

CONSTRUCTION CONTRACT

BETWEEN

GREAT LAKES WATER AUTHORITY, A MICHIGAN MUNICIPAL AUTHORITY

AND

ENTER CONTRACTOR NAME

REQUISITION NO. ENTER REQ NUMBER

SCN-_____

ENTER BRIEF DESCRIPTION OF CONTRACT

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**GREAT LAKES WATER AUTHORITY
CONSTRUCTION CONTRACT**

This Construction Contract, requisition no. Enter Req Number (“Contract”), is made by and between the Great Lakes Water Authority (“Owner”), and Enter Contractor Name, with its principal place of business located at Enter Contractor Address (“Contractor”). Collectively, Owner and Contractor are the “Parties” and individually a “Party”.

Recitals

A. Owner desires to retain Contractor for purposes of securing from Contractor certain labor, equipment and/or materials (“Work”); and

B. Contractor is willing and able to perform the Work in accordance with the Contract Documents; 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 Owner engages Contractor to perform the Work relating to the Project, as the same is described in Exhibit A, General Project Details, in accordance with the terms and conditions contained in the Contract Documents, which are set forth in Exhibit B, Contract Documents, as administered and directed by Owner, and if applicable, as set forth in Exhibit H, Supplemental General Conditions. The Contract Documents include, without limitation, Exhibit C, General Conditions.
- 1.02 Contractor shall comply with and shall require its employees, Subcontractors, Sub-Subcontractors, Suppliers, and laborers to comply with (i) all health, safety, and security policies and procedures in effect at any Owner-owned or operated facility, (ii) any Owner-requested background checks, and (iii) Owner’s security clearance requirements.

Article II: Contracting Officer

- 2.01 The Contracting Officer shall be the CPO or, if designated by the CPO, Owner’s Project Manager, as set forth in Exhibit E, Notice of Addresses and Designation of Representatives.

Article III: The Contract Documents

- 3.01 The Contract Documents shall be as set forth in Exhibit B.

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 complete on or before each Key Completion Time specified in Exhibit A.
- 4.02 The terms and conditions regarding liquidated damages, if any, shall be as set forth in Exhibit A.

Article V: Contract Price; Terms of Payment

- 5.01 Subject to Contractor's performance of its obligations under and in accordance with the Contract Documents, Owner agrees to pay Contractor the Contract Price stated in Exhibit D, Costing Summary and Terms of Payment.

Article VI: Notices

- 6.01 "Notice of Termination for Cause", "Notice of Termination for Convenience", and "Notice to Proceed" shall be in writing, mailed by postage prepaid, signed by the CPO, and addressed to Contractor as set forth in Exhibit E.
- 6.02 Either Party may change its postal address and/or e-mail address at any given time by giving notice of the address change to the other Party.
- 6.03 "Notice of Change of Address" shall be in writing, mailed by postage prepaid, signed by the authorized representative of the Party, and addressed as set forth in Exhibit E.
- 6.04 All other notices, consents, approvals, requests, and other communications required or permitted under the Contract Documents, including change of e-mail address, may be given by a Party by e-mail at the e-mail addresses set forth in Exhibit E.
- 6.05 Notices shall be deemed given on the day of mailing or e-mailing.
- 6.06 Any notice given in the manner specified in this Article shall be sufficient and Contractor waives all claims relative to the sufficiency of such notice.

Article VII: Insurance and Bonds

- 7.01 Contractor shall provide and include in its pricing the insurance and bonds required in Exhibit F, Insurance and Bonds. Contractor shall comply fully with the terms and conditions of Exhibit F at no additional cost to Owner.

Article VIII: Miscellaneous Provisions

- 8.01 No part of the Contract Documents may be waived except by written agreement of the Parties. Forbearance in any form from demanding performance is not a waiver of performance. Until complete performance under the Contract Documents, the Party owed performance may invoke any remedy thereunder or under law, despite its past forbearance.
- 8.02 If any provision of the Contract Documents, or their application to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of the Contract Documents shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.
- 8.03 The Contract Documents contain the entire agreement between the Parties and all prior negotiations and agreements are thereby merged. Neither Owner nor its agents have made any representations except those expressly set forth in the Contract Documents, and no rights or

remedies are, or shall be, acquired by Contractor by implication or otherwise unless expressly set forth therein.

- 8.04 Unless the context otherwise expressly requires, (i) the words "herein", "hereof", "hereunder", and words of similar import refer to the Contract Documents as a whole and not to any particular section or subdivision; and (ii) as used in the Contract Documents, the singular shall include the plural, and the plural shall include the singular.
- 8.05 The headings of the sections of the Contract Documents are for convenience only and shall not be used to construe or interpret the scope or intent of the Contract Documents or in any way affect the same.
- 8.06 The Contract Documents and all actions arising thereunder shall be governed by, subject to, and construed according to the laws of the State of Michigan. Contractor shall submit to the personal jurisdiction of any competent court in Wayne County, Michigan, for any action arising out of the Contract Documents. Service of process at the address and in the manner specified in Article VI, "Notices", shall be sufficient to put Contractor on notice and waives all claims relative to such notice. Contractor shall not commence any action against Owner because of any matter whatsoever arising out of or relating to the validity, construction, interpretation, and enforcement of the Contract Documents, 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. The terms of this Section shall survive the expiration or termination of this Contract.
- 8.07 If any Subcontractor, Sub-Subcontractor, Supplier, or laborer shall take any action which, if done by a Party, would constitute a breach of the Contract Documents, the same shall be deemed a breach by Contractor with right legal effect. The terms of this Section shall survive the expiration or termination of this Contract.
- 8.08 This is not an exclusive service contract and, during the term hereof, Owner may contract with other consulting firms and contractors. Contractor is free to render the same or similar services to other clients, provided however, that Contractor's obligations to Owner contained in the Contract Documents shall not be affected in any manner.
- 8.09 Contractor warrants that all prices, terms, warranties, and benefits granted to Owner are comparable to or better than the equivalent terms presently being offered by Contractor to any other customer for the performance of the Work.
- 8.10 Contractor covenants that it is not and shall not become in arrears to Owner upon any contract, debt, or other obligations to Owner. Contractor shall include this provision in any Subcontracts.
- 8.11 The Contract Documents shall not be construed to create any rights in any third party.
- 8.12 This Contract may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Contract. Promptly after the execution of this Contract, Owner shall provide a copy to Contractor.

- 8.13 The rights and benefits under the Contract Documents shall inure to Owner and its agents, successors, and assigns.
- 8.14 Unless explicitly stated otherwise, the rights and remedies of Owner set forth in the Contract Documents are not exclusive and are in addition to any of the rights and remedies provided by law or equity.
- 8.15 Contractor waives any defense it may have to the validity of the execution of the Contract Documents.
- 8.16 Owner shall have the right to recover by setoff from any payment owed to Contractor any amounts owed to Owner by Contractor under the Contract Documents or other contracts, and any other debt owed to Owner by Contractor.
- 8.17 No term or condition of the Contract Documents shall be construed to abrogate the governmental immunity granted to Owner by law.
- 8.18 Contractor shall not make an assignment of all or any part of the Contract Documents, nor any Work thereunder, nor any payments due or to become due thereunder, without first obtaining written consent from Owner, which consent may be withheld in Owner's sole and absolute discretion.
- 8.19 Owner shall be permitted to make an assignment of the Contract Documents to any successor in interest without the prior consent of Contractor. As soon as practicable thereafter, Owner shall provide written notice to Contractor of the assignment.
- 8.20 Nothing contained in the Contract Documents shall be construed as to create a relationship of employment, principal and agent, or joint venture between Owner and Contractor. Contractor is an independent contractor with respect to the Work to be performed under the Contract Documents.
- 8.21 Contractor represents and warrants that this Contract has been duly authorized and executed by an individual authorized to bind Contractor to its terms and conditions in accordance with Contractor's requirements and procedures and constitutes a legal, valid, and binding obligation of Contractor.
- 8.22 No rights or remedies are, or shall be, acquired by Contractor by implication or otherwise unless expressly set forth in the Contract Documents.
- 8.23 For purpose of the hold harmless and indemnity provisions contained in the Contract Documents, the term "Owner" shall be deemed to include the Great Lakes Water Authority and all other associated, affiliated, allied, or subsidiary entities or commissions, now existing or subsequently created, and their officers, agents, representatives, and employees. The terms of this Section shall survive the expiration or termination of this Contract.
- 8.24 Capitalized terms in the Contract Documents shall have the meanings defined throughout the Contract and as ascribed in Exhibit G, Glossary.

- 8.25 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 Owner Energy Manager for approval only as to the sufficiency of the “Energy Star” rating and/or other applicable energy efficiency ratings; Owner 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 Owner 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 Owner Energy Manager.
- 8.26 Contractor shall be subject to Owner’s “Vendor Performance Assessment”, and the results thereof may impact its future engagements with Owner.
- 8.27 When the Work requires adherence to Owner’s Business Inclusion and Diversity (B.I.D.) Program as set forth in the Procurement Policy, Contractor shall use its best efforts to ensure compliance with Contractor’s “Diversity Plan”, as finalized and approved by Owner upon execution of this Contract. Owner may monitor and assess Contractor’s compliance with Contractor’s “Diversity Plan” during the term of this Contract.
- 8.28 Owner shall not be bound by “Unauthorized Acts” in any dealings with Contractor. For purposes of this Section, Unauthorized Acts means any acts by Owner’s employees, agents, or representatives that are not permitted by the Contract Documents.

(Signatures appear on next page)

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

Enter Contractor Name, Contractor:

By: _____
Signature

Print Name

Its: _____
Title

Dated: _____

Great Lakes Water Authority, Owner:

By: _____
Choose an item.

Its: Enter title

Dated: _____

APPROVED AS TO FORM BY
GLWA GENERAL COUNSEL: _____
Signature/Date

APPROVED BY GLWA

BOARD OF DIRECTORS: Not Applicable Enter Date

EXHIBIT A

GENERAL PROJECT DETAILS

The Project: Insert Project Title

The Work: The Work generally consists of the following items and as fully described in the Contract Documents.

Enter summary of Work

Key Completion Times:

Milestone Enter Number shall be Enter Number Days from the start date specified in the Notice to Proceed.

Substantial Completion shall be Enter Number Days from the start date specified in the Notice to Proceed.

Final Completion shall be Enter Number Days from the start date specified in the Notice to Proceed.

Liquidated Damages: Contractor recognizes that Owner shall suffer financial loss for which Contractor shall be liable if the Work is not completed within the Contract Time and by the Key Completion Times specified in the Contract Documents, including any authorized extensions. Contractor and Owner also recognize the delays, expense and difficulties involved in proving the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty), Contractor shall pay Owner the sum(s) shown below, per Day, for each Day that expires after the applicable Key Completion Time until the Work is completed in accordance with the Contract Documents.

Milestone Enter Number = \$ Enter Dollar Amount in Numbers

Substantial Completion = \$Enter Dollar Amount in Numbers

Final Completion = \$Enter Dollar Amount in Numbers

Schedule of Manufacturers and Suppliers:

Contractor shall adhere to the schedule below and there shall be no deviations from the schedule except as permitted by a Field Order or a Change Order. The schedule shall be considered a part of the Specifications. In the event of any inconsistency, conflict, or ambiguity between the schedule and the Specifications, the schedule shall control.

