.2 Except as otherwise specifically provided in this Agreement, Claims by the Contractor must be made promptly and within not more than twenty (20) days, unless a longer period is granted by writing, after the Contractor first recognizes the condition giving rise to the Claim, whether or not any impact in money or time has been determined. **IN NO EVENT SHALL THIS PROVISION BE DEEMED TO EXTEND THE PERIOD OF TIME FOR THE CONTRACTOR TO MAKE CLAIMS FOR AN EXTENSION OF THE CONTRACT TIME OR ADJUSTMENT TO THE CONTRACT PRICE AS PROVIDED IN THE OTHER PROVISIONS OF THE AGREEMENT, WHICH PROVISIONS AND TIME PERIODS ARE TO BE STRICTLY ADHERED TO BY THE CONTRACTOR.**

18.1.3 Pending final resolution of a Claim, the Work shall continue unabated, the Contractor shall proceed diligently with performance of the Work, and GLWA shall continue to make payment in accordance with the Contract Documents, except as to amounts in good faith dispute.

18.2 CLAIMS FOR ADDITIONAL COST.

Subject to the limitations and other time limits contained herein, if the Contractor wishes to make a Claim for an increase in the Contract Price, to the extent the Claim is reasonably discoverable, written notice of it shall be given to the Contracting Officer before the Contractor proceeds to execute the Work for which the Claim is made. Prior notice is not required for Claims relating to bona fide emergencies endangering life or property. All Claims for adjustment to the Contract Price shall be supported by such documentation as the Contracting Officer shall require.

18.3 INJURY OR DAMAGE TO PERSON OR PROPERTY.

If the Contractor suffers injury or damage to person or property because of an act or omission of GLWA, or its employees or agents, or others for whose acts GLWA is legally liable, prompt notice of such injury or damage shall thereafter be given within a reasonable time and not exceeding twenty-four (24) hours in the case of serious personal injury or damage or seventy-two (72) hours in all other cases after first observance. The notice shall provide sufficient detail to enable GLWA to investigate the matter.

18.4 SUBMITTAL OF CLAIMS; RESOLUTION.

18.4.1 All Claims shall be submitted to the Contracting Officer. Any mutual agreement reached shall be final and binding upon the parties.

18.4.2 All Claims which are not asserted and pursued strictly (not substantially) in accordance with the provisions of this Article 18 shall be deemed to have been waived and forever barred, regardless of whether the Contractor is prejudiced thereby.

18.4.3 The resolution of all Claims under this Article 18 resulting in a change in the Contract Price or Contract Time shall be memorialized by a Change Order. The provisions of this Article 18 shall survive the completion of the Work and termination of the Agreement.

(End Exhibit C – General Conditions)

EXHIBIT D

COSTING SUMMARY

[Insert Section 410 Bid Breakdown]

EXHIBIT E

DESIGNATION OF NOTICE ADDRESS

Notices to the Contractor should be sent to:

Name _____
Title _____
Company _____
Address _____

(End Exhibit E – Designation of Notice Address)

EXHIBIT F

INSURANCE AND BONDS

A. INSURANCE REQUIRED

Until completion and final acceptance of the Work, the Contractor shall purchase and maintain Worker's Compensation Insurance, Employer's Liability Insurance, Direct Liability Insurance for Contractor's own operations, Contingent Liability Insurance for the operations of Subcontractors and Contractual Liability Insurance to insure the indemnifying portions of the Agreement, such insurance to include Bodily Injury Liability and Property Damage Liability. Certificates of such insurance (and copies of policies if requested) shall be filed with the Contracting Officer and shall be subject to its approval for adequacy of protection and the satisfactory character of the insurer, but in no case shall they be less than the following limits:

1. **Worker's Compensation** shall conform to statutory limits under Michigan law and **Employers' Liability** limit of \$1,000,000 each accident/each employee disease/policy limit disease.
2. **Commercial General Liability** including Premises-Operations, Independent Contractors' Protective, Products and Completed Operations, Contractual Liability, and Personal Injury with the following minimum limits and other specifications:
 - a. Minimum limits of:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$1,000,000 Personal and Advertising Injury
 - \$2,000,000 Products-Completed Operations Aggregate
 - b. Property Damage Liability Insurance will provide (shall not exclude) X, C and U Coverage as applicable.
3. **Comprehensive Automobile Liability** covering all owned, non-owned and hired vehicles for Bodily Injury and Property Damage as follows:
 - a. Minimum limit of \$1,000,000 each accident – combined single limit.
 - b. Deductible amount shall not exceed \$25,000.
4. **Umbrella/Excess Liability**, with minimum limits of \$4,000,000 each occurrence and \$4,000,000 aggregate, which shall provide excess limits over the commercial general liability, auto liability and employers' liability policies.
5. **Builder's Risk**, if applicable, with limits equal to the Contract Price which shall be maintained until completion and final acceptance of the Work and may not contain coinsurance penalty provisions.

