

DESIGN BUILD AGREEMENT

BETWEEN

GREAT LAKES WATER AUTHORITY, A MICHIGAN MUNICIPAL AUTHORITY

AND

ENTER CONTRACTOR NAME

CONTRACT NO. ENTER CONTRACT NUMBER

ENTER BRIEF DESCRIPTION OF AGREEMENT

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**GREAT LAKES WATER AUTHORITY
DESIGN BUILD AGREEMENT**

This Design Build Agreement Contract No. Enter Contract Number (“Agreement”) is entered into 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 services, labor, equipment and/or materials (“Work”) generally described in Exhibit A, “General Description of Project and Work; Key Completion Times; Liquidated Damages”, relating to the Project generally described in Exhibit A and as otherwise set forth in Exhibit B, “Contract Documents”; 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 understandings 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 and Contractor shall perform the Work in accordance with the terms and conditions contained in the Contract Documents. This Agreement shall be administered by Owner and Contractor shall perform the Work at the direction of Owner as set forth in the Contract Documents.
- 1.02 If all or portions of the Work will be funded by the State Revolving Loan Fund as defined in, and in accordance with the U.S. Environmental Protection Agency (“EPA”) regulations as administered by the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”), it must be noted that (i) the United States, EPA, State of Michigan and EGLE are not parties to this Agreement and (ii) this Agreement is subject to regulations contained in 40 CFR 35.936, 35.938 and 35.939 in effect on the date of execution of this Agreement, and Owner’s rights and remedies provided in these clauses are in addition to any other rights and remedies provided by law or under this Agreement.
- 1.03 Contractor shall comply with and shall require its employees, Engineer, Subcontractors, Sub-Subcontractors, and Suppliers to comply with all security policies and procedures in effect at any Owner-owned or operated facility.

**Article II
Contracting Officer**

2.01 The Contracting Officer shall be the CPO of Owner or an employee of Owner designated as such by the CPO. As used in the Contract Documents, the term “Contracting Officer” shall include any designated representative of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

**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 Work shall be started by the date specified in the Notice to Proceed and shall be completed prior to the time indicated for Final Completion 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 the Contract Documents, Owner agrees to pay Contractor for the performance of the Work in accordance with the terms and conditions of and at the sum set forth in Exhibit D, “Costing Summary and Terms of Payment” (the “Contract Price”).

**Article VI
Notices**

6.01 Notice of termination for cause, notice of termination for convenience, Notice to Proceed, and notice of change of address shall be given in writing, mailed by postage prepaid, signed by the authorized representative of such Party and addressed as follows:

If to Owner: Great Lakes Water Authority 735 Randolph Street, 15 th Floor Detroit, Michigan 48226 Attention: Chief Procurement Officer E-mail: ChiefProcurementOfficer@glwater.org	If to Contractor: See Exhibit E, “Addresses for Notice”
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- 6.02 All other notices, consents, approvals, requests, and other communications (collectively, “Notices”) required or permitted under the Contract Documents may be given by a Party by e-mail at the e-mail addresses set forth in Exhibit E.
- 6.03 Either Party may change its postal address and/or e-mail address at any time by giving notice of the address change to the other Party.
- 6.04 Notices shall be deemed given on the day of mailing or e-mailing.
- 6.05 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 failure by Owner to insist upon the strict performance of any covenant, agreement, term, or condition of the Contract Documents or to exercise any right, term or remedy consequent upon its breach shall constitute a waiver of such covenant, agreement, term, condition, or breach.
- 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, the words “herein”, “hereof”, and “hereunder” and other words of similar import refer to the Contract Documents as a whole and not to any particular article, section or subdivision.

- 8.05 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.
- 8.06 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.
- 8.07 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.
- 8.08 If any Subcontractor, Sub-Subcontractor, or Supplier 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.
- 8.09 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.
- 8.10 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.
- 8.11 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.
- 8.12 This Agreement may be executed in any number of originals, any one of which shall be deemed an accurate representation of this Agreement. Promptly after the execution of this Agreement, Owner shall provide a copy to Contractor.

- 8.13 As used in the Contract Documents, the singular shall include the plural, and the plural shall include the singular.
- 8.14 The Contract Documents shall not be construed to create any rights in any third party.
- 8.15 No part of the Contract Documents may be waived except by the written agreement of the Parties. Forbearance in any form from demanding performance is not a waiver of performance. Until complete performance under the Contract Documents, the Party owed performance may invoke any remedy thereunder or under law, despite its past forbearance.
- 8.16 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.
- 8.17 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.
- 8.18 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.
- 8.19 Contractor represents and warrants that this Agreement 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.
- 8.20 Capitalized terms in the Contract Documents shall have the meanings defined throughout the Agreement and as ascribed in Exhibit G, "Glossary".
- 8.21 When the Work includes the installation of certain equipment and/or products, Contractor is required to review the proposed equipment/products to ensure that they are, at a minimum, "Energy Star" rated. All proposed equipment/product choices must be reviewed by a qualified 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.

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

Enter Contractor Name:

By: _____
Signature

Print Name

Its: _____
Title

Dated: _____

Great Lakes Water Authority, Owner:

By: _____
Choose an item.