Item #	Specified Material or Equipment	Specification Section	Specified Manufacturer or Supplier (Vendor to Select One)
1			<input type="checkbox"/> Item Name <input type="checkbox"/> Item Name <input type="checkbox"/> Approved Equal
2			<input type="checkbox"/> Item Name <input type="checkbox"/> Item Name <input type="checkbox"/> Approved Equal
3			<input type="checkbox"/> Item Name <input type="checkbox"/> Item Name <input type="checkbox"/> Approved Equal
4			<input type="checkbox"/> Item Name <input type="checkbox"/> Item Name <input type="checkbox"/> Approved Equal
5			<input type="checkbox"/> Item Name <input type="checkbox"/> Item Name <input type="checkbox"/> Approved Equal
6			<input type="checkbox"/> Item Name <input type="checkbox"/> Item Name <input type="checkbox"/> Approved Equal
7			<input type="checkbox"/> Item Name <input type="checkbox"/> Item Name <input type="checkbox"/> Approved Equal
8			<input type="checkbox"/> Item Name <input type="checkbox"/> Item Name <input type="checkbox"/> Approved Equal
9			<input type="checkbox"/> Item Name <input type="checkbox"/> Item Name <input type="checkbox"/> Approved Equal
10			<input type="checkbox"/> Item Name <input type="checkbox"/> Item Name <input type="checkbox"/> Approved Equal

Key Personnel and Approved Subcontractors:

[INSERT KEY PERSONNEL LIST]

[INSERT APPROVED SUBCONTRACTORS LIST]

(End Exhibit A)

EXHIBIT B

CONTRACT DOCUMENTS

- I. The Contract Documents. The Contract Documents shall consist of the documents explicitly designated in this Exhibit B.
- a. The Contract, which consists of:
 - i. Book 1: This Construction Contract including:
 - 1. Exhibit A: General Project Details
 - 2. Exhibit B: Contract Documents
 - 3. Exhibit C: General Conditions
 - 4. Exhibit D: Costing Summary and Payment Terms
 - 5. Exhibit E: Notice Addresses and Designation of Representatives
 - 6. Exhibit F: Insurance and Bonds
 - 7. Exhibit G: Glossary
 - 8. Exhibit H: Supplemental General Conditions, if applicable
 - ii. Book 2: Specifications
 - iii. Book 3: Drawings, if applicable
 - b. Notice to Proceed and Contracting Officer's Designated Representatives; and
 - c. Field Orders, Change Orders, and Unilateral Change Orders.
- II. Interpretation. The Contract Documents are intended to permit the Parties to complete the Work and all obligations required by the Contract Documents within the Contract Time for the Contract Price. The Contract Documents are intended to constitute a single agreement, to be complementary and interpreted in harmony to avoid conflict, with its words and phrases interpreted in a manner consistent with construction and design industry standards using common sense interpretations. In the event of any inconsistency, conflict, or ambiguity between or among the Contract Documents, the Contract Documents shall be construed according to the following priority:

Highest Priority: Field Orders, Change Orders, and Unilateral Change Orders
Second Priority: Exhibit H, Supplemental General Conditions, if and as applicable
Third Priority: The Contract, excepting Exhibits C and H
Fourth Priority: Exhibit C, General Conditions
Fifth Priority: Specifications and Drawings

(End Exhibit B)

EXHIBIT C

GENERAL CONDITIONS

Article 1: General Provisions

1.1 Definitions

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

1.2 Execution, Correlation and Intent

1.2.1 Contractor shall furnish all Work required for the construction and administration of the Project as set forth in the Contract Documents or as reasonably inferable from the Drawings and Specifications to produce a completed, fully operational, and functional Project suitable for Owner's intended purposes. Contractor shall be responsible for performing and coordinating the total construction of the Project, including the coordination of all labor, materials, facilities, utilities, equipment, insurance, taxes, and all other items necessary for the proper execution and completion of the Work within the Key Completion Times for the Contract Price. Lists of "Work Included," "Scope" or "Description of Work" are not intended to enumerate each and every item of Work or appurtenances required and shall include all Work inherent in or impliedly required by the Contract Documents. Words which have well-known technical or trade meanings are used herein in accordance with such recognized meanings.

1.2.2 Contractor represents that (i) it is financially solvent; (ii) it is qualified to conduct business in the State of Michigan; (iii) it has all required licenses and permits necessary in connection with performance by Contractor hereunder (all such licenses and permits shall be at Contractor's sole cost and expense); (iv) it has the expertise and authority to perform its obligations under the Contract Documents; (v) it has inspected the Project site and familiarized itself with the local conditions (including, both all physical conditions and all local codes, laws and applicable regulations) under which the Work is to be performed; (vi) it is familiar with all applicable federal, state, and local laws, ordinances and regulations which may, in any way, affect the Project and the Work or those employed therein; and (vii) the Contract Price is the agreed amount for all the Work, including all risks, hazards, and difficulties in connection therewith assumed by Contractor under the Contract Documents. Contractor shall ensure that the foregoing representations are included in any Subcontract.

1.2.3 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 execution of the Contract, except where otherwise indicated.

1.2.4 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.

1.2.5 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.

1.3 Ownership and Use of Documents

1.3.1 Owner shall provide Contractor with one (1) set of reproducible Drawings and Specifications. 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 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 Contractor. Contractor is responsible for verifying existing conditions and facilities, taking detailed field measurements and other responsibilities as necessary for Contractor to complete the Work in accordance with the Contract Documents.

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, Contractor shall refer the matter to the Contracting Officer who may refer the request to Project Design Lead for an initial decision, whose decision thereon shall be conclusive if approved by the Contracting Officer. Project Design Lead's costs and expenses in connection with reviewing and answering requests for information submitted by Contractor or any Subcontractor will be charged to Contractor and offset against amounts otherwise due to 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: Owner General Provisions

2.1 General Provisions

2.1.1 Owner shall always have access to the Work for inspection. Contractor shall provide proper and safe facilities for access and inspection and shall cooperate with Owner regarding the conduct and scheduling of all necessary inspections.

2.1.2 The Contracting Officer, Owner's Project Manager, the Project Construction Management Lead, and the Project Design Lead have the authority to act on behalf of Owner to the extent provided in the Contract Documents.

2.1.3 Owner's interpretations in matters relating to aesthetic effect shall be final if consistent with the intent of and in accordance with the Contract Documents.

2.1.4 Owner will review and approve, or take other appropriate action upon, Contractor's Submittals such as Shop Drawings, Product Data and Samples, as each is defined in Section 4.7. Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.1.5 Owner will prepare, or review and approve if Contractor prepares, supporting documentation for Field Orders, Change Requests, Change Directives, and Change Orders.

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

2.1.7 If the Owner determines that the Work is not performed in accordance with the Contract Documents, the Owner will notify Contractor. Upon receipt of such a notice, Contractor shall, at no additional expense to Owner, correct the non-conforming or defective Work within thirty (30) Days or, if such non-conforming or defective Work cannot be corrected within such period, Contractor shall commence the corrective Work and submit its Drawings, as applicable, within such period and shall report its progress with respect thereto whenever requested by Owner. Corrections shall be accomplished without affecting Key Completion Times or the Contract Price.

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

2.1.9 Based on Owner's observations at the Project site and upon evaluation of Contractor's Application 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 Contractor that Contractor believes the Work is Substantially Complete, Owner will inspect the Work and prepare a Punch List of items, materials, or systems that require completion, correction, replacement, or additional work. Upon written notice from Contractor that the Punch List is complete, Owner 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 Contractor in accordance with Section 9.7.

2.1.11 Owner 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 Contractor's failure to carry out the Work in accordance with the Contract Documents. Owner will not be responsible for or

have control over the acts or omissions of Contractor, its agents, employees, Subcontractors, Sub-Subcontractors, Suppliers, laborers, 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's designee, the CPO may designate and substitute another representative as the Contracting Officer's designee. Such designation must be in writing and shall be effective when delivered to Contractor.

2.1.13 Owner shall not be estopped, bound, or precluded by any determination, decision, approval, order, letter, payment or certificate made or given by the Contracting Officer or any other officer, employee, representative or agent of Owner, 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 Contractor or any other person or entity performing the Work, or from showing at any time that any determination, 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 Contractor, or such damages as Owner may sustain by reason of Contractor's failure to strictly perform each and every term, provision or condition of the Contract Documents. The terms of this Section shall survive the expiration or termination of this Contract.

Article 3: Owner Obligations and Rights

3.1 Information and Assistance Required of Owner

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

3.2 Owner's Right to Stop the Work

If 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, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity. If Owner elects to order Contractor to stop the Work, Contractor shall be responsible for whatever measures are necessary to maintain the Key Completion Times once the cause for such order has been eliminated and for all costs and expenses associated therewith.

3.3 Owner's Right to Carry Out the Work

If Contractor:

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

3.3.2 Fails to make payments to its Subcontractors, Suppliers, or laborers for material, equipment, 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, Suppliers, and/or laborers; or

3.3.6 Fails to maintain any insurance coverage required under the Contract; 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 Contract Documents;

then Owner may, after thirty (30) Days' written notice to Contractor and without prejudice to any other remedy Owner may have, make good such deficiencies, or otherwise rectify such situations to the satisfaction of Owner unless Contractor shall have commenced corrective action within said thirty (30) Day period. In such case, the cost of correcting such deficiencies or otherwise rectifying such situations to the satisfaction of Owner, including compensation for Owner's separate contractors' or consultants' additional services made necessary by such default, neglect, or failure, shall be offset against any amounts otherwise due to Contractor. If the payments then or thereafter due to Contractor are not sufficient to cover such amount, then Contractor shall pay the difference to Owner.

3.4 Owner's Right to Withhold Payment

Owner 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 Owner from loss because:

3.4.1 Contractor fails to properly respond to notices issued by Owner pursuant to Section 2.1.7 or 3.2; or

3.4.2 Contractor is in material default under 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 Owner with respect to defective Work; or

3.4.4 Contractor has failed to make payments in accordance with the Subcontract documents to Subcontractors, Suppliers, or laborers for material, equipment, 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 undischarged 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 Owner has reasonable indication that the Work will not be completed by the Key Completion Times; or

3.4.8 If Owner 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 to Contractor unless and until Contractor, at no cost to Owner, 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 Owner to be sufficient to so complete the Work.

Article 4: Contractor Obligations

4.1 Review of Contract Documents

4.1.1 Contractor shall review and familiarize itself with the Contract Documents. Contractor acknowledges and affirms that the Contract Documents are full and complete, and that the Drawings and the Specifications are sufficient to enable Contractor to construct the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations, and otherwise to fulfill all of Contractor's obligations under the Contract Documents. Contractor further acknowledges that (i) it has visited the Project site; (ii) it has examined all conditions affecting the Work; (iii) it is fully familiar with all the conditions thereon and affecting the same, and (iv) having carefully examined all Drawings, Specifications and documents, there are no discrepancies or omissions in the Contract Documents. Accordingly, Owner makes no representation, expressed or implied, that the Drawings and Specifications are constructible or adequate; 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 Contractor assume responsibility for design, for checking engineering

calculations, for determining performance criteria and standards or for determining that all of Owner'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 Section 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, Contractor shall carefully study and compare the Contract, General Conditions, Drawings, Specifications, and other Contract Documents and shall immediately report to the Contracting Officer any error, inconsistency or omission Contractor may discover. Any necessary change shall be ordered as provided in Article 12, subject to the other provisions of the Contract Documents. If 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, Contractor could have discovered such, Contractor shall bear all costs arising therefrom.

4.2 Supervision and Construction Procedures

4.2.1 Contractor shall cause the Project to be constructed and shall provide competent supervision, coordination, and related services accordingly. Contractor shall be solely responsible for all construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work. 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. 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 Contractor shall be responsible to, and indemnify and hold harmless Owner for the acts, errors, and omissions of Contractor's employees. Contractor shall be as fully responsible to Owner for the acts, errors, and omissions of its Subcontractors, Suppliers, laborers, agents, and persons directly or indirectly employed by it, and any other persons performing any of the Work, as it is for the acts, errors, and omissions of persons directly employed by Contractor. The terms of this Section 4.2.2 shall survive the expiration or termination of this Contract.

4.2.3 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 Owner in its administration of the Contract Documents, or by inspections, tests or approvals required or performed by persons other than Contractor. No inspection performed or failed to be performed by Owner hereunder shall be a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

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

4.2.5 Contractor shall always provide a Contractor Project Manager approved by the Contracting Officer who shall, on behalf of Contractor, (i) have full responsibility for the prosecution of the Work; (ii) act as agent and be a single point of contact in all matters; (iii) always

be present (or their approved designee will always be present) at the Project site when the Work is performed; and (iv) be available to execute instructions and directions from Owner.

4.2.6 Contractor shall maintain daily field reports recording the labor force and equipment employed by Contractor, Subcontractors, and Sub-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 Contractor promptly upon request by Owner. Owner's review of any daily field report shall not be construed as an agreement with any information contained in such report.

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

4.2.8 The right of possession of the premises and the improvements made thereon by Contractor shall always remain in Owner. Contractor's right to entry and use of the premises arises solely from the permission granted by Owner 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 Owner shall always be provided with safe, secure, and convenient access.

4.2.9 If the Work involves modifications to and/or expansion of an existing occupied and/or operating facility, Owner will continue its operation of the facility in which the Work is to be performed and Contractor shall conduct the Work to cause a minimum of interference with Owner's operations. The welfare of Owner's employees, guests and invitees is always to be considered. If the Work involves modifications to and/or expansion of an existing occupied and/or operating facility, all shutdowns/outages of building systems, utilities and equipment shall be approved in advance by Owner. Contractor shall provide Owner 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 Contractor and Owner. Contractor will, at the request of Owner, schedule any Work which otherwise may have an adverse impact upon the health, safety or welfare of Owner'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 because of such scheduling.

4.2.10 Contractor shall retain a competent registered professional engineer or registered land surveyor, acceptable to Owner, 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. Contractor shall certify as to the actual location of the constructed facilities in relation to property lines, building lines, easements, and other restrictive boundaries. 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 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 incorporated or to be incorporated in the Work. 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. Contractor must obtain advance written approval from Owner for any tie-ins to, and disconnections from, existing Owner systems.

4.3.2 Owner may, in writing, require Contractor to remove from the Project any employee or Subcontractor or employee of a Subcontractor that Owner deems incompetent, careless, or uncooperative and may require Contractor to replace any such person with suitable personnel. Contractor shall always 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 Work required under the Contract Documents shall be performed in a competent and professional manner. Contractor shall develop and administer an effective labor relations program for the Project and Contractor shall employ, and require its Subcontractors and Sub-Subcontractors to employ, only compatible labor. In its labor analysis, Contractor shall take into consideration scheduled work by Owner with the objective of eliminating strikes, picketing, hand billing and other similar activities which would disrupt the Project.

4.3.3 All materials furnished and used in connection with the Work shall be new and approved by Owner, except as otherwise expressly provided for in the Contract Documents. Contractor shall be responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. Owner may require 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 Owner, 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 Contractor's expense.