6. **Installation Floater**, if applicable, with limits equal to the Contract Price which shall be maintained until completion and final acceptance of the Work and may not contain coinsurance penalty provisions.
7. **Professional Liability (errors and omissions)**, if Contractor is performing design, architectural or engineering services, with minimum limits of \$3,000,000 each occurrence and \$3,000,000 aggregate, to be maintained for such period as may be specified by GLWA (which will extend, at a minimum, through the applicable warranty period).
8. **Contractors' Pollution Legal Liability**, if applicable, with minimum limits of \$1,000,000 each occurrence and \$2,000,000 aggregate.
9. Any other insurance as may be required by applicable federal, state or local laws, ordinances, rules, regulations or orders.

B. OTHER INSURANCE SPECIFICATIONS

1. The Contractor shall require all Subcontractors, if any, performing design and other architectural or engineering services hereunder to maintain professional errors and omissions coverage in connection with subcontracted work. All professional errors and omissions insurance shall be endorsed to provide contractual liability coverage, shall be in amounts approved by GLWA prior to the execution of any Subcontract including design or engineering responsibilities, and shall be maintained for such period as may be specified by GLWA (which will extend, at a minimum, through the applicable warranty period). Certificates of such coverage shall be filed with the Contracting Officer prior to commencement of the Work.

2. All policies required to be maintained by Contractor shall be written on an occurrence basis, if the same is commercially available.

3. The commercial general liability insurance shall include an endorsement naming GLWA and others designated by GLWA as additional insureds.

4. The commercial general liability and umbrella/excess liability policies shall be or shall be endorsed to be primary and non-contributory and any similar or additional insurance maintained by GLWA shall be secondary and excess to that carried by the Contractor or any Subcontractor.

5. The workers' compensation, commercial general liability and automobile liability policies shall be endorsed with a waiver of subrogation on either a blanket basis or in favor of GLWA.

6. All policies required by this Agreement shall be issued by insurers authorized to conduct business in Michigan or which have an A.M. Best's rating of A-/VIII or better. GLWA reserves the right to reject any insurer who is involved in an ongoing claims dispute with GLWA or whose claims response history is not otherwise satisfactory to GLWA.

7. For any policy required by this Agreement, the Contractor shall provide to GLWA thirty (30) days' written notice of cancellation and ten (10) days notice for cancellation due to non-payment of premium.

8. Before commencing the Work, the Contractor shall furnish to GLWA a certificate from its insurance carrier showing that it has complied with the provisions of this Exhibit F.

9. In the event of failure of the Contractor to furnish and maintain such insurance or to furnish a satisfactory certificate therefor, GLWA shall have the right to take out and maintain the said insurance for and in the name of the Contractor, and the Contractor agrees to furnish all necessary information to permit GLWA to take out and maintain such insurance for the account of the Contractor and to pay the cost thereof to GLWA immediately upon presentation of a bill. Compliance by the Contractor with the foregoing requirements as to carrying insurance and furnishing certificates shall not relieve the Contractor from liability under the Agreement.

C. PAYMENT AND PERFORMANCE BONDS

1. The Contractor shall furnish to GLWA and keep in force during the term of the Agreement performance and labor and material payment bonds, guaranteeing that the Contractor will perform its obligations under the Agreement and will pay for all labor and materials furnished for the Work. Such bonds shall be issued in a form and by a Surety reasonably acceptable to GLWA, shall be submitted to GLWA for approval as to form, shall name GLWA as obligee, and shall be in an amount equal to at least 100% of the Contract Price (as the same may be adjusted from time to time pursuant to the Agreement). The Contractor shall deliver the executed, approved bonds to GLWA prior to the execution of the Agreement. Neither the Contractor nor any Subcontractor may begin the Work until the required bonds are delivered to the Contracting Officer.

2. The costs of all bonds furnished hereunder shall be included in the Contract Price.

3. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Contractor shall promptly furnish a copy of the bonds to the Contracting Officer or shall permit a copy to be made.