Its: Enter title

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

APPROVED BY GLWA
BOARD OF DIRECTORS: Not Applicable Enter Date

EXHIBIT A

PROJECT; WORK PLAN; TIME

The Project:

The 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

(End Exhibit A)

EXHIBIT A-1

KEY PERSONNEL

[INSERT KEY PERSONNEL LIST/DIAGRAM]

EXHIBIT B

CONTRACT DOCUMENTS

- I. The Contract Documents. The Contract Documents shall consist of the documents explicitly designated in this Exhibit B.
- a. The Agreement, which consists of:
 - i. Book 1: This Design Build Agreement, including:
 - 1. Exhibit A: General Description of Project and Work; Key Completion Times; Liquidated Damages
 - a. Exhibit A-1: Key Personnel
 - 2. Exhibit B: Contract Documents
 - 3. Exhibit C: General Conditions
 - 4. Exhibit D: Costing Summary and Payment Terms
 - 5. Exhibit E: Addresses for Notice
 - 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. Notices to Proceed; and
 - c. Construction Change Directives, 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:	Construction Change Directives, Change Orders and Unilateral Change Orders
Second Priority:	The Agreement, excepting Exhibit C, General Conditions
Third Priority:	Exhibit H, Supplemental General Conditions, if and as applicable
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 RELATIONSHIP OF THE PARTIES

1.2.1 Contractor shall furnish the design and construction services set forth in the Contract Documents 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 design and construction of the Project, including the coordination of all consultant, professional design and engineering services and supplying all labor, materials and equipment used or incorporated therein. Contractor shall ensure performance of all Work necessary to obtain completion of the Project by the Key Completion Times specified in the Contract Documents for the Contract Price.

1.2.2 Contractor shall assume full responsibility and liability with respect to design and construction of the Project in accordance with applicable professional standards and the requirements herein and shall indemnify and hold harmless the Indemnitees with respect to any defects in the Project which may relate to errors, omissions, inconsistencies, or other defects therein.

1.2.3 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 and the Work 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.

1.2.4 The services of Contractor may be self-performed. All design and construction services performed by Subcontractors shall be performed by Subcontractors that Contractor will competitively procure, award, hold, administer, and manage in accordance with the Contract Documents.

1.2.5 The basis and details of any design necessary to carry out the Project are the sole responsibility of Contractor to coordinate and develop.

ARTICLE 2 CONTRACTING OFFICER

2.1 GENERAL PROVISIONS

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

2.1.2 The Contracting Officer has authority to act on behalf of Owner only to the extent provided in the Contract Documents.

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

2.1.4 The Contracting Officer will prepare supporting documentation in connection with Requests for Change Orders, Construction Change Directives and Change Orders.

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

2.1.6 If the Contracting Officer determines that the Work is not performed in accordance with the Contract Documents, the Contracting Officer will notify Contractor. Upon receipt of such notice, Contractor shall, at no additional expense to Owner, correct the non-conforming or defective Work within seven (7) Days or, if such non-conforming or defective Work cannot be corrected within such period, Contractor shall commence the corrective Work and submit its Drawings within such period and shall report its progress with respect thereto whenever requested by the Contracting Officer. Corrections shall be accomplished without affecting Key Completion Times or the Contract Price.

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

2.1.8 During the design phase of the Work, based on the Contracting Officer's observations and on evaluations of Contractor's Applications for Payment, the Contracting Officer shall issue Certificates for Payment in such amounts as determined by the Contracting Officer. During the construction phase of the Work, based on the Contracting Officer's observations at the Project site and on evaluations of Contractor's Applications for Payment, the Contracting Officer shall issue Certificates for Payment in such amounts as determined by the Contracting Officer.

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

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

2.1.11 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. Such designation shall be in writing and shall be effective when delivered to Contractor.

2.1.12 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, servant 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) 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.

**ARTICLE 3
OWNER**

3.1 INFORMATION AND SERVICES REQUIRED OF OWNER

Upon Contractor's written request, information or services 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 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, Sub-Subcontractors, laborers, or materialmen or for material or labor used in the Work; or

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

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

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

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

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

3.3.8 Fails to pay withholding or other taxes; or

3.3.9 Fails to perform any other material obligation under the Contract Documents; then Owner may, after seven (7) 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 seven (7) 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 or the Contracting Officer 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, Sub-Subcontractors, Suppliers, laborers or materialmen or for material or labor used in the Work; or

3.4.5 Any part of such payment is attributable to Work with respect to which any Party has filed an 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 any Key Completion Time; 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

4.1 GENERAL

4.1.1 Contractor shall provide all Work necessary to design and construct the Project and shall cause the Project to be designed and constructed for the Contract Price, within the Contract Time and otherwise in accordance with the terms and conditions of the Contract Documents. Without limiting the generality of the foregoing, Contractor's responsibilities with respect to the Project shall include all Work described in the Contract Documents and the following (to the extent not already accomplished by Owner prior to the date of this Agreement):

4.1.1.1 Contractor shall analyze in detail and recommend to the Contracting Officer what portions of the Project will be treated for design and/or construction purposes as separate portions of the Project.

4.1.1.2 Contractor shall prepare and make all filings that Owner may be required by law to make to obtain and maintain in good standing all necessary licenses and permits for the design, construction, and construction management of the Project. Contractor shall assist the Contracting Officer in any responsibility that Owner may have to file any document(s) with any governmental entity necessary to obtain any such necessary licenses or permits.

4.1.1.3 Contractor shall prepare and make all filings that Contractor may be required by law to make to obtain and maintain in good standing any licenses and/or permits required of Contractor to perform all aspects of the Work. Contractor shall have sole and exclusive responsibility and liability for any and all losses or actual damages suffered by Owner by virtue of Contractor's failure to timely or properly obtain or maintain any such necessary licenses or permits, and, to the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Indemnitees from any and all liabilities,

claims, fees and actual damages resulting from Contractor's failure to obtain or maintain any such necessary licenses or permits.

4.1.1.4 Contractor shall manage the process of obtaining all necessary utilities and third-party consents necessary to construct the Project.

4.1.1.5 Contractor shall identify and secure, at Contractor's sole cost, potential sites for temporary acquisition in connection with the construction of the Project provided, however, if the identified site is an Owner site, Contractor shall obtain Owner approval to use such site. If the Project requires the permanent acquisition of real property by Owner, Contractor shall, upon request of Owner, identify such potential sites and make recommendations to Owner regarding the same.