4.3.4 Deviations from the Drawings and Specifications shall not be permitted except for substitutions approved by Owner in accordance with this Section. Substitutions recommended by Contractor for the purpose of reducing the Contract Price or Contract Time shall be subject to Section 4.3.4.1. Substitutions recommended by 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 Section 4.3.4.2. Owner shall determine whether the procedures of Section 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 Contractor, except that where "or approved equal" is used, Contractor shall have the right, after the contract has been executed, to request Owner's approval of a substitute material generally considered to be equal to that named in the Drawings and/or Specifications. Owner, however, shall have no obligation to accept any substitute.

4.3.4.1 On-going value engineering recommendations of Contractor shall be reviewed by Owner in their sole discretion.

4.3.4.2 Requests from Contractor or a Subcontractor for approval of any substitution for the benefit of Contractor or such Subcontractor, as determined by Owner, must be submitted in writing to Owner, together with all necessary supporting data. Unless Owner 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 (i) 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 (ii) a statement that no such matters described in (i) will result; and (iii) the analysis of whether the proposed substitute is inferior, equal, or superior to the product specified.

(i) If a substitution recommended by 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, Contractor shall be solely responsible for such costs.

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

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

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

(c) 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 Contractor or any Subcontractor, 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 under the Contract Documents; and

(d) Will comply with all applicable laws, regulations, ordinances and requirements of, and conditions of any approvals, certifications or permits given by, 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 method for those originally specified shall be borne by Contractor, notwithstanding approval or acceptance of such substitution by Owner. Any such approval by Owner hereunder shall be by Field Order.

4.4 Warranty

4.4.1 The warranties associated with the Work for each Milestone, if any, and the Work associated with Substantial Completion shall remain in effect for one (1) year upon achievement of each such Key Completion Time. All materials furnished or installed shall be subject to a guaranty of the longer of: (i) one (1) year from the date of Substantial Completion; or (ii) such longer period as may be provided in the Drawings and Specifications or other Contract Documents. All rights acquired by Owner through (i) guarantees by Contractor; (ii) any equipment warranties; (iii) warranties from Subcontractors, Sub-Subcontractors, or Suppliers, secured by contract, including those more than one (1) year; and (iv) any additional bond or guaranty which may be required under the Drawings and Specifications, shall inure to the benefit of Owner, its successors, and assigns. Contractor shall require that each Subcontractor provide a similar warranty and guaranty for the benefit of Contractor and Owner. Contractor shall acquire, catalog, and deliver to Owner all bonds and guarantees under Subcontracts and from Suppliers. Contractor shall render assistance and cooperate with Owner in enforcing those warranties from Subcontractors, Sub-Subcontractors, and Suppliers which extend beyond Contractor's warranties.

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

4.4.3 The terms of this Section 4.4 shall survive the expiration or termination of this Contract.

4.5 Taxes

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 Contract is executed, whether yet effective.

4.6 Permits, Fees and Notices

4.6.1 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 Contract is executed. If any of the Work is required to be inspected or approved by any public authority

other than Owner, Contractor shall, at its sole cost and expense, cause such inspection or approval to be sought and obtained.

4.6.2 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 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. 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 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 Owner notice thereof prior to performance thereof, Contractor shall bear all costs arising therefrom.

4.7 Shop Drawings, Product Data, and Samples

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

4.7.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by 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.

4.7.3 Samples are physical examples furnished by 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.

4.7.4 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 Owner or any separate contractor, all Shop Drawings, Product Data and Samples required by the Contract Documents or subsequently required by Owner.

4.7.4.1 Shop Drawings, Product Data and Samples shall be properly identified as specified, or as Owner may require.

4.7.4.2 At the time of submission, Contractor shall clearly inform Owner in writing of any deviation in the Shop Drawings, Product Data or Samples from the requirements of the Contract Documents. Shop Drawings and other Submittals failing to disclose deviations will be returned without review from Owner.

4.7.4.3 Shop Drawings and other Submittals which are not approved by the Contractor will be returned without review from Owner.

4.7.4.4 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 Contractor to verify that the Submittal has been properly prepared. Shop Drawings and other Submittals containing disclaimers or other exculpatory language will be returned without review from Owner.

4.7.5 By approving and submitting Shop Drawings, Product Data and Samples, 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 Drawings, Product Data and Samples with the requirements of the Work and of the Contract Documents; and (iii) clarified any discovered design ambiguity with Owner in writing.

4.7.6 Owner shall review and approve or take other appropriate action upon Shop Drawings, Product Data and Samples with reasonable promptness so as to cause no delay.

4.7.6.1 Contractor shall provide all Submittals as required by the CPM Schedule. Contractor shall allow for a minimum period of thirty (30) Days for Owner's review and approval of any Submittal not covered by the CPM Schedule.

4.7.6.2 Owner's approval of a separate item shall not indicate approval of an assembly in which the item functions.

4.7.6.3 Owner'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 Section 4.7.4.

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

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

4.7.7.1 Contractor shall direct specific attention in writing on resubmitted Shop Drawings, Product Data or Samples to revisions other than the corrections requested by

Owner on previous submissions and Owner's review and approval of resubmitted submissions will not constitute approval of any changes other than those specifically noted.

4.7.7.2 The fees and expenses of Owner in reviewing and approving resubmitted submissions, in excess of two (2) submissions, shall be charged to Contractor and off-set against amounts otherwise due and payable to 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.

4.7.7.3 Contractor shall submit to Owner final Shop Drawings, as used for construction, marked as such for Owner's records.

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

4.7.9 Except as specifically authorized by Owner 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 Owner. All such portions of the Work shall be in accordance with such reviewed and approved Shop Drawings, Product Data and Samples.

4.8 Use of Site

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

4.9 Cutting and Patching of Work

4.9.1 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 Owner or any separate contractor. Owner shall not be responsible for any costs arising out of cutting, fitting and patching the work of the various Subcontractors and no Change Requests nor claims on account thereof will be considered.

4.9.2 Contractor shall not, and shall not permit any Subcontractor to, damage or endanger any portion of the Work or the work of Owner or any separate contractor by cutting, patching, or

otherwise altering any work, or by excavation. Contractor shall not cut or otherwise alter the work of Owner or any separate contractor except with the written consent of Owner and of such separate contractor. Contractor shall not unreasonably withhold from Owner or any separate contractor its consent to cutting or otherwise altering the Work.

4.10 Cleaning Up

4.10.1 Contractor shall always keep the Project site free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work, Contractor 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.

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

4.11 Royalties and Patents

Contractor shall pay all royalties and license fees. Contractor shall indemnify and hold harmless the Indemnitees from all suits or claims for infringement of any patent rights or copyrights and shall indemnify and hold harmless the Indemnitees from all loss, cost or expense (including reasonable attorney's fees) on account thereof. Notwithstanding the foregoing, Contractor shall not be responsible for infringement of patent rights where a particular design process or product of a particular manufacturer is specified by Owner and Contractor has no reason to believe that such design process or product specified is an infringement of a patent or copyright. The terms of this Section 4.11 shall survive the expiration or termination of this Contract.

4.12 Indemnification

4.12.1 To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Indemnitees from and against claims, damages, losses, liability, cost and expenses (including, but not limited to, reasonable attorneys' fees and court costs) 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, but only to the extent caused by a negligent act or omission of Contractor or a party under its responsibility and control. 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 Section.

4.12.2 To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Indemnitees from and against all claims, damages, losses, liability, cost and expenses (including, but not limited to, reasonable attorneys' fees and court costs) resulting from claims against the Indemnitees attributable to bodily injury in connection with the Project by any employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, but only to the extent caused by a negligent

act or omission of Contractor or a party under its responsibility and control. The indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.12.3 The terms of this Section 4.12 shall survive the expiration or termination of this Contract.

Article 5: Subcontractors

5.1 No Contractual Relationship

Nothing contained in the Contract Documents shall create any contractual relation between Owner 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 for the Work, Contractor shall provide Owner with a list of proposed Subcontractors for Owner's prior review and approval (the "Subcontractor List"). Owner may object, for any reason, to any proposed Subcontractor within a reasonable time after its receipt of the Subcontractor List. Contractor shall not award any portion of the Work to a Subcontractor that was not nominated before execution of the Contract, without first obtaining Owner's written consent. If Owner objects to any Subcontractor without cause, and such objection causes an increase in the Contract Price, Owner 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 Owner, or Contractor's cost to self-perform that part of the Work involved, whichever is applicable. Contractor shall make no substitution for any Subcontractor, person or entity previously approved by Owner without first obtaining Owner's written consent.

5.2.2 Contractor shall promptly deliver to Owner 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 Contractor. Contractor shall consult with Owner prior to giving consent to any proposed substitution.

5.3 Subcontractor Relations

5.3.1 By an appropriate written agreement, Contractor shall require each Subcontractor, to the extent of the portion of the Work to be performed by the Subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities which Contractor, by the Contract Documents, assumes toward Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar

agreements with its Sub-Subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound and shall identify to the Subcontractor any terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of the Contract Documents available to its Sub-Subcontractors.

5.3.2 Contractor shall cause all its Subcontractors, Suppliers, and laborers to agree to indemnify and hold harmless the Indemnitees from all claims that may arise from such Subcontractor's operations to the same extent as Contractor has indemnified the Indemnitees pursuant to Section 4.12. Such provisions shall be in a form reasonably satisfactory to Owner. The terms of this Section 5.3.2 shall survive the expiration or termination of this Contract.

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

5.3.3.1 The provisions required by Sections 1.2.2, 4.2.2, 5.2.3, 7.2, 8.3.7, 8.4.6, 8.5.2, 9.5.2, 9.6 and 15.1.2;

5.3.3.2 A provision that preserves and protects the rights of Owner under the Contract Documents with respect to the Work to be performed under the Subcontract;

5.3.3.3 A provision that the Work shall be performed in accordance with the requirements of the Contract Documents;

5.3.3.4 A provision that requires the submission to Contractor of sworn statements and waivers of claim under each Subcontract and Sub-subcontract, in reasonable time to enable Contractor to comply with the Contract Documents, all such documents to be in the form approved by Owner and in compliance with all requirements of applicable law;

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

5.3.3.6 A waiver of all rights the contracting Parties may have against one another and against Owner for damages caused by fire or other perils covered by the property insurance required under the Contract; and

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

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

5.3.5 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. Contractor and all Subcontractors shall always afford each trade, any separate contractor, or Owner, every reasonable opportunity for the installation of work and the storage of materials.

5.4 Communications with Subcontractors

5.4.1 Contractor shall be responsible for the communication of information between the Subcontractors or Suppliers and Owner.

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

Article 6: Work by Owner or by Third Parties

6.1 Owner's Right to Perform the Work and to Award Separate Contracts

6.1.1 This is not an exclusive service contract. Owner reserves the right to (i) perform work related to the Project with its 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 Contractor shall ensure the coordination of the Work with the work of Owner's forces and any third parties, who shall cooperate therewith as provided in Section 6.2.

6.2 Mutual Responsibility

6.2.1 Contractor shall afford Owner and Owner'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 Owner or any separate contractor, Contractor shall, prior to proceeding with such portion of the Work, inspect and promptly report to Owner any apparent discrepancies or defects in such other work that render it unsuitable for such proper execution and results. Failure of Contractor to

inspect and report shall constitute an acceptance of Owner's or Owner's separate contractors' work as fit and proper to receive Contractor's Work, except as to defects which may develop or become apparent in Owner's or separate contractor's work after the execution of the Work.

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

6.2.4 Should Contractor cause damage to the work or property of any separate contractor, 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 Owner on account of any damage alleged to have been caused by Contractor, Owner shall notify Contractor who shall indemnify and hold harmless the Indemnitees from any damages, penalties, liabilities, costs, judgments, or awards against Owner therefrom, including all reasonable attorneys' fees and court or arbitration costs. The terms of this Section 6.2.4 shall survive the expiration or termination of this Contract.

6.3 Owner's Right to Clean Up

If a dispute arises between Contractor and Owner as to Contractor's responsibility for cleaning up as required by Section 4.10 or the Contract Documents, Owner may clean up and charge the cost thereof to Contractor if Contractor does not commence reasonable action upon 48 hours' written notice.

Article 7: Miscellaneous Provisions

7.1 Tests

7.1.1 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. Contractor shall give Owner timely notice of its readiness and the date arranged so they may observe such inspection, testing or approval.

7.1.2 If Owner determines that any Work requires special inspection, testing, or approval which Section 7.1.1 does not include, Owner will instruct Contractor to order such special inspection, testing or approval, and Contractor shall give notice as provided in Section 7.1.1. 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, Contractor shall bear all costs thereof; otherwise, Owner shall bear such costs, and an appropriate Field Order or Change Order shall be issued.

7.1.3 Certificates of inspection, testing or approval required to be obtained by Contractor or Subcontractors in connection with construction permits shall be secured by Contractor, cataloged, indexed, bound (in removable form), or provided in such form, electronic or otherwise, as may be requested by Owner, and promptly delivered to Owner.