4. If any Surety hereunder makes any assignment for the benefit of creditors, or commits any act of bankruptcy, or is declared bankrupt, or files a voluntary petition for bankruptcy or in the reasonable opinion of GLWA is insolvent, the Contractor shall immediately furnish and maintain another Surety satisfactory to GLWA.

D. GENERAL TERMS REGARDING INSURANCE AND BONDS

1. If GLWA is damaged by the failure of the Contractor to purchase or maintain any insurance or bond required by the Agreement then the Contractor shall pay all costs incurred by GLWA, including but not limited to reasonable attorney's fees.

2. Any insured loss under the required policies of property insurance will be adjusted with GLWA and will be made payable to GLWA as trustee for the insured. GLWA shall deposit in a separate account, and shall distribute monies received, based on any agreement that the parties in interest may reach. If no other distribution agreement is reached, the damaged Work shall be replaced or repaired, the monies received shall be used for that purpose and the Work involved and resulting costs shall be covered by Change Order. GLWA as trustee shall have the power to adjust and settle any loss with the insurers unless a party in interest objects in writing within fifteen

(15) days following the occurrence of loss to GLWA's exercise of this power. If an objection is made, GLWA as trustee shall settle with the insurers pursuant to any agreement that the parties in interest may reach.

3. If by the terms of the insurance a mandatory deductible is required, the Contractor shall be responsible for the deductible amount in the event of a paid claim. The Contractor shall also be responsible for any co-insurance penalties.

(End Exhibit F – Insurance and Bonds)

INSURANCE CERTIFICATE

PERFORMANCE BOND

PAYMENT BOND

BID BOND

EXHIBIT G

GLOSSARY

Agreement	The written document executed between the Contractor and the GLWA including each of its Exhibits, and any amendments, as approved by Contractor and the GLWA Chief Executive Officer or Authorized person.
Allowance	Refers to either a Cash Allowance or a Provisionary Allowance, as either term is defined in this Glossary.
Application for Payment	The Contractor's certified request for payment for completed portions of the Work and for materials or equipment suitably stored pending their incorporation into the Work.
Board of Directors	The Board Directors of the GLWA.
Cash Allowance	A sum specified by the GLWA included within the Contract Price to reimburse the Contractor for actual purchase/furnished cost of required materials, equipment or other designated items that are to be furnished and incorporated into the Work, as provided in the Contract Documents. Although the scope (i.e., the required quantity) of any portion of the Work covered by a Cash Allowance is sufficiently detailed in the Contract Documents for the equipment and supplemental costs, it is understood that the required materials, equipment or other designated items are either of uncertain purchase cost at the time the Agreement is executed or are yet to be specified in more detail by the Contracting Officer as to quality, appearance, durability, finish and such other necessary features. Any remaining balance of the Cash Allowance upon Final Completion shall be retained by the GLWA and not paid to the Contractor.
CEO	The Chief Executive Officer of the GLWA

Certificate for Payment	A certificate issued by the Contracting Officer certifying the amount of the Progress Payment due to the Contractor/Engineer.
Certificate of Substantial Completion	A certificate prepared by the Contracting Officer on the basis of an inspection (a) stating that the Work or a designated portion thereof is Substantially Complete; (b) establishing the date of Substantial Completion; (c) stating the responsibilities of the GLWA and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance; and (d) fixing the time within which the Contractor shall complete the items listed therein.
Construction Change Directive	A written order prepared by the Contracting Officer that directs a change in the Work and states a proposed basis for adjustment, if any, in the Contract Price or Contract Time.
Change Order	A written instrument signed by the GLWA and the Contractor that authorizes a change in the Work, an adjustment in the Contract Price or Contract Time, or both.
Contract Price	The sum stated in the Agreement that is the total amount payable by the GLWA to the Contractor for the performance of the Work.
Contract Time	The period of time allotted in the Contract Documents for Final Completion of the Work, including authorized adjustments.
Contract Documents	The Exhibits A, B, C, D, E, F and G of the Agreement and any other document or instrument explicitly designated in Exhibit B. The Contract Documents do not include any other documents, unless designated or incorporated by reference as provided above, such as (i) bidding requirements, advertisements or invitations to bid, instructions to bidders, sample forms, soils, geotechnical, or other reports, surveys, or analyses, which may be printed, bound, or assembled with the Contract Documents, or