4.1.1.6 Upon Substantial Completion, Contractor shall assist the Contracting Officer in the preparation of detailed and accurate Punch Lists and shall require the applicable Subcontractor to complete the final Punch List. Upon Final Completion, Contractor shall provide to the Contracting Officer for approval a certification of Final Completion in a form reasonably satisfactory to the Contracting Officer.

4.1.1.7 Contractor shall provide sufficient personnel and organization, at the level shown in the organizational chart set forth in Exhibit A-1 to accomplish, in an efficient and timely manner, its obligations under the Contract Documents. Contractor shall not assign any other projects or assignments to any members of such staff if such projects or assignments could reasonably be expected to cause any delays in the development of the Project or materially impair the ability of Contractor to perform its obligations under the Contract Documents.

4.1.1.8 Contractor acknowledges the importance to the Project of Owner's confidence in the services of Contractor's Project Manager, as named in this Agreement, its key personnel and its respective principals, and the substantial continuity of key personnel's participation in the Work. The Agreement has been entered into on the representation that Contractor will use reasonable efforts to maintain the listed individuals, firm affiliations, assignments, and responsibilities during the entire term of the Agreement. No substitution or replacement of individuals or change in status (e.g., firm affiliation, assignment, or responsibilities) of the entities and individuals listed in the Agreement shall be made by Contractor without the prior written approval of the Contracting Officer (which approval shall not be unreasonably withheld), except when necessitated by causes beyond Contractor's reasonable control. Nothing in this Section, however, shall be deemed to require Contractor to agree to any change in the terms of employment or engagement of any individual or entity to retain that individual's or entity's services. At the request of the Contracting Officer, Contractor shall consult with the Contracting Officer to resolve any situation in which a member of Contractor's team (including, without limitation, any

Subcontractor or any principal or employee thereof) is failing to perform to an adequate professional and technical standard.

4.2 DESIGN REVIEW PROCEDURES

4.2.1 Contractor shall conduct, oversee and/or manage the preparation of the Design Documents and Construction Documents for the Project. Such design shall conform to all applicable requirements of the Contract Documents and all federal, state, and local codes and regulations of any authorities having jurisdiction. The design of the Project shall be in accordance with all professional engineering principles generally accepted as standards of the industry for projects of similar technology, size, scope, and complexity at the time and in the locale where the design Work is furnished. For the purposes of this subsection, the locale shall be Detroit, Michigan.

4.2.2 Contractor shall deliver to the Contracting Officer the Design Documents and the Construction Documents according to the Key Completion Times, if any, or the CPM Schedule.

4.2.3 The Contracting Officer shall have the right to review, comment on and object to all Design Documents and Construction Documents for the purpose of verifying compliance with the requirements of the Contract Documents. The Contracting Officer will coordinate all Owner design review comments and will deliver such comments to Contractor.

4.2.4 If the Contracting Officer has any comments or objections related to Contractor's failure to comply with the requirements of the Contract Documents, then Contractor shall respond to all such comments and ensure they are incorporated and/or resolved as necessary to fully reflect such comments. The foregoing shall in no way obligate Contractor to incorporate any comments that (i) Contractor believes would render the Design Documents or Construction Documents erroneous, defective, or deficient in any respect; or (ii) do not directly relate to specific requirements of the Project and would result in a delay to any Key Completion Time or an increase in its costs. If Contractor does not incorporate or otherwise resolve any comment, Contractor shall deliver to the Contracting Officer within a reasonable time, not to exceed thirty (30) Days after receipt of the Contracting Officer's comments, a written explanation as to why modifications or incorporations based on such comments are not required. The explanation shall include facts, analyses and reasons that support the conclusion. Any failure of Contractor to provide such explanation shall constitute Contractor's full acceptance of all responsibility related to its failure to incorporate or resolve the Contracting Officer's comments or objections to the Design Documents and Construction Documents.

4.2.5 Contractor shall be responsible for handling all design reviews required by and obtaining all design approvals of any third parties as required.

4.2.6 All Design Documents, Construction Documents, reports, and other data (including without limitation, written, printed, graphic, video and audio material contained in any computer

data base or computer readable form) (hereinafter “Works of Authorship”) developed during the term of the Agreement are the property of Owner. Works of Authorship created during the term of the Agreement are “Works for Hire,” as that term is defined in copyright law. Owner shall own all rights to any inventions, discoveries, new uses, advances on the state of art, protocols, ideas, products, or other protectable rights arising from any activities within the scope of the Contract Documents (hereinafter “Inventions”). Contractor shall execute all documents, provide all information, and otherwise take all actions requested by Owner including, without limitation, assignments of any rights Contractor may have in such works, to secure for Owner the ownership rights and available legal protections for all Works of Authorship or Inventions. Contractor expressly disclaims any rights in Works of Authorship or Inventions related to the performance of Work. In no event shall this Section 4.2.6 transfer any right, title or interest to any intellectual property Contractor possessed prior to entering into this Agreement or that is developed separately from this Project.

4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

4.3.1 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. Neither Contractor nor any entity that owns any of the equity interests of Contractor (nor any entity in which Contractor or any such equity interest owner has a greater than 5% ownership interest) shall serve as a Subcontractor with respect to any portion of the Work unless such equity ownership interest has been disclosed to and approved by the Contracting Officer.

4.3.2 Contractor shall be responsible to Owner for the acts and omissions of Contractor’s employees. Contractor shall be as fully responsible to Owner for the acts and omissions of its Subcontractors, their agents, and persons directly or indirectly employed by them, and other persons performing any of the Work as it is for the acts and omissions of persons directly employed by Contractor.

4.3.3 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 the Contracting Officer in their 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.