7.2 Non-Discrimination

Contractor shall comply with and shall require its Subcontractors to comply with all applicable federal, state, and local laws regarding non-discrimination, fair employment practices, and equal opportunity laws. Contractor shall furnish and file relevant compliance reports within the times and in the form prescribed by Owner. Compliance reports may elicit information as to the practices, policies, programs, and employment statistics of Contractor and Subcontractors. Contractor will permit access to Contractor's records and accounts by Owner and/or its agent for purposes of investigation to ascertain compliance with the Contract Documents. The United States, the State of Michigan, and Owner shall have the right to seek judicial enforcement of the foregoing covenants against discrimination, against Contractor or its Subcontractors connected directly or indirectly with the performance of the Work.

Article 8: Time

8.1 Determining Substantial and Final Completion

8.1.1 The date of Substantial Completion of the Work, or designated portion thereof, is the date upon which the Contracting Officer has certified that construction is sufficiently complete, in accordance with the Contract Documents, so Owner 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 operations and maintenance (O&M) manuals (i.e., 90% O & M manuals in the case of Substantial Completion of the entire Work); (iii) the successful testing and demonstration of all systems by 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 authorities having jurisdiction over the Work.

8.1.2 Final Completion shall be the date on which the Work is fully, completely, and finally completed in accordance with the Contract Documents and:

8.1.2.1 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;

8.1.2.2 Contractor has delivered to the Contracting Officer:

8.1.2.2.1 All 100% complete O&M manuals, if any;

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

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

8.1.2.2.4 An assignment and/or transfer of all guarantees and warranties from Subcontractors, Sub-Subcontractors, Suppliers, laborers, and manufacturers;

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

8.1.2.2.6 The Subcontractor close-out logs; and

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

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

8.2 Progress and Completion

8.2.1 All time limits stated in the Contract Documents are of the essence and all Work shall be completed by the Key Completion Times. The construction of the Project shall be undertaken in accordance with the CPM Schedule. The Parties shall use the CPM Schedule for planning and monitoring the progress of the Work.

8.2.2 Contractor shall carry the Work forward expeditiously with adequate forces.

8.2.3 Contractor shall be responsible to maintain daily Records that will enable Contractor to accurately update the CPM Schedule as required in Section 8.2.4.

8.2.4 At the end of the first month following issuance of the baseline CPM Schedule and every month thereafter (or at such lesser intervals if deemed necessary by Owner), 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 baseline CPM Schedule to facilitate identification of variances therefrom (activity descriptions shall not be redefined on such updated CPM Schedule).

8.2.5 Adjustments to the Key Completion Times or the Contract Time shall not be granted except as expressly provided for in this Article 8.

8.3 Suspension by Owner

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

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 CPO, and such act (i) causes delays in the critical path activity set forth in the CPM Schedule; and (ii) affects any Key Completion Time, then any

such affected Key Completion Time shall be adjusted as determined by Owner, but the total extension of any Key Completion Time shall not exceed the length of the delay.

8.3.3 Any Change Request related to an extension of time pursuant to Section 8.3.2 shall be made in writing to the CPO no more than thirty (30) Days after the commencement of the suspension, delay, or interruption, otherwise it shall be waived. In the case of a continuing cause of delay, only one (1) Change Request is necessary. Any delay of less than twenty-four (24) hours' duration shall not be justification for adjusting any Key Completion Time or the Contract Price.

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

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

8.3.6 Notwithstanding anything contained herein to the contrary, no extensions of the Contract Time, any Key Completion Times or increase to the Contract Price shall be permitted except as approved in advance and in accordance with the Procurement Policy and this Contract.

8.3.7 Each Subcontractor shall be bound by the provisions of this Section 8.3.

8.4 Delays and Extensions of Time

8.4.1 If Contractor shall be delayed by (i) 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 Contractor; (ii) any Act of God, war, act of terrorism, riot, epidemic or pandemic, explosion, sabotage, embargo, fire, unavoidable casualties, unusual delay in transportation, national emergency, unusually severe and adverse weather conditions, the binding order of any court or governmental authority; or (iii) by any other causes which Contractor could not reasonably control or circumvent, and if such delay affects the critical path activity as set forth in the CPM Schedule, then the CPM Schedule shall be adjusted as necessary, and as determined by Owner, 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 An adjustment to any Key Completion Time or an extension of the Contract Time shall be Contractor's sole remedy for any delay. Owner's exercise of any of its rights under the Contract Documents, including requirement of correction or re-execution of the Work, regardless of the extent, number, or frequency of Owner's exercise of such rights or remedies, shall not under

any circumstances be construed to as providing grounds for Contractor to seek damages for delay of the Project. In no event shall 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. Contractor waives and shall not assert any claims against Owner for any damages, costs, losses or expenses of any nature whatsoever which 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 Owner, its representatives or agents, and Contractor's sole remedy in such event shall be an adjustment to any Key Completion Time or extension of the Contract Time.

8.4.3 All Change Requests arising under Section 8.4.1 shall be made in no more than thirty (30) Days after the commencement of the delay, except those matters regarding weather delays which shall be made monthly 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 (1) Change Request is necessary. Any delay of less than twenty-four (24) hours duration shall not be justification for adjusting any Key Completion Time or the Contract Price.

8.4.4 No adjustments shall be made under this Section 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 Contractor; or (ii) for which an equitable adjustment is provided or excluded under any other provision of the Contract Documents. Owner's exercise of any of its rights under the Contract Documents, or Owner's requirement of correction or re-execution of any defective Work shall not, under any circumstances, be construed as interference with Contractor's performance of the Work.

8.4.5 Contractor shall mitigate any delay, whether caused by Owner, Contractor, Subcontractor, Sub-Subcontractor, Suppliers, or laborers.

8.4.6 Each Subcontractor shall be bound by the provisions of this Section 8.4.

8.5 Acceleration of Performance

8.5.1 If Owner desires the Work to be performed with greater speed than is contracted for, Contractor shall, without affecting or abridging the rights of Owner under the Contract Documents, upon receipt of a written order from Owner specifically setting forth a request pursuant to this Section 8.5, employ overtime labor. Owner shall, in accordance with the Contract Documents, compensate Contractor for the premium cost of such overtime labor, as shown on the time slips checked and approved each day by Owner, plus any additional incremental costs Contractor incurs to comply with and which result directly from such acceleration, and as such costs are otherwise permitted by the Contract Documents. This provision shall not apply to acceleration of performance caused by Contractor's default, the cost of which shall be borne solely by Contractor.

8.5.2 Each Subcontractor shall be bound by the provisions of this Section 8.5.

8.6 Prerequisites for Start of Construction

8.6.1 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 their sole discretion, and Contractor shall commence such construction promptly following the occurrence of such events:

8.6.1.1 The Contracting Officer has issued a Notice to Proceed for the relevant phase of the Work; and

8.6.1.2 Owner has reviewed and approved the baseline CPM Schedule; and

8.6.1.3 Owner has convened and conducted a kick-off meeting.

8.7 Use of Float

Total Float shall be available to and shared between Contractor and Owner. If Owner determines that 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, Contractor shall not be entitled to any changes in Contract Price, any Key Completion Times, or Contract Time.

Article 9: Payments and Completion

9.1 Schedule of Values

Upon request of Owner, Contractor shall prepare, and submit to Owner for approval, a Schedule of Values showing the allocation of the Contract Price among the various components of the Work and in sufficient detail as Owner may require. Contractor shall revise the Schedule of Values as required by Owner. The Schedule of Values, when approved by Owner, shall be used as a basis for Applications for Payment and Progress Payments. Contractor represents and warrants to Owner that the final Schedule of Values is an accurate and correct allocation of the Contract Price.

9.2 Applications for Payment

9.2.1 The issuance of an Application for Payment constitutes a representation by Contractor to Owner that (i) the Work has progressed to the point indicated; (ii) the quality of the Work is in accordance with the Contract Documents; (iii) all as-built Drawings are accurate and up to date; and (iv) Contractor is entitled to payment in the amount certified.

9.2.2 With prior written approval of the Contracting Officer, payments will be made on account of materials and equipment not incorporated in the Work but delivered and suitably stored at the Project site or at some other location. Payment for materials stored off-site shall be conditioned upon submission by Contractor of (i) the notarized bill of sale to Owner executed by

an officer of the selling corporation; (ii) a certificate of insurance covering the material for fire, theft and vandalism naming Owner as the insured party; (iii) an affidavit from an officer of the selling corporation stating that they are an officer and giving the complete address of the specific location where the material is stored; (iv) a certification authorizing inspection by Owner or its representative at the storage location; and (v) such other evidence as Owner 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 Contract, Contractor shall have full responsibility for all stored materials and shall bear the risk of all loss, damage of theft thereof or thereto.

9.2.3 Contractor 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 Owner upon the receipt of payment by Contractor, free and clear of all liens, claims, security interests, encumbrances or rights in others (collectively, "Lien(s)"); and that no portion of the Work, materials or equipment covered by an Application for Payment has been acquired by Contractor, or by any other person or entity performing Work 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 Contractor or such other person or entity.

9.2.4 At a minimum, each Application for Payment shall be accompanied by (i) Contractor's sworn statements and waivers of claim, which 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) properly completed sworn statements and waivers of claim from each Subcontractor, Sub-Subcontractor, Supplier, and laborer, 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 of claim 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 Contract Documents, and that all amounts which have previously been paid for Work have been properly distributed to the various Subcontractors, Sub-Subcontractors, Suppliers, and laborers. In the event of any discrepancy, Contractor shall furnish a written explanation to the Contracting Officer.

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

9.3 Progress Payments

9.3.1 Owner 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 Contract Documents.

9.3.2 Owner may, on request and at their discretion, furnish to any Subcontractor, if practicable, information regarding the percentages of completion or the amounts applied for by Contractor and the action taken thereon by Owner on account of Work done by such Subcontractor.

9.3.3 Owner shall have no obligation to pay or to see to the payment of any monies owed to any Subcontractor.

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

9.4 Payments Withheld

9.4.1 In addition to and not in limitation of the rights granted to Owner under Section 3.4, Owner 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 Owner from loss because:

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

9.4.1.2 Contractor is in material default under the Contract Documents; or

9.4.1.3 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 Owner; 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 Owner shall determine reasonably necessary to protect Owner with respect to defective Work; or

9.4.1.4 Contractor has failed to make payments when due to Subcontractors, Suppliers, or laborers for material, equipment, or labor used in the Work in accordance with the Subcontract documents; or

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

9.4.1.6 Owner has reasonable indication that the Work will not be completed within the Contract Time or by any Key Completion Time; or

9.4.1.7 If Owner determines that the portion of the Contract Price then remaining unpaid will not be sufficient to complete the Work, no additional payments will be due to Contractor unless and until Contractor, at no cost to Owner, 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 Owner to be sufficient to complete the Work.

9.4.2 Until the Work is fifty percent (50%) completed as determined by the Contracting Officer, Owner 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 Contractor is not making satisfactory progress or is not in compliance with the terms of the Contract Documents.

9.4.3 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 Owner. The interest shall belong to Contractor. The retainage plus interest shall be paid to Contractor with the Final Payment and upon fulfillment of the conditions set forth in Section 9.7.2.

9.5 Failure of Payment

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

9.5.2 Each Subcontractor shall be bound by the provisions of this Section 9.5.

9.6 Substantial Completion

When Contractor considers that the Work is substantially complete as defined in Section 8.1.1, Contractor shall prepare for submission to Owner the Punch List. The failure to include any items on the Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents. When Owner, based on an inspection, determines that the Work or designated portion thereof is substantially complete, they will then prepare a Certificate of Substantial Completion which shall (i) establish the date of Substantial Completion; (ii) state the responsibilities of Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance; and (iii) fix the time within which Contractor shall complete the Punch List.

9.7 Final Completion, Final Payment, and Release of Retention

9.7.1 Upon (i) receipt of written notice that the Work is ready for final inspection and acceptance and (ii) receipt of a final Application for Payment, Owner will promptly make the final inspection. When the Work is determined to be fully performed and acceptable under the Contract Documents, and all items on the Punch List completed to Owner's satisfaction, then the Contracting Officer will promptly issue a final Certificate for Payment, which shall set forth their final determination of the actual quantities and measurements of the completed Work, and state

that to the best of their knowledge, information and belief, and on the basis of their 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 to Contractor, and noted in said final Certificate for Payment, is due and payable.

9.7.2 Neither the Final Payment nor the retained percentage shall become due until Contractor submits to the Contracting Officer (i) an affidavit that all payrolls, bills for materials and equipment and other indebtedness connected with the Work for which Owner might in any way be responsible, have been paid or otherwise satisfied; (ii) consent of surety, if any, to final payment and release of retention; and (iii) final, unconditional general releases and final sworn statements and waivers of claim from Contractor and all Subcontractors, Sub-Subcontractors, Suppliers, and laborers in the form required by the Contracting Officer. Notwithstanding the foregoing, 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. Acceptance of the Final Payment by Contractor shall constitute accord and satisfaction of all claims against Owner of whatsoever kind or nature under the Contract Documents.