	otherwise made available for review or information or (ii) bids.
Contractor	The party identified in the Agreement.
Contracting Officer	The party identified in the Agreement.
CPM Schedule	A schedule or diagram of all events expected to occur and operations to be performed in completing the Work, approved in writing by the Contracting Officer and rendered in a form permitting determination of the optimum sequence and duration of each operation.
Detailed Cost Breakdown	An itemized breakdown of the Work and Contract Price detailing, for each pay item, quantities and dollar amounts required for making Progress Payments. The sum of all pay items in the Detailed Cost Breakdown shall equal the Contract Price.
Drawings	Graphic and pictorial documents depicting the design, location and dimensions of the elements of the Project.
Engineer	A registered professional engineer in the State of Michigan, employed by the GLWA to design the Work. The Engineer has the rights and authority assigned to the Engineer in the Contract Documents.
Final Completion	The date on which the Work has been completed in accordance with the terms and conditions of the Contract Documents and accepted by the Contracting Officer in writing.
Final Payment	Payment made by the GLWA to the Contractor of the entire unpaid balance of the Contract Price as adjusted by Change Orders.
General Conditions	Exhibit C of the Agreement.
GLWA	The Great Lakes Water Authority, a Michigan municipal authority.

Notice to Proceed	Written notice from the CEO, or his/her designated representative, authorizing the Contractor to proceed with the Work, or a designated portion of the Work.
Progress Payment	A periodic payment to the Contractor based on the Contracting Officer's approval of the Contractor's Application for Payment as required pursuant to the terms of the Agreement.
Project	The planned undertaking described in Exhibit A of the Agreement.
Project Manager	The individual designated by the Contractor to manage the Contractor's activities in connection with the Project.
Provisionary Allowance	An amount included in the Contract Price to reimburse the Contractor for the cost to furnish and perform Work that is uncertain, i.e., may not be required, or of indeterminate scope, i.e., design information and quantities, complexity, etc. are neither shown nor detailed in the Contract Documents. Work authorized under any Provisionary Allowance may consist of (a) changes required by actual conditions, as determined by the Contracting Officer, that are incorporated into the Work in accordance with the General Conditions, and (b) any other work authorized and completed under the pertinent provisions of the Contract Documents. Unlike a Cash Allowance, payments under a Provisionary Allowance shall include not only the purchase and finished cost of materials and equipment involved, but also all associated labor, Subcontracts, construction equipment and supplemental costs, provided those costs are substantiated as required by the General Conditions. Any remaining balance upon Final Completion shall be retained by the GLWA and not paid to the Contractor.
Punch List	A list of items of Work to be completed or corrected by the Contractor after Substantial

	Completion, as required by the Contract Documents.
Request for Change Order	A request from the Contractor for an extension of time or additional compensation served on the Contracting Officer in accordance with the General Conditions.
Request for Proposal	A document issued by the Contracting Officer that may include Drawings and other information used to solicit a proposal for a change in the Work.
Schedule of Values	A statement furnished by the Contractor reflecting the portions of the Contract Price allocated to the various portions of the Work and used as the basis for reviewing the Contractor's Applications for Payment.
Specifications	A part of the Contract Documents consisting of written requirements for materials, equipment, construction systems, standards and workmanship.
Subcontract	Agreement between the Contractor and Subcontractor for performance of a portion of the Work at the Project site.
Subcontractor	A person or entity that has a direct contract with the Contractor to perform any of the Work at the Project Site.
Sub-subcontractor	A person or entity that has a direct or indirect contract with a Subcontractor to perform any of the Work at the Project site.
Substantial Completion	The stage in the progress of the Work when the Contracting Officer has determined that the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents that the GLWA can occupy or utilize the Work for its intended purpose. As more fully defined in the General Conditions.

Submittals	Includes Shop Drawings, Samples, Product Data and those other documents required for submission by the Contract Documents.
Supplementary General Conditions	Part of the Contract Documents that supplements and may also modify, change, add to, or delete provisions of the General Conditions.
Supplier	A person or entity that supplies materials or equipment for the Work, including that fabricated to a special design, but who does not perform labor at the Project site.
Surety	An entity that guarantees the Work via issuance of performance and payment bonds as required pursuant to the terms of the Agreement.
Total Float	The number of days by which the Work or any part of the Work may be delayed without necessarily extending the Contract Time or any other milestones set forth in the CPM Schedule. Total Float is by definition at least equal to Contract Float.
Work	All goods and services, such as labor, transportation, tools, and equipment (i) to be incorporated into the Project, (ii) required under the Contract Documents, or (iii) necessary or appropriate to fully construct, fixture, operate and maintain the Project. The Work shall be performed in accordance with the Contract Documents. The Work may constitute the whole or a part of the Project.

(End Exhibit G – Glossary)