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

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

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

4.3.7 Contractor shall maintain at the Project site one record copy of the Construction 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 Construction Documents, (iv) all approved Submittals, and (v) all clarifications and interpretations.

4.3.8 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.

4.3.9 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 the Contracting Officer. Contractor shall provide the Contracting Officer with reasonable prior notice of any required shutdowns of building systems, utilities and/or equipment, such amount of prior notice to be agreed upon between Contractor and the Contracting Officer. Contractor will, at the request of the Contracting Officer, schedule any Work which otherwise may have an adverse impact upon the health, safety, or welfare of Owner's employees, guests or invitees or the normal facility operations during those times in which such adverse consequences may be minimized and there shall be no increase in the Contract Price because of such scheduling.

4.3.10 Contractor shall retain a competent registered professional engineer or registered land surveyor, acceptable to the Contracting Officer, who shall establish the exterior lines and required elevations of all buildings and structures to be erected on the Project site and shall establish sufficient lines and grades for the construction of the 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.

4.3.11 Contractor shall conduct, oversee and/or manage the construction of the Project in accordance with the final Construction Documents approved in writing by the Contracting Officer. Contractor shall be solely responsible for and have control over the fabrication, delivery, sequences, procedures, and site safety, and shall be solely responsible for coordinating all portions of the Work, subject, however, to all requirements contained in the Contract Documents. 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.

4.4 LABOR AND MATERIALS

4.4.1 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 the Contracting Officer for any tie-ins to, and disconnections from, existing Owner systems.

4.4.2 The Contracting Officer may, in writing, require Contractor to remove from the Project any employee or Subcontractor or employee of a Subcontractor that the Contracting Officer deems incompetent, careless, or uncooperative and may require 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 them. 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, handbilling and other similar activities which would disrupt the Project.

4.4.3 All materials furnished and used in connection with the Work shall be new and approved by the Contracting Officer, 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. The Contracting Officer 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 the Contracting Officer, would lead to a reasonable certainty that any material used or proposed to be used in the Work meets the requirements of the Contract Documents. All such data shall be furnished at Contractor's expense.

4.4.4 Deviations from the Drawings and Specifications shall not be permitted except for substitutions approved by the Contracting Officer 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 4.4.4.1. Substitutions recommended by Contractor or a Subcontractor for the purpose of reducing cost to the Subcontractor or Contractor or off-setting delays for which Contractor or Subcontractor is responsible shall be subject to Section 4.4.4.2. The Contracting Officer shall determine whether the procedures of Section 4.4.4.1 or 4.4.4.2 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 Agreement has been executed, to request the Contracting Officer's approval of a substitute material generally considered to be equal to that named in the Drawings and/or Specifications. The Contracting Officer, however, shall have no obligation to accept any substitute.

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

4.4.4.2 Requests from Contractor or a Subcontractor for approval of any substitution for the benefit of Contractor or such Subcontractor, as determined by the Contracting Officer, must be submitted in writing to the Contracting Officer, together with all necessary supporting data. Unless the Contracting Officer agrees otherwise, all such requests shall be submitted prior to the execution of the Subcontract covering the portion of the Work for which a substitution or variation is proposed. Requests for approval of any substitute shall be accompanied by (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 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) Shall meet the standard of care set forth in Section 4.2.1;

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

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

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

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

4.5 WARRANTY

4.5.1 Contractor warrants as follows: (i) all design Work performed pursuant to the Contract Documents shall conform to the standard of care set forth in Section 4.2.1; (ii) the Project construction shall be free of defects, including defects in materials and workmanship; (iii) all materials and equipment furnished under the Contract Documents shall be new and of good quality

and suitable for the purpose used; and (iv) the Work shall meet all the requirements of the Contract Documents.

4.5.2 The warranties associated with 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 or Suppliers, secured by Contractor, including those more than one (1) year; and (iv) any additional bond or guaranty which may be required under the Drawings and Specifications, shall each 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 material suppliers. Contractor shall render assistance and cooperate with Owner in enforcing those warranties from Subcontractors and Suppliers which extend beyond Contractor's warranties.

4.5.3 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.

4.6 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 Agreement is executed, whether or not yet effective.

4.7 PERMITS, FEES AND NOTICES

4.7.1 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 Agreement 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.

4.7.2 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.

4.7.3 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.

4.7.4 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.

4.8 ALLOWANCES

4.8.1 Contractor shall obtain the Contracting Officer's written consent 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 the Cash Allowance shall also exclude any fees payable to Contractor under Article 11 and insurance and bond costs.

4.8.2 Contractor shall complete Work covered by a Provisional Allowance only as directed in writing by the Contracting Officer. The costing basis of Work authorized under any Provisional Allowance shall be determined pursuant to the procedures set forth in Article 11, except that payment within the limits of a Provisional Allowance shall exclude insurance and bond costs.

4.9 USE OF SITE

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

4.10 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 from all loss, cost, or expense (including reasonable attorneys' fees and court costs) 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.

4.11 INDEMNIFICATION

4.11.1 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.

4.11.2 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.

4.11.3 The obligations of Contractor under this Section 4.11 shall survive the termination of the Agreement as to all matters arising prior to the date of termination and shall be fulfilled at no cost or expense to Owner.

ARTICLE 5 SUBCONTRACTORS

5.1 THIRD-PARTY BENEFICIARY

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 Agreement, without first obtaining the Contracting Officer'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 the Contracting Officer a complete, executed copy of each Subcontract awarded.

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

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By an appropriate written agreement, 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 Subcontractors, Suppliers, laborers, and vendors to agree to indemnify and hold harmless Owner from all claims that may arise from such Subcontractor's operations to the same extent as Contractor has indemnified Owner pursuant to Section 4.11. Such provisions shall be in a form reasonably satisfactory to Owner.