Article 10: Protection of Persons and Property

10.1 Safety Precautions and Programs

Contractor shall develop and revise as necessary a comprehensive Project safety program and require each separate Subcontractor to adhere to such program. Contractor shall appoint a safety officer who shall be responsible for administering the comprehensive safety program. This person shall be the Contractor Project Manager unless otherwise designated by Contractor in writing to Owner. The person designated shall not be changed unless notice is given to Owner. 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 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 executing 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 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 during construction; and

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

10.2.2 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 Owner. 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 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, 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 Sections 10.2.1.2, 10.2.1.3, and 10.2.1.4 caused by 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 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 Contract.

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

10.2.7 Contractor shall always protect excavations, trenches, buildings, and materials, from rainwater, 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. Contractor shall provide and operate all pumps, piping, and other equipment necessary to this end.

10.2.8 Contractor shall remove snow and ice which might result in damage or delay to the Work.

10.2.9 Contractor shall take all precautions necessary to prevent loss or damage caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of Owner's property, whether a part of the Work or located within the Project area to which Contractor has access. Contractor shall have full responsibility for the security of Owner's property and shall reimburse Owner for any loss, damage, or injury, except as may be directly caused by agents or employees of Owner.

10.2.10 If Contractor suffers injury or damage to person or property because of an act or omission of Owner, its employees or agents, or others for whose acts Owner is legally liable, notice

of such injury or damage shall be given to the CPO within a reasonable time after first observance and not exceeding twenty-four (24) hours in the case of personal injury or damage, or seventy-two (72) hours in all other cases. The notice shall provide sufficient detail to enable Owner to investigate the matter and resolution shall be in accordance with Article 18.

10.2.11 If Contractor suffers injury or damage to person or property by any third party, for recordkeeping purposes only, Contractor shall give notice to the CPO of the details of such injury or damage within a reasonable time and not exceeding seven (7) Days. In such event, Contractor shall not be entitled to any claim against Owner.

10.3 Emergencies

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

10.4 Environmental

10.4.1 Contractor shall not 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 Contractor. Any material change and/or addition to the Hazardous Materials or uses so identified must be approved in writing in advance by the Owner, which approval shall not be unreasonably withheld.

10.4.2 Contractor shall (i) always be in material compliance with all applicable state, federal, and local environmental and safety laws and regulations; (ii) at its sole cost and expense, obtain and maintain all permits, licenses, and authorizations required for Contractor's business, equipment, and operations on and in connection with the Work; (iii) comply with all material terms and conditions of such permits, licenses, and authorizations; and (iv) 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 Contractor shall certify with each Application for Payment that (i) Contractor, Subcontractors, and Sub-Subcontractors are in material compliance with the requirements of all Applicable Laws; (ii) to Contractor's knowledge, no disposal of Hazardous Materials has occurred on, in, under, or about the Work or the Project site; (iii) to Contractor's knowledge, no release of Hazardous Materials (except as otherwise reported to Owner pursuant to Section 10.4.6) has occurred on, in, under, or about the Work or the Project site; (iv) to Contractor's 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 in the Work or on the Project site except as provided under Section 10.4.1.

10.4.4 Contractor shall, to the extent of Contractor's negligence, indemnify and hold harmless the Indemnitees from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses, costs, and expenses (including reasonable attorneys' 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) 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 Contractor's, Subcontractor's, or Sub-Subcontractor's activities on or in connection with the Work. Contractor's indemnification obligation includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by Owner 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, reasonable attorneys' fees, court costs, consultant and laboratory fees, and experts' fees as a result of Contractor's, Subcontractor's, or Sub-Subcontractor's activities on or in connection with the Work or the Project site. Without limiting the foregoing, if any Hazardous Materials to the extent attributable to Contractor, Subcontractor, Sub-Subcontractor, 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 that (i) except in emergency situations (in which case notice shall be given to Owner as soon as practicable), Owner'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 Owner, then 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 Owner in their sole discretion. Notwithstanding anything to the contrary set forth in the Contract Documents, Contractor shall not be liable for any damages or costs suffered or incurred by Owner 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 Work) even if Contractor's activities contributed or caused the Hazardous Materials to be disturbed or discharged unless Contractor had actual knowledge of the presence of the Hazardous Materials and nevertheless proceeded to cause such Hazardous Materials to be disturbed or discharged. Contractor shall not under any circumstances be liable to Owner for any consequential damages because of discovery of or disturbing any Hazardous Materials which were present at the Project site prior to Contractor's commencement of the Work. The terms of this Section 10.4.4 shall survive the expiration or termination of this Contract.

10.4.5 Owner may conduct any testing, sampling, borings, and analyses it deems necessary. Contractor, upon request, shall be given split samples of such test samples or borings;

such testing shall be at Contractor's expense if Contractor, Subcontractor, or Sub-Subcontractor caused Hazardous Materials to be used in the Work or on the Project site, or if Owner 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 Contractor, Subcontractor, or Sub-Subcontractor. In addition to any other right granted by law or the Contract Documents, if Contractor is in material noncompliance with any Applicable Law, Owner may make a reasonable demand for action upon Contractor. If Contractor does not respond within seven (7) Days (unless an emergency is involved, in which case Contractor shall respond as soon as is practicable), Owner may, at its option, take whatever action it deems necessary and appropriate at Contractor's sole expense, which sums therefor shall be immediately due and payable to Owner. Upon termination of the Contract, or abandonment of the Work by Contractor for any reason, Contractor shall remove all 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 Contractor, Subcontractor, or Sub-Subcontractor in compliance with all Applicable Laws. At all times during the performance of the Work, Contractor shall, if required by Owner or any governmental agency, promptly take whatever steps are necessary to stop 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 Contractor, Subcontractor, or Sub-Subcontractor.

10.4.6 Contractor shall promptly notify Owner in writing of any release of Hazardous Materials on the Project site, specifying (i) the nature and quantity of the release; (ii) the location of the release; and (iii) 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. Contractor shall be given a reasonable period 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: Costing Basis

11.1 Cost-Plus Fixed Fee Work

11.1.1 Costs Included. The term "Cost of the Work" shall mean the sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work as set forth in this Section 11.1. When the value of Work covered by a Field Order or Change Order or when a

Change Request for an adjustment in the Contract Price is determined based on the Cost of the Work, the costs to be reimbursed to Contractor will only be those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Change Request. These costs will also form the basis for Contractor's recoverable costs which are associated with extensions of the Contract Time caused by changed Work, or other cause solely within the control of Owner, and which are further substantiated by Contractor in accordance with the requirements of Article 12; recoverable costs related to extensions of any Key Completion Time caused by changed Work shall be at the sole discretion of the Contracting Officer. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, and shall not include any of the costs itemized in Section 11.1.2, and shall include only the following items:

11.1.1.1 Payroll Costs. Payroll costs shall include costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, forepersons, and other personnel employed full-time at the Project site. Payroll costs for employees not employed full time on the Work shall be apportioned based on their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, and vacation and holiday pay applicable thereto. The cost of performing Work after regular working hours, on Saturday, Sunday, legal holiday, or Owner-designated holiday shall be included in the above only to the extent authorized in writing by Owner. Regular working hours shall be limited to Monday through Friday, 7:00 AM to 3:30 PM EST, unless otherwise stated in the applicable Specification or approved by Owner in writing.

11.1.1.2 Materials and Equipment. Costs of all materials and equipment furnished and incorporated in the Work shall include costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.

11.1.1.3 Transportation. Costs of providing, operating, and maintaining any Contractor vehicles necessary to transport Contractor's employees and/or their small tools or equipment to the Project site(s) to complete the Work.

11.1.1.4 Subcontractors. Payments made by Contractor to Subcontractors shall include costs for Work performed or furnished by Subcontractors. If any subcontract provides that the Subcontractor is to be paid based on the Cost of the Work plus a fixed fee, the Subcontractor's Cost of the Work and fixed fee shall be determined in the same manner as Contractor's Cost of the Work and fixed fee.

11.1.1.5 Special Consultants. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to performing the Work shall be included.

11.1.1.6 Supplemental Costs. Supplemental costs shall include the following items:

11.1.1.6.1 The cost of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in the performance of Work that is more than 50 miles outside the corporate limits of the City of Detroit.

11.1.1.6.2 The cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the Project site and hand tools not owned by the workers, which are consumed in the performance of the Work, and the cost, less market value, of such items used but not consumed which remain the property of Contractor.

11.1.1.6.3 Rentals of all construction equipment and machinery and the parts thereof, whether rented from Contractor or others in accordance with rental agreements approved by Owner, and the costs of transportation, loading, unloading, installation, dismantling and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

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

11.1.1.6.5 Deposits lost for causes other than the negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

11.1.1.6.6 Losses, damages, and related expenses caused by any damage to the Work that is not compensated by insurance or otherwise and is sustained by Contractor in connection with the furnishing and performance of the Work, provided such losses, damages, and related expenses have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fixed fee.

11.1.1.6.7 The cost of utilities, fuel, and sanitary facilities used at the Project site.

11.1.1.6.8 Minor expenses such as long-distance telephone calls, telephone service at the Project site, express and courier services, and similar petty cash items related to the performance of the Work.

11.1.1.6.9 The cost of premiums for all insurance and bonds Contractor is required to furnish and maintain under this Contract.

11.1.2 Costs Excluded. The term Cost of the Work shall not include any of the following items:

11.1.2.1 Payroll Costs. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by Contractor whether at the Project site or in Contractor's principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Section 11.1.1.1, all of which are to be considered administrative costs covered by the Contractor's fixed fee.

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

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

11.1.2.4 Damages. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.

11.1.2.5 Negotiations. Legal and administrative costs to review and (re)negotiate the Contract Documents.

11.1.2.6 Fines. Fines, penalties, sanctions, or impositions assessed or imposed by any governmental body, instrumentality or tribunal arising from the fault of Contractor.

11.1.2.7 Certain Costs. Costs incurred under the Contract Documents resulting from or related to:

11.1.2.7.1 The failure of Contractor or its Subcontractors to coordinate their work with that of Owner and Owner's third-party contractors.

11.1.2.7.2 Costs resulting from the failure of Contractor or any Subcontractor to procure and maintain insurance as and to the extent required by the Contract Documents.

11.1.2.7.3 Costs related to Contractor's indemnification obligations pursuant to the Contract Documents.

11.1.2.7.4 Liquidated or actual damages imposed by Owner for failure of Contractor to complete the Work on or before any Key Completion Time; and

11.1.2.8 Other. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Section 11.1.1.1.

11.1.3 Contractor's Fixed Fee. When the Work is performed based on Cost of the Work plus a fixed fee, Contractor's fixed fee shall be as set forth in the Contract Documents. When the value of the Work covered by a Field Order or Change Order is determined based on the Cost of the Work, Contractor's fee shall be determined as set forth in Section 12.3.3.

11.1.4 Documentation. Whenever the value of any Work is to be determined pursuant to Sections 11.1, Contractor will establish and maintain Records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Owner an itemized cost breakdown together with supporting data.

11.2 Unit Price Work

11.2.1 Where the Contract Documents provide that all or part of the Work is to be unit price Work, the Contract Price shall include the sum total of the established unit prices for each item of unit price Work times the estimated quantity of each item as indicated in the Contract Documents. The estimated quantities of items of unit price Work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of unit price Work performed by Contractor will be made by Owner.

11.2.2 Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.

11.2.3 There shall be no adjustment, equitable or otherwise, to unit prices established in the Contract Documents, unless otherwise permitted by the CPO in their sole discretion and, if applicable, in accordance with Section 12.1.2.

11.3 Lump Sum Work

Where the Contract Documents provide that all or part of the Work is to be paid on a lump sum basis, the Contract Price shall be as set forth in Exhibit D and may include overhead and profit. Owner may elect to use unit prices within a lump sum proposal.

Article 12: Changes in the Work

12.1 General

12.1.1 General. Owner may, without invalidating the Contract Documents, order changes in the Work (including extra Work, less Work, or alterations) and such changes, regardless of their scope or number, are within the contemplation of the Parties. Changes in the Work shall be ordered only by Field Order, Change Order, or Unilateral Change Order. 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 Owner. Changes in the Work shall be performed under the applicable provisions of the Contract Documents and as provided in the Field Order, Change Order, or Unilateral Change Order. No verbal instructions, course of conduct or dealings between the Parties, nor express or implied acceptance of changes in the Work, and no claim that Owner has been unjustly enriched by any change in the Work, whether or not there is, in fact, any unjust enrichment to Owner, shall be the basis for any Change Request or claim and are waived by Contractor and forever barred.

12.1.2 Field Order. A Field Order shall be used to (i) order changes in the Work; (ii) authorize the use of or the reallocation of the funds of any Allowance; (iii) adjust quantities of, establish, or change unit prices; and/or (iv) authorize the reallocation of funds between lump sum line items, which each of the foregoing shall not change any Key Completion Times, the Contract Time, and/or the Contract Price. When the cost of a Field Order is paid from an Allowance, the terms of Section 12.6 shall apply. A signed Field Order shall be immediately effective and binding on the Parties, and shall constitute a final settlement and waiver of, and permanent bar to, all claims and matters relating to the subject of the Field Order.

12.1.3 Change Order. A Change Order shall be used to order any changes in the Work, including changes that affect any Key Completion Time, Contract Time, and/or Contract Price. Agreement on any Change Order shall constitute a final settlement 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 all adjustments to the Contract Price, any Key Completion Times, and/or Contract Time, and shall entitle Contractor to payment for the Work covered thereby. Contractor shall include the Work covered by any Change Order in its Applications for Payment as if such Work were originally part of the Contract Documents.