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 1.2.3, 4.3.2, 5.2.3, 7.3, 8.3.7, 8.4.5, 8.5.2, 9.6.2, 9.7 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 the Contracting Officer 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 Contracting Officer 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 Agreement; and

5.3.3.7 An obligation that 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 the Contracting Officer.

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 SEPARATE CONTRACTORS

6.1 OWNER'S RIGHT TO PERFORM WORK AND TO AWARD SEPARATE CONTRACTS

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

6.1.2 Contractor shall provide for the coordination of the work of Owner's forces and of each separate contractor with the Work of Contractor, 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 the Contracting Officer 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, the 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, the Contracting Officer shall notify Contractor who shall indemnify and hold harmless Owner from any damages, penalties, liabilities, costs, judgments, or awards against Owner therefrom, including all reasonable attorneys' fees and court or arbitration costs.

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 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 the Contracting Officer timely notice of its readiness and the date arranged so they may observe such inspection, testing or approval.

7.1.2 If the Contracting Officer determines that any Work requires special inspection, testing, or approval which Section 7.1.1 does not include, the Contracting Officer 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 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 the Contracting Officer, and promptly delivered to the Contracting Officer.

7.2 OTHER PROJECTS

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

7.3 NONDISCRIMINATION

Contractor shall comply with Titles VI and VII of the Civil Rights Act of 1964 (Public Law 88-352, 78 STAT.266), U.S. Department of Justice Regulations (28 CFR Part 42), the Michigan Civil Rights Act (Public Act No. 453 of 1976), the Michigan Handicappers Civil Rights Act (Public Act No. 220 of 1976) and all other fair employment practices and equal opportunity laws. Contractor shall furnish and file compliance reports within the times and in form prescribed by Owner. Compliance reports may also 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. Contractor shall not discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment because of religion, race, color, national origin, age, sex, height, weight, marital status, or handicap that is unrelated to the individual's ability to perform the duties of a particular assignment or position. The 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 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 maintenance and operating 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 Any assignment and/or transfer of all guarantees and warranties from Subcontractors, vendors, Suppliers 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 the Contracting Officer), 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.

8.2.6 In the event (i) Construction Change Directives or Change Orders are issued by Owner; or (ii) Contractor becomes aware of any conditions which are likely to cause or are actually causing delays, Contractor shall notify the Contracting Officer in writing of the effect, if any, within any specified time limits set forth in the Contract Documents (and if no specific time limits are set forth, within ten (10) Days) and shall state in what respects, if any, to any Key Completion Times that should be revised with the reasons therefor. If Contractor fails to provide the Contracting Officer with written notice within the specified time that an adjustment to any Key Completion Time is necessary, then any claims by Contractor for an adjustment of any Key Completion Time or the Contract Time shall be waived.

8.3 SUSPENSION BY OWNER

8.3.1 The Contracting Officer 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 is suspended, delayed, or interrupted at the direction of the Contracting Officer, and such act (i) causes delays in the critical path activity set forth in the CPM Schedule; and (ii) affects any Key Completion Time in Exhibit A, then any such affected Key Completion Time shall be adjusted as determined by the Contracting Officer, but the total extension of any Key Completion Time shall not exceed the length of the delay.

8.3.3 Any claims for extension of time pursuant to Section 8.3.2 shall be made in writing to the Contracting Officer no more than ten (10) Days after the commencement of the delay, otherwise they shall be waived. In the case of a continuing cause of delay, only one claim is necessary. Any delay of less than twenty-four (24) hours duration shall not be justification for adjusting 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 GLWA Procurement Policy.

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, and if such delay affects any Key Completion Time, then any such affected Key Completion Time shall be adjusted as determined by the Contracting Officer but the total extension of any Key Completion Time shall 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 Any claims for extension of time pursuant to Section 8.4.1 shall be made in writing to the Contracting Officer no more than ten (10) Days after the commencement of the delay, except in connection with weather delays which shall be made 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 claim 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 Each Subcontractor shall be bound by the provisions of this Section 8.4.

8.5 ACCELERATION OF PERFORMANCE

8.5.1 If Owner shall desire 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 the Contracting Officer specifically setting forth a request pursuant to this Section 8.5, employ overtime labor. Owner shall compensate Contractor for the premium cost of such overtime labor, as shown on the time slips checked and approved each day by the Contracting Officer, 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 construction phase of the Work. Any final design or construction Work that precedes the Notice to Proceed for construction shall be at Contractor's sole risk and expense;

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

8.6.1.3 The Contracting Officer has reviewed and approved in writing, the final Design Documents and Construction Documents for construction relating to such portion of the Work; and

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

8.6.2 As used in this Section 8.6, the term "construction" specifically excludes field activities incidental to design Work. Such exclusion does not relieve Contractor of any conditions and prerequisites to conducting such field activities set forth in the Contract Documents or applicable laws, rules, or regulations.

8.7 USE OF FLOAT

Total Float shall be available to and shared between Contractor and Owner. If the Contracting Officer 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 CONTRACT PRICE

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

9.2 SCHEDULE OF VALUES

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

9.3 APPLICATIONS FOR PAYMENT

9.3.1 The issuance of an Application for Payment 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.

9.3.2 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 the Contracting Officer may reasonably require demonstrating that it is the owner of such material free and clear of all rights in others. Except to the extent covered by the insurance required under the Agreement, Contractor shall have full responsibility for all stored materials and shall bear the risk of all loss, damage of theft thereof or thereto.

9.3.3 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.

9.3.4 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, laborer and materialman, 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, laborers and materialmen. In the event of any discrepancy, Contractor shall furnish a written explanation to the Contracting Officer.

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

9.4 PROGRESS PAYMENTS

9.4.1 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.

9.4.2 The Contracting Officer may, upon 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 the Contracting Officer on account of Work done by such Subcontractor.

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

9.4.4 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 the Contracting Officer 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.

9.5 PAYMENTS WITHHELD

9.5.1 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 of any of the causes listed in Sections 9.5.1.1 through 9.5.1.7 below.

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

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

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

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

9.5.1.5 Any part of such payment is attributable to Work with respect to which 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

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

9.5.1.7 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.

9.5.2 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.

9.5.3 As provided by MCL 125.1563(3), all retainage shall be held in an interest-bearing account with a regulated financial institution in the State of Michigan unless the retained funds are to be provided under a state or federal grant and the retained funds have not been paid to 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 9.8.2.

9.6 FAILURE OF PAYMENT

9.6.1 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.

9.6.2 Each Subcontractor shall be bound by the provisions of this Section 9.6.

9.7 SUBSTANTIAL COMPLETION

When Contractor considers that the Work, or a designated portion thereof which is acceptable to the Contracting Officer, is substantially complete as defined in Section 8.1.3, Contractor shall prepare for submission to the Contracting Officer 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 the Contracting Officer, 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.

9.8 FINAL COMPLETION, FINAL PAYMENT AND RELEASE OF RETENTION

9.8.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Contracting Officer will promptly make such inspection and, when they find the Work acceptable under the Contract Documents, all items on the Contracting Officer's Punch List completed to the Contracting Officer's satisfaction and the Contract Documents fully performed, 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 stating 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 Contractor, and noted in the final Certificate of Payment, is due and payable.

9.8.2 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 or its property 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, laborers and material suppliers in the forms 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 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 Contractor's Project Manager unless otherwise designated by Contractor in writing to the Contracting Officer. The person designated shall not be changed unless notice is given to the Contracting Officer. 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 in the course of 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 Agreement.

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 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 the foregoing Owner property and shall reimburse Owner for any loss, damage, or injury, except as may be directly caused by agents or employees of 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 Contracting Officer, 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, its agents, employees, Subcontractors, Sub-Subcontractors and their agents and employees (collectively, "Associates"), 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 the Contracting Officer 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 or its Associate'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 or its Associate'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 or its Associates, 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 the Contracting Officer as soon as practicable), the Contracting Officer's written approval of such actions shall first be obtained, which approval shall not be unreasonably withheld; and (ii) if it is impossible to return the Work or the Project site to such condition, as determined by the Contracting Officer, then Contractor may substitute an alternative action which will achieve and maintain the safe condition of the Work or the Project site, if such alternative is acceptable to the Contracting Officer in 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.

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 or its Associates 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 or its Associates. In addition to any other right granted by law or the Agreement, 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 Agreement, 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 or its Associates in compliance with all Applicable Laws. At all times during the performance of the Work, Contractor shall, if required by the Contracting Officer 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 or its Associates.

10.4.6 Contractor shall promptly notify the Contracting Officer 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 Change Order or when a Claim 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 Claim. 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 the Contracting Officer, 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.

11.1.1.1.1 Such employees shall include, without limitation, superintendents, forepersons, and other personnel employed full-time at the 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 expenses of performing Work after regular working hours, on Saturday, Sunday, legal holiday, or Owner holiday shall be included in the above only to the extent authorized in writing by the Contracting Officer. 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.

11.1.1.1.2 Such employees shall also include engineers, engineering technicians, architects, and others providing design professional services. For purposes of this Section 11.1.1.1, Contractor shall be entitled to payment for such employees an amount equal to salary costs times a factor, both as designated in the Contract Documents, for all services performed or furnished by such employees engaged in the Work.

11.1.1.2 Materials and Equipment. Cost 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 Subcontractors. Payments made by Contractor to Subcontractors (excluding payments for design professional services pursuant to Section 11.1.1.4) 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.

11.1.1.4 Payments made by Contractor for design professional services provided or furnished under a design Subcontract shall be included.

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 for travel more than 50 miles outside the corporate limits of the City of Detroit, the proportion of necessary transportation, travel and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the performance of the Work.

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 or engineering 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 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 by the Agreement.

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 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 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 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 Agreement. When the value of the Work covered by a Change Order is determined based on the Cost of the Work, Contractor's fee shall be determined as set forth in Section 12.3.4.

11.1.4 Documentation. Whenever the cost 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 will be deemed to include for all unit price Work an amount equal to the sum of the established unit prices for each separately identified 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 permitted by the CPO in their sole discretion and in accordance with Article 12. For the avoidance of doubt, the Contracting Officer's designee shall not have any authority in permitting any adjustment to unit prices.

11.3 LUMP SUM WORK

11.3.1 Where the Contract Documents provide that all or part of the Work is to be lump sum price Work, the Contract Price shall be as set forth in Exhibit D. 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 Change Order or Construction Change Directive. Changes in the Work may be made

without notice to any Sureties, and absence of such notice shall not relieve such Sureties of any of their obligations to Owner.

12.1.2 Change Order. A Change Order shall be mutually agreed upon by the Parties. A Change Order may result from a Construction Change Directive. 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 Contract Time and shall entitle Contractor to payment for the Work covered thereby. Contractor shall include the Work covered by such Change Orders in its Applications for Payment as if such Work were originally part of the Contract Documents. Contractor shall proceed promptly with any Work authorized under any Change Order upon approval thereof.