12.1.4 Unilateral Change Orders. Notwithstanding anything to the contrary in the Contract Documents and subject to Article 18, the Contracting Officer may, by Unilateral Change Order (i) unilaterally order changes which are within the general scope of the Work, consisting of additions to, deletions from or other revisions thereto; and (ii) unilaterally make or provide the basis for making an adjustment in the Contract Price, any Key Completion Times or Contract Time related thereto.

12.1.5 Emergencies. In cases of emergency, Owner shall have the right to direct such emergency changes in the Work to proceed promptly. Until a Field Order, Change Order, or Unilateral Change Order is authorized, the authorization of which shall proceed promptly,

Contractor shall certify, maintain, and submit daily Records and invoices of labor, materials, and equipment used in the changed Work, which Records shall be acknowledged daily by Owner. Such documentation shall be submitted in the form directed by Owner and include an itemized accounting, supporting dates, receipts, and vouchers of all actual costs associated with the extra or changed Work.

12.2 Processing Changes in the Work

12.2.1 Field Orders. Owner may initiate changes in the Work by issuing a Field Order describing any changes in the Work agreed between Owner and Contractor and otherwise in accordance with Section 12.1.2. Contractor shall, if in agreement, sign the Field Order and Owner's signature subsequent to Contractor's signature shall give the Field Order immediate effect.

12.2.2 Change Orders. Owner may initiate changes in the Work by issuing a Change Directive sufficiently describing the scope and justification of the change being considered. Contractor shall respond within five (5) Days with its proposed submission date of its Change Request, which time shall be agreed upon. Contractor may initiate changes by submission of a Change Request. In either case, Contractor shall submit its Change Request including (i) the amount of any encumbrance against an Allowance or change to the Contract Price including an itemization of all material and labor costs, quantities, and total costs; and (ii) any changes to any Key Completion Times including a substantiation for any adjustment thereof, together with a revised CPM Schedule depicting the change. Contractor shall produce all documentation which Owner may request for the purpose of determining the correctness of the charges for the changed Work. If the Parties agree to proceed with the changes in the Work, then the Parties shall execute a Change Order, which shall include any revised Drawings and Specifications.

12.2.3 Unilateral Change Order. Subject to Article 18, if the Parties do not reach mutual agreement on the changed Work, the Contracting Officer may submit a Unilateral Change Order and Contractor shall proceed as ordered therein.

12.3 Costing Basis for Changed Work

12.3.1 The changed Work shall be performed on a costing basis of Owner's choosing including (i) a unit price basis as provided in Section 12.3.2.1, (ii) a lump sum basis as provided in Section 12.3.2.2, (iii) a cost-plus fixed fee basis as provided in Section 12.3.2.3, or (iv) any combination of the foregoing costing bases.

12.3.2 The value of any changed Work or the value of any Change Request for an adjustment in the Contract Price will be determined as follows:

12.3.2.1 Unit Prices. Where Owner chooses to have the Work performed on a unit price basis and the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Section 11.2). If an item of the Work involved does not have

an established unit price, then the Contractor and Owner may, by mutual agreement, establish a unit price in accordance with Section 11.2.

12.3.2.2 Lump Sum. Where Owner chooses to have the Work performed on a lump sum basis, the parties shall mutually agree on the lump sum price, which may include overhead and profit not necessarily in accordance with Section 12.3.3.2. The Contractor shall furnish, with its Change Request, supporting data consisting of Contractor (self-performing), Subcontractor, Sub-Subcontractor, Supplier, and any other vendor-executed proposals. If any of the changed Work included in the Change Request is covered by unit prices, Owner may elect to use these unit prices within the Change Request.

12.3.2.3 Cost-Plus Fixed Fee. Where Owner chooses to have the Work performed on a cost-plus fixed fee basis, the Cost of the Work shall be determined as provided in Section 11.1 and the fixed fee for overhead and profit shall be determined as provided in Section 12.3.3.

12.3.3 Fixed Fee. Contractor's fixed fee for overhead and profit on changed Work shall be determined as follows:

12.3.3.1 A mutually acceptable fixed fee; or

12.3.3.2 If a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:

12.3.3.2.1 For costs incurred under Sections 11.1.1.1 and 11.1.1.2, the Contractor's fee shall be 15 percent (15%),

12.3.3.2.2 For costs incurred under Sections 11.1.1.4, 11.1.1.5, and 11.1.1.6, the Contractor's fee shall be five percent (5%),

12.3.3.2.3 Where one or more tiers of Subcontracts are on the basis of Cost of the Work plus a fixed fee and no fixed fee is agreed upon, the intent of Sections 12.3.3.1 and 12.3.3.2.1 is that the Subcontractor who actually performs or furnishes Work, at whatever tier, will be paid a fee of 15 percent (15%) of the costs incurred by such Subcontractor under Sections 11.1.1.1 and 11.1.1.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent (5%) of the amount paid to the next lower tier Subcontractor provided, however, regardless of the number of tiers of Contractors and Subcontractors, the total fee paid by Owner shall not exceed thirty percent (30%),

12.3.3.2.4 The amount of credit to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent (5%) of such net decrease.

12.3.3.2.5 When both additions and credits are involved in any one change, the adjustment in Contractor's fixed fee shall be computed based on the net change in accordance with Sections 12.3.3.2.1 through 12.3.3.2.4, inclusive.

12.4 Concealed Conditions

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

12.4.2 If Contractor wishes to make a Change Request for an increase in the Contract Price or extension of the Contract Time pursuant to this Section 12.4, it shall give Owner written notice thereof prior to the end of the second business day after discovery of the conditions. This notice shall be given by Contractor before proceeding to execute further Work and no claim shall be valid for any Work performed prior to delivery of written notice to the Contracting Officer, except (i) in an emergency endangering life or property in which case Contractor shall proceed in accordance with Section 10.3; or (ii) 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 Change Request or claim shall be made by Contractor due to differing site conditions if (i) Contractor knew of the existence of those conditions before proceeding with the Work; or (ii) Contractor should have discovered those conditions by reasonable exploration and examination as required under the Contract Documents.

12.5 Changes for an Owner Act, Error, or Omission

Subject to the terms of the Contract Documents, if Contractor believes that any act, error or omission of Owner constitutes a change in the Work entitling it to additional compensation and/or time, it shall within thirty (30) Days after the date on which Contractor discovers, or should have discovered with the exercise of appropriate diligence, the relevant act, error or omission of Owner (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 to Owner a Change Request stating the amount of the additional compensation and/or additional time to which it is entitled and the justification for the request. Owner shall evaluate the Change Request within a reasonable time and advise Contractor whether Owner will grant in whole, grant in part, or deny the Change Request. Any additional compensation and/or additional time granted shall be recorded in the form of a Change Order. Failure of Contractor to timely submit a Change Request in strict, not substantial, accordance with the requirements of this Section 12.5 shall constitute a waiver of and shall forever bar any claim and any recovery whatsoever arising out of the pertinent act, error, or omission of Owner, even if Owner was not prejudiced thereby.

12.6 Allowances

12.6.1 Contractor shall obtain Owner's written consent through, as applicable, a Field Order or a Change Order before furnishing materials, equipment or any other designated item covered by a Cash Allowance. Payments under a Cash Allowance shall be on an actual cost basis, except that (i) payments shall exclude any associated supervision, unloading, handling, storage, installation, testing, etc. costs that Contractor incurs, however caused; and (ii) payments within the limits of any Cash Allowance shall also exclude any fees payable to Contractor under Article 11 and insurance and bond costs.

12.6.2 Contractor shall complete Work covered by a Provisional Allowance only as directed in writing by Owner through, as applicable, a Field Order or a Change Order. The costing basis of Work authorized under a Provisional Allowance shall be determined pursuant to the procedures set forth in Sections 12.3.1, 12.3.2, and 12.3.3, except that payment within the limits of a Provisional Allowance shall exclude bond and insurance costs.

Article 13: Uncovering and Correction of Work

13.1 Uncovering of Work

13.1.1 If any portion of the Work is covered contrary to the request of Owner or to the requirements of the Contract Documents, such Work must promptly be uncovered for observation, shall be replaced at Contractor's sole cost and expense and Contractor shall not be entitled to any increase to the Contract Price or adjustment to any Key Completion Time.

13.1.2 If any other portion of the Work has been covered which Owner specifically requested to observe prior to being covered, Owner may request to see such Work and it shall be promptly uncovered by Contractor. If such Work is found to be in accordance with the Contract Documents, the cost of uncovering and replacement shall, in accordance with Article 12, be charged to Owner. If such Work is found not to be in accordance with the Contract Documents, Contractor shall correct the Work at its sole cost and expense and maintain the Key Completion Times.

13.2 Correction of Work

13.2.1 Contractor shall correct all Work rejected by Owner as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion or Final Completion and whether fabricated, installed or completed. All corrections shall be accomplished within seven (7) Days after notice from Owner unless the Work cannot be accomplished within such period, in which case Contractor shall commence the correction and submit its Drawings therefor within seven (7) Days. Contractor shall bear all costs of corrections, including corrections of other work of Owner or separate contractors and any other facilities damaged or destroyed by the rejected Work and their removal or correction. If Contractor is notified of corrections to the Work prior to Final Completion, Contractor shall make the corrections while maintaining all Key Completion Times. Nothing set forth in this Section 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, Contractor shall make any and all repairs or replacements and shall 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 thirty (30) Days from receipt of written notice from Owner and to diligently prosecute the same to conclusion, without cost to, and to the satisfaction of, Owner. This obligation shall survive termination of the Contract. Owner shall give such notice promptly after discovery of the condition.

13.2.3 Contractor shall remove from the Project site all defective or non-conforming portions of the Work, unless removal is waived in writing by Owner, and the Work shall be corrected to comply with the Contract Documents without cost to Owner.

13.2.4 If Contractor fails to correct defective or nonconforming Work in accordance with Section 13.2.1, Owner may correct it in accordance with Section 3.3.

13.2.5 If Contractor does not remove defective or nonconforming Work within a reasonable time fixed by written notice from Owner, Owner may remove it and may store the materials or equipment at the expense of Contractor. If Contractor does not pay the cost of such removal and storage within thirty (30) Days thereafter, Owner 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 Contractor. If such proceeds of sale do not cover all costs which Contractor should have borne, the difference shall be charged to Contractor and an appropriate Change Order or Unilateral Change Order shall be issued. If the payments then or thereafter due the Contractor are not sufficient to cover such amount, Contractor shall pay the difference to Owner.

13.2.6 Nothing contained in this Section 13.2 shall be construed to establish a period of limitation with respect to any other obligation which Contractor might have under the Contract Documents. The establishment of the time period of one (1) 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 Contractor to correct the Work, and has no relationship to the time within which 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 Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

13.3 Acceptance of Defective or Non-Conforming Work

If Owner prefers to accept defective or nonconforming Work, it may do so instead of requiring its removal and correction, in which case a Change Order or Unilateral 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 Contractor.

Article 14: Termination

14.1 Termination

This Contract shall remain in full force and effect for the duration of the Contract Time unless otherwise terminated for cause or convenience according to the provisions of this Article 14.

14.2 Termination for Cause

14.2.1 Owner shall have the right, without prejudice to any other right or remedy it may have, to terminate this Contract for cause. Cause is an event of default.

14.2.1.1 An event of default shall occur if there is a material breach of the Contract Documents, and shall include the following:

14.2.1.1.1 Contractor fails to begin the Work in accordance with the terms of the Contract Documents; or

14.2.1.1.2 Contractor, in the judgment of Owner, is unnecessarily, unreasonably, or willfully delaying the performance and/or completion of the Work; or

14.2.1.1.3 Contractor ceases to perform the Work; or

14.2.1.1.4 Owner reasonably believes the Work cannot be completed within any Key Completion Time and that the delay is attributable to conditions within Contractor's control; or

14.2.1.1.5 Contractor, without just cause, reduces its work force to a number that would be insufficient, in the reasonable judgment of Owner, to complete the Work by any Key Completion Time, and Contractor fails to sufficiently increase such work force when directed to do so by Owner; or

14.2.1.1.6 Contractor voluntarily makes any unauthorized changes in its personnel, Subcontractors, and Sub-Subcontractors previously approved by Owner; or

14.2.1.1.7 Contractor assigns, transfers, conveys, or otherwise disposes of its interests in the Contract Documents in whole or in part without prior approval of Owner; or

14.2.1.1.8 Any officer or employee of Owner acquires an interest in this Contract to create a conflict of interest; or

14.2.1.1.9 Contractor violates any of the provisions of the Contract Documents, or disregards applicable laws, ordinances, permits, licenses, instructions, or orders of Owner; or

14.2.1.1.10 The performance of the Work, in the sole and reasonable judgment of Owner, is substandard, unprofessional, or faulty and not adequate to the demands of the Work to be performed; or

14.2.1.1.11 Contractor fails in any of the agreements set forth in the Contract Documents; or

14.2.1.1.12 Contractor ceases to conduct business in the normal course; or

14.2.1.1.13 Contractor makes an assignment for the benefit of creditors or makes an admission in writing of its inability to pay its debts generally as they become due; or

14.2.1.1.14 Claims are filed with Owner by third parties alleging Contractor's failure to pay any amount due (except disputed claims).