12.1.3 Construction Change Directive. A Construction Change Directive may be issued by the Contracting Officer and may or may not be mutually agreed upon by the Parties. A Construction Change Directive signed by Contractor indicates Contractor's agreement with its terms. A mutually agreed upon Construction Change Directive shall be immediately effective and binding on the Parties and shall, on or before issuance of Final Payment, be incorporated into a Change Order. In the case of disagreement as to the terms of the Construction Change Directive including the amount to be adjusted, credited, or paid for changed Work, Contractor shall nevertheless promptly comply with the Construction Change Directive, and payment or credit shall be made in accordance with the Contract Documents up to the reasonable estimated value of the change as determined by Owner. A Construction Change Directive shall not be used to change any Key Completion Times, the Contract Time, or the Contract Price. A Construction Change Directive may be used to (i) order changes in the Work which do not affect the Contract Price; (ii) authorize the use of or the reallocation of the funds of any Allowance; (iii) adjust quantities of, establish, or change (subject to Section 11.2.3) unit prices which do not affect the Contract Price; and (iv) authorize the reallocation of funds between lump sum line items. Contractor shall proceed promptly with the changes in the Work authorized by any Construction Change Directive, unless otherwise stated in the Construction Change Directive.

12.1.4 Unilateral Change Orders. Notwithstanding anything to the contrary in the Contract Documents, without notice to any surety and subject to Article 18, Owner 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 Contract Price, any Key Completion Times or Contract Time related thereto. Upon receipt of a Unilateral Change Order, Contractor shall promptly proceed or continue with the Work involved. Any such adjustment made hereunder shall be final and binding on Contractor. In the case of disagreement as to the terms of the Unilateral Change Order including the amount to be adjusted, credited, or paid for changed Work, Contractor shall nevertheless promptly comply with the Unilateral Change Order, and payment or credit shall

be made in accordance with the Contract Documents up to the reasonable estimated value of the change as determined by Owner.

12.1.5 Authorization. Changes in the Work shall be performed under the applicable provisions of the Contract Documents, and Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive, or Unilateral Change Order. Any change in the Contract Price, any Key Completion Times or Contract Time must result from a Change Order or Unilateral Change Order issued in strict compliance with the requirements of the Contract Documents and approved in accordance with the GLWA Procurement Policy. Accordingly, no verbal instructions, course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by an alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall, in the absence of a written Change Order or Construction Change Directive, be the basis for any claim to an increase in any amounts due under the Contract Documents or a change in the time period provided for in the Contract Documents, and all such claims are waived by Contractor and are forever barred.

12.1.6 Daily Records. In cases of emergency, Owner shall have the right to order such changes in the Work to proceed promptly. Until a Change Order, Construction Change Directive or Unilateral Change Order is authorized, Contractor shall certify, maintain, and submit daily records and invoices of labor, materials and equipment used in the changed Work which shall be acknowledged daily by the Contracting Officer. Such documentation shall be submitted in the form directed by the Contracting Officer and include an itemized accounting, supporting dates, and receipts and vouchers of all actual costs associated with the extra or changed Work.

12.2 PROCESSING CHANGES IN THE WORK

12.2.1 Owner Initiated Changes. Notwithstanding anything contained herein to the contrary, Owner may negotiate changes in the Work with Contractor by submitting a Request for Quotation to Contractor describing the change being considered and requesting that Contractor submit its proposal for the corresponding encumbrance against an Allowance, adjustment in Contract Price, any Key Completion Times, or Contract Time, if any.

12.2.2 Supporting Documentation. Within ten (10) Days of its receipt of a Request for Quotation, Contractor shall provide the Contracting Officer with (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. If the Parties mutually agree to proceed with the changes in the Work based upon the negotiation of Contractor's quote, the Contracting Officer shall submit a proposed Change Order or Construction Change Directive, as appropriate, to Contractor, together with the revised Drawings and Specifications, and which shall set forth any adjustment in the Contract Price or any Key Completion Times. Subject to Article 18, if the Parties do not reach mutual agreement

on the changed Work, the Contracting Officer may submit a Construction Change Directive or Unilateral Change Order and Contractor shall proceed as ordered therein.

12.2.3 Contractor Initiated Changes. Contractor may request changes in the Work by submitting a request for information to the Contracting Officer that includes the supporting documentation stated in Section 12.2.2.

12.2.4 Upon Contractor's acceptance of a proposed Change Order, the Contract Price and/or any Key Completion Times shall be adjusted as duly authorized and executed by the Parties.

12.2.5 In accordance with the Contract Documents, Contractor and its Subcontractors shall produce all documentation which Owner may request for the purpose of determining the correctness of the charges for the changed Work. Contractor shall submit to Owner daily time and material tickets for all changed Work, including changed Work performed by Subcontractors. These tickets shall include the identification number assigned to the changed Work, the location and description of the changed Work, the classification of labor employed including the applicable Subcontractor, workers' names and the last four digits of their social security numbers, the materials used, the equipment rented (not tools) and any other information required by the Contracting Officer. Owner shall be authorized to verify directly with Contractor's and its Subcontractors' suppliers of labor and materials the charges for such labor, material and other items appearing in Contractor's bills rendered to Owner, to confirm balances due and obtain sworn statements and waivers of claim.

12.3 CHANGE OF CONTRACT PRICE

12.3.1 The Contract Price may only be changed by a Change Order.

12.3.2 Owner shall always have the right to order changes in the Work to be performed on a costing basis of Owner's choosing. The Owner Request for Quotation or Construction Change Directive shall state which costing basis shall be utilized.

12.3.3 The value of any Work covered by a Change Order or the value of any Claim for an adjustment in the Contract Price will be determined as follows:

12.3.3.1 Where 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.

12.3.3.2 Where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum price (which may include an allowance for overhead and profit not necessarily in accordance with Section 12.3.4.2).

12.3.3.3 Where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum price is not reached under Section 12.3.3.2, based on the Cost of the Work (determined as provided in Section 11.1) plus a fixed fee for overhead and profit (determined as provided in Section 12.3.4).