14.2.2 If Owner finds an event of default has occurred, Owner may issue a Notice of Termination for Cause setting forth the grounds for terminating the Contract. Contractor shall have either thirty (30) Days from the date of the Notice of Termination for Cause within which to cure such default, or such other period as may be provided therein (the "Cure Period"). If the default is cured within the Cure Period, the right of termination for such default shall cease. If the default is not cured to the satisfaction of Owner within the Cure Period, this Contract shall terminate at the end of the Cure Period, unless Owner, in writing, gives Contractor additional time to cure the default (the "Extended Cure Period"). If the default is not cured to the satisfaction of Owner within the Extended Cure Period, this Contract shall terminate for cause at the end of the Extended Cure Period.

14.2.3 If Owner terminates this Contract for cause, Owner shall have the right to take possession of the Project site and of all materials, equipment, and tools purchased and paid for by and through this Contract and finish the Project by whatever method Owner may deem expedient.

14.2.4 In the event of a termination for cause, Contractor shall be entitled to receive, as total compensation for all Work performed, payment for all Work properly performed and accepted by Owner prior to the effective date of termination, plus properly incurred and authorized reimbursable expenses then due. Payment of such compensation is the sole and exclusive remedy of Contractor for a termination of the Contract by Owner for cause, and Contractor shall not be entitled to, and waives, claims for lost profits and all other damages and expenses. Contractor shall execute a waiver and general release of claim as a condition of payment. At Owner's option, Contractor shall assign to Owner all approved Subcontracts, and Owner shall hold harmless Contractor against all claims for payment with respect to Work performed after the date of termination. Contractor shall be liable to Owner for any damages sustained by Owner as a result

of Contractor's breach or any reasonable costs Owner might incur in enforcing or attempting to enforce this Contract. Such costs shall include reasonable fees and expenses for attorneys, expert witnesses, and other consultants. Owner may withhold any payments to Contractor, in an amount not to exceed the amount claimed in good faith by Owner to represent its damages, for the purpose of setoff until such time as the exact amount of damages due to Owner from Contractor is determined. Contractor shall remain liable for any damages Owner sustains in excess of any setoff.

14.3 Termination for Convenience

Owner may terminate the Contract, in whole or in part, without cause and for its convenience at any time upon fifteen (15) Days' written Notice of Termination for Convenience to Contractor and take possession of the Project site and of all materials, equipment, tools purchased and paid for by and through this Contract and finish the Project by whatever method Owner may deem expedient. In such case and to the extent of the termination specified, Contractor shall be entitled to receive, as total compensation for all Work performed (i) payment for all Work properly performed and accepted by Owner prior to the effective date of termination, including payment of any appropriate retainage; and (ii) any restocking or material and equipment cancellation charges payable to Suppliers and any other vendors (unless Contractor assigns to Owner, at the request of Owner, the agreements pursuant to which such material and equipment was ordered and Owner holds harmless Contractor in connection therewith); and (iii) Contractor's reasonable demobilization costs. Payment of such compensation is the sole and exclusive remedy of Contractor for a termination of the Contract by Owner without cause and for its convenience and Contractor shall not be entitled to, and waives, claims for lost profits and all other damages and expenses. Contractor shall execute a waiver and general release of claim as a condition of payment. At Owner's option, Contractor shall assign to Owner all approved Subcontracts and ensure the assignment of all approved Sub-Subcontracts, and Owner shall hold harmless Contractor against all claims for payment with respect to Work performed after the date of termination. On the date that Contractor receives the written Notice of Termination for Convenience, 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 Owner's Access to Contractor's Records

15.1.1 Owner or any of its duly authorized representatives shall, until the expiration of three (3) years after Final Payment, have access to and the right to examine and audit any directly pertinent Records involving transactions related to the Contract Documents.

15.1.2 Contractor shall include in each Subcontract the terms of Section 15.1.1. The term "Subcontract," as used in this clause only, excludes (i) purchase orders of less than Two Thousand Five Hundred (\$2,500.00) Dollars; and (ii) 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 Article 15 for Records which relate to or arise under (i) Article 18, "Claims"; (ii) litigation or the settlement of claims

arising out of the performance of the Contract Documents; or (iii) costs and expenses of the Contract Documents as to which exception has been taken by Owner, shall continue until such appeal, litigation, claim, or exception has been disposed of.

Article 16: Conflict of Interest

16.1 Contractor warrants that (i) 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; (ii) in the performance of the Contract Documents, no person having any such interest shall be employed; and (iii) to the best of its knowledge and belief, no officer, member or employee of Owner and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Contract Documents has any personal or financial interest, direct or indirect, in the Contract Documents or in the proceeds thereof.

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

16.3 Contractor and its employees shall not influence Owner's employees to seek employment with Contractor within the duration of the Contract and shall not for a period of one (1) year thereafter employ any of Owner's employees without prior written approval from Owner. Proof of such activity as determined by Owner may cause immediate termination of this Contract.

16.4 Contractor shall include the provisions of this Article 16 in any Subcontract.

Article 17: Confidential Information

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

17.2 Contractor shall take appropriate action with respect to its Subcontractors, Suppliers, and laborers to ensure that the obligations of non-use and non-disclosure of confidential information of the Contract Documents can be fully satisfied.

17.3 The terms of this Article 17 shall survive the termination or expiration of this Contract.

Article 18: Claims

18.1 Claims

18.1.1 Claims may result from a rejected Change Request or as provided in Section 10.2.10. All claims shall be made by written notice to the CPO containing as much detail as reasonably possible and be supported by any documentation required by the CPO and otherwise in accordance with the Contract Documents. The burden for substantiating any claim shall rest with Contractor.

18.1.2 Except as otherwise provided in Section 10.2.10, claims by Contractor must be made promptly and within not more than thirty (30) Days after the date of a rejected Change Request, unless a longer period is granted by the CPO in writing, , whether any impact to Contract Price, any Key Completion Time, and/or Contract Time has yet to be determined. In no event shall this provision be deemed to extend the period for Contractor to make claims for an extension of any Key Completion Time, the Contract Time, and/or adjustment to the Contract Price as provided in other provisions of the Contract, which provisions and time periods are to be strictly adhered to by Contractor.

18.1.3 Pending final resolution of a claim, the Work shall continue unabated and be diligently pursued by Contractor, and Owner shall continue to make payment in accordance with the Contract Documents, except as to amounts in good faith dispute.

18.2 Submittal of Claims; Resolution

18.2.1 Agreement on the resolution of any claim shall be final and binding upon the Parties.

18.2.2 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 Contractor is prejudiced thereby.

18.2.3 The resolution of all claims under this Article 18 resulting in a change in the Contract Price, any Key Completion Time, and/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 this Contract.

(End Exhibit C – General Conditions)

EXHIBIT D

COSTING SUMMARY AND PAYMENT TERMS

I. Contract Price

Subject to the performance by Contractor of its obligations under the Contract Documents, Owner agrees to pay Contractor for the performance of the Work the sum of Enter Contract Amount in Words and 00/100 Dollars (\$Enter Contract Amount in Numbers) (“Contract Price”), payable as set forth below.

II. Applications for Payment; Computation of Progress Payments

- a. Contractor shall, subject to other provisions of the Contract Documents, submit to the Contracting Officer an Application for Payment in a form acceptable to the Contracting Officer on or before the 10th Day of the month for Work completed through the last day of the previous month. Applications for Payment shall be proportioned to show the percent complete for each phase of the Work in accordance with the Schedule of Values.
- b. Subject to the provisions of the Contract Documents, the amount of each Progress Payment shall be computed as set forth below. Notwithstanding the provisions below, no retainage shall be withheld with respect to that portion of a Progress Payment pertaining to engineering, design, and other professional services.
 1. 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 Schedule of Values, less retainage of ten percent (10%) and as such holding of retainage is otherwise subject to Section 9.4.2 and 9.4.3;
 2. 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%) as such holding of retainage is otherwise subject to Section 9.4.2 and 9.4.3, provided, however, that Contractor provides evidence to Owner that said materials and equipment are insured against damage, theft or other hazards for their full value;
 3. Subtract the aggregate of previous payments made by Owner; and
 4. Subtract amounts that are (i) determined to have been improperly paid to the Contractor pursuant to previous Applications for Payment because of errors subsequently discovered by Owner, or (ii) chargeable to the Contractor pursuant to the provisions of the Contract Documents, 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 Contractor.

- c. For any Work completed on a unit price, time, and materials and/or hourly rate basis the Application for Payment shall also detail, as may be requested by Owner, the following: applicable unit price, staff name; staff labor classification and associated billable rate or rate range; staff hours; and the specific task notes for hours worked on the Project for each segment.
- d. Contractor shall be reimbursed for the reimbursable expenses set forth herein, if any. Contractor shall present each month a statement of reimbursable expenses for the preceding month. Contractor expressly waives any right to payment for any reimbursable expenses other than those described herein if Contractor does not secure the Contracting Officer's prior written approval of such reimbursable expenses. Contractor further waives any right to payment for any reimbursable expense if Contractor fails to invoice Owner for same on the immediately following Application for Payment. Notwithstanding anything contained herein to the contrary, in no event shall the reimbursable expenses described herein exceed, in the aggregate, throughout the term of the Contract, the Contract Price unless otherwise agreed to by Owner in writing.

III. Applications for Payment; Submission and Payment

- a. Applications for Payment shall be submitted electronically each month and must be received by Owner not more than thirty (30) Days after the close of the immediately preceding calendar month. Applications for Payment shall be submitted by E-mail to: ConstructionAccounting@glwater.org
- b. Payment for the proper performance of the Work shall be contingent upon receipt by Owner of accurate, complete, and timely Applications for Payment from Contractor and shall be made within forty-five (45) Days after receipt of a proper Application for Payment which conforms to the requirements of this Exhibit D.

IV. Costing Summary

[Insert Costing Summary]

(End Exhibit D)

EXHIBIT E

NOTICE ADDRESSES AND DESIGNATION OF REPRESENTATIVES

Notices to Owner and Designation of Representatives:

“Notice of Change of Address” shall be sent to the CPO and Owner’s Project Manager as set forth below.

Chief Procurement Officer
Great Lakes Water Authority
735 Randolph Street, 15th Floor
Detroit, Michigan 48226
E-mail: ChiefProcurementOfficer@glwater.org

Enter Name, Owner’s Project Manager
Great Lakes Water Authority
Enter Address
Detroit, Michigan Enter Zip
E-mail: Enter E-mail Address

All other communications shall be sent to the Owner’s Project Manager, the Project Construction Management Lead, or the Project Design Lead, as required or permitted by the Contract Documents. The name, title, and e-mail address for the Project Construction Management Lead and the Project Design Lead shall be provided to Contractor under separate cover.

Notices to Contractor:

Notices to Contractor shall be sent to:

Name: Insert Name
Title: Insert Title
Company: Insert Name of Firm
Address: Insert Firm Address
Insert Firm City/State/Zip Code
E-mail: Insert E-Mail Address

(End Exhibit E)

EXHIBIT F

INSURANCE AND BONDS

I. Insurance Coverage Types, Amounts and Endorsements

- a. For the duration of this Contract and until Final Completion is met, Contractor shall procure and maintain at its expense the insurance marked below and as otherwise required by this Exhibit F.

<u>TYPE</u>	<u>AMOUNT NOT LESS THAN</u>
<input type="checkbox"/> Workers' Compensation	Statutory Limits Mandated by Law
<input type="checkbox"/> Employers' Liability	\$1,000,000 Each Accident \$1,000,000 Disease Each Employee \$1,000,000 Disease Policy Limit
<input type="checkbox"/> Commercial General Liability (Property Damage Liability Insurance shall provide X, C and U Coverage)	\$1,000,000 Each Occurrence \$1,000,000 Personal/Advertising Injury \$2,000,000 General Aggregate \$2,000,000 Products/Completed Operations
<input type="checkbox"/> Automobile Liability (Covering Any Auto including Owned, Hired and Non-Owned vehicles)	\$1,000,000 Combined Single Limit
<input type="checkbox"/> Umbrella/Excess Liability (Providing excess limits over the Commercial General Liability, Auto Liability and Employers' Liability policies)	\$4,000,000 Each Occurrence \$4,000,000 Aggregate
<input type="checkbox"/> Professional Liability (Errors and Omissions)	\$3,000,000 Any One Claim
<input type="checkbox"/> Builders' Risk/Installation Floater	Limits Equal to Contract Price
<input type="checkbox"/> Contractor's Pollution Liability	\$1,000,000 Any One Claim

- b. The commercial general liability policy shall include an endorsement naming the "Great Lakes Water Authority" as an additional insured and any other entities as may be designated by Owner.
- c. The commercial general liability policy and the umbrella/excess liability policy shall be endorsed to provide that Contractor's insurance is primary and non-contributory to any insurance already carried by Owner.
- d. 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 Owner. Further, Owner and Contractor waive all rights against each other for damages caused by fire or other perils to the extent covered by insurance required under the Contract or any other insurance carried by Owner or Contractor, respectively. Contractor shall require similar waivers by Subcontractors and Sub-Subcontractors in accordance with Article 5 of Exhibit C. All insurance policies required by this Contract shall permit and recognize such waivers of subrogation.
- e. All insurance required by this Contract shall:
 - i. Name Contractor as the insured;
 - ii. Excepting professional liability insurance, be written on an occurrence-based policy form if the same is commercially available; and
 - iii. Be affected under valid and enforceable policies, issued by insurers either authorized to conduct business in Michigan or which have an A.M. Best's rating of A-/VIII or better, and which are otherwise acceptable to Owner.
- f. Contractor shall require all Subcontractors, if any, performing design and other architectural or engineering services to maintain professional errors and omissions coverage in connection with such subcontracted Work, the amount of which shall be appropriate to the subcontracted Work, in Contractor's sole judgment, and for such extended period as Contractor determines necessary to cover the applicable warranty period and completed operations.

II. Insurance General Requirements

- a. If, during the term of this Contract, changed conditions or other pertinent factors should, in the reasonable judgment of Owner, render inadequate the foregoing insurance limits, Contractor shall furnish such additional types of coverage or coverage amounts as may reasonably be required under the circumstances and the actual cost differential therefor shall be paid by Owner in accordance with the Contract Documents. Within thirty (30) Days of such request, Contractor shall obtain the additional coverage and furnish evidence of such coverage to Owner.

- b. Certificates of insurance evidencing the coverage required by this Contract shall, in a form acceptable to Owner (ACORD 25 form preferred), be submitted to Owner upon Contractor's execution of this Contract and at least five (5) Days prior to the expiration dates of expiring policies. All submittals shall be emailed to COI@glwater.org.
- c. Certificates of insurance shall reference this Contract requisition number.
- d. Contractor or its insurer shall provide to Owner thirty (30) Days' written notice of cancellation of any policy required by this Contract and ten (10) Days' written notice of cancellation due to non-payment of premium.
- e. If any Work is subcontracted in connection with the Contract Documents, Contractor shall require each Subcontractor to effect and maintain the types and amounts of insurance which, in Contractor's sole judgment, shall be appropriate to the Work conducted by each such Subcontractor. Owner shall have the right to request copies of any Subcontractor certificates of insurance.
- f. Contractor shall be responsible for the payment of all deductibles and/or self-insured retentions contained in any insurance required under this Contract. The provisions requiring Contractor to carry the specified insurance shall not be construed in any manner as waiving or restricting the liability of Contractor.
- g. If Contractor maintains broader coverage and/or higher limits than the minimums designated in this Contract, Owner requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor.
- h. Failure to comply with any term or condition of this Exhibit F shall constitute a material breach of this Contract.

III. Payment and Performance Bonds

- a. Contractor shall furnish to Owner and maintain during the term of this Contract performance and payment bonds guaranteeing that Contractor will perform its obligations under the Contract Documents and will pay for all labor and materials furnished for the Work. Such bonds shall (i) be issued in a form and by a Surety reasonably acceptable to Owner, (ii) be submitted to Owner for approval as to form, (iii) name Owner as obligee, and (iv) be in an amount equal to 100% of the Contract Price, as the same may be adjusted from time to time in accordance with the Contract Documents. Contractor shall deliver the executed, approved bonds to Owner upon execution of the Contract. Neither Contractor nor any Subcontractor may begin the Work until the required bonds are delivered to the CPO.
- b. The costs of all bonds furnished hereunder shall be included in the Contract Price.
- c. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract Documents,

Contractor shall promptly furnish a copy of the bonds to the CPO or shall permit a copy to be made.

- d. 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 Owner is insolvent, Contractor shall immediately furnish and maintain another Surety satisfactory to Owner.

IV. General Terms Regarding Insurance and Bonds

- a. If Owner is damaged by the failure of Contractor to purchase or maintain any insurance or bond required by this Contract, then Contractor shall pay all costs incurred by Owner, including but not limited to reasonable attorneys' fees and court costs.
- b. Any insured loss under the required policies of property insurance will be adjusted with Owner and will be made payable to Owner as trustee for the insured. Owner 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. Owner 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 Owner's exercise of this power. If an objection is made, Owner as trustee shall settle with the insurers pursuant to any agreement that the parties in interest may reach.
- c. If by the terms of the insurance a mandatory deductible is required, Contractor shall be responsible for the deductible amount in the event of a paid claim. Contractor shall be responsible for any co-insurance penalties.

(End terms and conditions of Exhibit F – Insurance Certificate and Bonds follow on next pages)

INSURANCE CERTIFICATE

PERFORMANCE BOND

PAYMENT BOND

BID BOND

EXHIBIT G

GLOSSARY

Allowance	Refers to either a Cash Allowance or a Provisional Allowance, as either term is defined in this Glossary.
Application for Payment	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 GLWA.
Cash Allowance	A sum specified by Owner included within the Contract Price to reimburse Contractor for actual purchase/furnished cost of required permits, or materials, equipment, or other designated items that are to be furnished and incorporated into the Work, as provided in the Contract Documents, which are either of uncertain purchase cost at the time the Contract is executed or are yet to be specified in more detail by Owner. Any remaining balance of the Cash Allowance upon Final Completion shall be retained by Owner and not paid to Contractor.
Certificate for Payment	A certificate issued by Owner certifying the amount of the Progress Payment due to Contractor.
Certificate of Substantial Completion	A certificate prepared by Owner based on an inspection: (i) stating that the Work or a designated portion thereof is Substantially Complete; (ii) establishing the date of Substantial Completion; (iii) stating the responsibilities of Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance; and (iv) fixing the time within which Contractor shall complete the items listed therein.
Change Directive	A written instrument initiated by Owner for a change in the Work that affects Contract Price, Key Completion Times, and/or Contract Time.
Change Order	A written instrument signed by Owner and Contractor and approved in accordance with the Procurement Policy, which authorizes a change in the Work and results in an adjustment in the Contract Price, any Key Completion Times, and/or Contract Time.

Change Proposal	Contractor’s written instrument that justifies a Change Directive or Change Request and includes detailed information related to the cost breakdown of the changed Work including the required labor, materials, equipment, and tools.
Change Request	A written instrument initiated by Contractor for a change in the Work, or issued in response to a Change Directive, that affects the Contract Price, Key Completion Times, and/or Contract Time, which is justified with a Change Proposal.
Contract	This written construction contract executed between Contractor and Owner in accordance with the Procurement Policy, including any exhibits attached hereto, each such exhibit which is fully incorporated by reference.
Contract Documents	Those documents specified in Exhibit B and any other documents so designated in the Contract. 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.
Contract Price	The sum stated in the Contract Documents, including any Allowances and authorized adjustments, that is the total amount payable by Owner to Contractor for the performance of the Work, including all risks, hazards and difficulties assumed by Contractor thereunder.
Contract Time	The duration of time stated in the Contract Documents, including authorized adjustments, allotted to Contractor for the performance of the Work.
Contracting Officer	The CPO or, if designated by the CPO, the Owner Project Manager as identified in Exhibit E, which shall act as Owner’s representative for certain matters arising under the Contract Documents. Whenever Exhibit E identifies an Owner Project Manager as the CPO’s designee, the Owner Project Manager shall be the Contracting Officer for purposes of this Contract.
Contractor	The party identified in the Contract.

Contractor Project Manager	The individual designated by Contractor to manage, direct, and oversee the Work and its related activities on a day-to-day basis as designated in the Contract Documents.
Cost of the Work	The sum of all costs necessarily incurred and paid by Contractor in the proper performance of the Work as further defined in Article 11.
CPO	The Chief Procurement Officer of GLWA.
Critical Path Methods (“CPM”) Schedule	A Submittal consisting of a schedule or diagram of all events expected to occur and operations to be performed in completing the Work, rendered in a form permitting determination of the optimum sequence and duration of each operation, and updated by Contractor monthly. The baseline (initial) CPM Schedule shall be approved in writing by Owner.
Day	A calendar day unless otherwise specifically designated.
Drawings	A part of the Contract Documents consisting of indicative graphic and pictorial documents depicting the design, location, and dimensions of the elements of the Project, attached as Book 3, if applicable.
Field Order	A written instrument signed by Owner and Contractor and approved in accordance with the Procurement Policy, which authorizes a change in the Work and does not result in an adjustment in the Contract Price, any Key Completion Times, and/or Contract Time.
Final Completion	The date on or time by which the Work shall be and is completed in accordance with the terms and conditions of the Contract Documents and accepted by Owner in writing, as more fully defined in Exhibit C, General Conditions.
Final Payment	The payment made to Contractor upon Final Completion.
General Conditions	Exhibit C of the Contract.
Indemnatee(s)	Owner and its directors, officers, employees, agents, and representatives, each an Indemnatee.
Key Completion Times	The times for Substantial Completion, Final Completion, and/or any other Milestones necessary to complete the Work as such times may be specified in Exhibit A, each time or Milestone a “Key Completion Time”.

Milestone	A designated portion of the Work that Contractor shall complete by an intermediate completion time prior to Substantial Completion, which designated portion of the Work shall be suitable for occupancy or use by Owner for its intended purpose by the time stated in Exhibit A and otherwise in conformance with the Contract Documents.
Notice to Proceed	Written notice from the CPO, or their designated representative, authorizing Contractor to proceed with the Work. The date of commencement of the Work is the date established in a Notice to Proceed.
Owner (or "GLWA")	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, including its officers, agents, representatives, employees, the CPO, the Contracting Officer, the Owner Project Manager, the PCML, and the PDL.
Owner Project Manager	The individual designated as the Contracting Officer's designee to manage the Work and the related activities in connection with the Project, as authorized in the Contract Documents.
Procurement Policy	Owner's document, entitled "Great Lakes Water Authority Procurement Policy", that establishes the way Owner conducts the process of procuring the goods and services for the business of the organization, as the same may be amended from time to time.
Progress Payment	A periodic payment to Contractor based on the Contracting Officer's certification of an Application for Payment pursuant to the terms of the Contract.
Project	The total undertaking described in Exhibit A and the Contract Documents to be accomplished by Contractor which completion of the Work will achieve.
Project Construction Management Lead ("PCML")	The individual or entity designated by Owner that provides construction management services to Owner.
Project Design Lead ("PDL")	The registered professional engineer in the State of Michigan that had primary responsibility for preparing or furnishing the Specifications and/or Drawings.

Provisional Allowance	An amount included in the Contract Price to reimburse Contractor for the cost to furnish and perform Work that is uncertain, may not be required, is of indeterminate scope, or where design information and quantities, complexity, etc. are neither shown nor detailed in the Contract Documents. Work authorized under any Provisional Allowance may consist of (i) changes required by actual conditions, as determined by Owner, that are incorporated into the Work in accordance with the General Conditions, and (ii) any other Work authorized and completed under the pertinent provisions of the Contract Documents. Unlike a Cash Allowance, payments under a Provisional 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 Owner and not paid to Contractor.
Punch List	A list of items of Work to be completed or corrected by Contractor after Substantial Completion, as required by the Contract Documents.
Record(s)	All books, ledgers, journals, accounts, documents, and other collected data of Contractor in which information is kept regarding the performance of this Contract.
Schedule of Values	A Submittal consisting of a statement furnished by Contractor reflecting the portions of the Contract Price allocated to the various portions of the Work and used as the basis for reviewing Applications for Payment.
Specifications	A part of the Contract Documents consisting of written indicative requirements for materials, equipment, construction systems, standards, and workmanship, attached as Book 2, if applicable, and including, if applicable, the “Schedule of Manufacturers and Suppliers” included in Exhibit B.
Subcontract	The agreement between Contractor and Subcontractor for performance of any of the Work.
Subcontractor	A person or entity which has a direct contract with Contractor to perform any of the Work.

Submittals	Includes progress schedules, including the CPM Schedule and the Schedule of Values, Shop Drawings, Samples, Product Data, and those other documents required for submission by the Contract Documents and provided by Contractor to Owner for approval, comment, information, or record. Submittals are not Contract Documents.
Substantial Completion	The stage in the progress of the Work when Owner has determined that the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents that Owner can occupy or utilize the Work for its intended purpose, as more fully defined in Exhibit C, General Conditions.
Sub-Subcontractor	A person or entity which has a direct or indirect contract with a Subcontractor to perform any of the Work.
Supplemental General Conditions	Exhibit H of the Contract which, if applicable, supplements and/or modifies, changes, adds to, or deletes provisions of Exhibit C, General Conditions.
Supplier	A person or entity which supplies materials or equipment for the Work, including those fabricated to a special design, but which does not perform labor on the Work.
Surety	An entity which guarantees the Work via issuance of performance and payment bonds.
Total Float	The number of Days by which the Work or any part of the Work may be delayed without necessarily adjusting any Key Completion Time.
Unilateral Change Order	A written instrument signed by Owner and approved in accordance with the Procurement Policy, which orders a change in the Work, and results in an adjustment in the Contract Price, any Key Completion Times, and/or Contract Time without the mutual agreement of Contractor.
Work	All goods and services including, without limitation, 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, 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)

EXHIBIT H
SUPPLEMENTAL GENERAL CONDITIONS

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(End Exhibit H – Supplemental General Conditions)