12.3.4 Fixed Fee. Contractor's fixed fee for overhead and profit on Change Orders shall be determined as follows:

12.3.4.1 A mutually acceptable fixed fee; or

12.3.4.2 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:

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

12.3.4.2.2 For costs incurred under Sections 11.1.1.3, 11.1.1.4, 11.1.1.5 and 11.1.1.6, the Contractor's fee shall be five percent (5%);

12.3.4.2.3 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 12.3.4.1 and 12.3.4.2.1 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 forty percent (40%);

12.3.4.2.4 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.

12.3.4.2.5 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 12.3.4.2.1 through 12.3.4.2.4, inclusive.

12.4 CONCEALED CONDITIONS

12.4.1 Contractor shall promptly notify the Contracting Officer 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 claim for an increase in the Contract Price or extension of the Contract Time pursuant to this Section 12.4, it shall give the Contracting Officer 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 proposal or claim by Contractor due to differing site conditions shall be allowed 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 MINOR CHANGES IN THE WORK

Contractor shall have the right to request and Owner shall have the authority to direct minor changes in the Work provided that such changes shall not affect or adjust the Contract Price, any Key Completion Times or extend the Contract Time. As used in this section, minor changes in the Work shall mean changes that do not (i) authorize the use of or the reallocation of the funds of any Allowance, (ii) adjust quantities of, establish, or change unit prices, and (iii) authorize the reallocation of funds between lump sum line items. Minor changes shall be made by written direction of the Contracting Officer and shall be binding on Contractor. Contractor shall proceed promptly with the minor changes in the Work, unless otherwise stated in the written directive.

12.6 REQUESTS FOR CHANGE ORDERS

12.6.1 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, it shall within twenty (20) 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 a Request for Change Order to the Contracting Officer stating the amount of the additional compensation and/or additional time to which it is entitled and the justification for the request. The Contracting Officer shall evaluate the Request for Change Order within a reasonable time and advise Contractor whether Owner will grant in whole, grant in part, or deny the Request for Change Order. Any additional compensation

granted shall be recorded in the form of a Change Order. Failure of Contractor to timely submit a Request for Change Order in strict, not substantial, accordance with the requirements of this Section 12.6.1 shall constitute a waiver of and shall forever bar any recovery arising out of the pertinent act, error, or omission of Owner, even if Owner was not prejudiced thereby.

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

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 the Contracting Officer 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 is covered, which the Contracting Officer has not specifically requested to observe prior to being covered, the Contracting Officer 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, by appropriate Construction Change Directive or Change Order, 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 the Contracting Officer as defective or as failing to conform to the Contract Documents whether observed before or after Substantial Completion or Final Completion and whether fabricated, installed or completed. All corrections shall be accomplished within seven (7) Days after notice from the Contracting Officer 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 the 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 seven (7) Days from receipt of written notice from the Contracting Officer and to diligently prosecute the same to conclusion, without cost to, and to the satisfaction of, the Contracting Officer. This obligation shall survive termination of the Agreement. The Contracting Officer shall give such notice promptly after discovery of the condition.

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

13.2.4 If Contractor fails to correct defective or nonconforming Work, 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 the Contracting Officer, 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 ten (10) 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 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 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 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 FOR CAUSE

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

14.1.1.1 Contractor breaches a material term of the Contract Documents and fails to cure such default within five (5) business days after receipt of notice of such default; or

14.1.1.2 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

14.1.1.3 Contractor voluntarily makes any unauthorized changes in the personnel previously approved by Owner; or

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

14.1.2. In such case, Contractor shall not be entitled to receive any further payment until the Work is complete, or the Agreement is terminated in accordance with Section 4.03(b)(iii). If the unpaid balance of the Contract Price exceeds the expense of completing the Work, including compensation for Owner's additional services, such excess shall be paid to Contractor but only to the extent of the costs incurred by Contractor prior to the termination of the Agreement. If the expense of completing the Work shall exceed the unpaid balance of the Contract Price, Contractor shall pay such excess to Owner.

14.2 TERMINATION FOR CONVENIENCE

Owner may terminate the Agreement for its convenience at any time upon fifteen (15) Days' written notice of termination to Contractor. In such case, Contractor shall be entitled to receive, as total compensation for all Work performed (i) payment for all Work properly performed prior to the effective date of termination, including payment of the appropriate retainage; plus (ii) any restocking or material and equipment cancellation charges payable to Suppliers and vendors (unless Contractor assigns to Owner, at the request of Owner, the agreements pursuant to which such material and equipment was ordered and Owner indemnifies Contractor in connection

therewith); plus (iii) Contractor's reasonable demobilization costs. Payment of such compensation is the sole and exclusive remedy of Contractor for a termination of the Agreement by Owner without 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 indemnify and defend 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, 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 books, documents, papers, and records of Contractor 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 and 00/100 Dollars (\$2,500.00); 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 the Contracting Officer, 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) 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 Agreement 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 Agreement, 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 Agreement 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 shall be cause for immediate termination of the Agreement.

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 all Subcontractors to regard all information gained by each such person because of the Work performed hereunder as information which is confidential and proprietary to Owner and not to be disclosed to any organization or individual without the prior consent of Owner.

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

ARTICLE 18 CLAIMS

18.1 CLAIMS

18.1.1 Claims must be made by written notice to the Contracting Officer containing as much detail as reasonably possible. The burden for substantiating any Claim shall rest with Contractor.

18.1.2 Except as otherwise specifically provided in the Agreement, Claims by Contractor must be made promptly and within not more than twenty (20) Days, unless a longer period is granted by writing, after Contractor first recognizes the condition giving rise to the Claim, whether

any impact in money or time has been 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 Times, the Contract Time or adjustment to the Contract Price as provided in the other provisions of the Agreement, which provisions and time periods are to be strictly adhered to by Contractor.

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

18.2 CLAIMS FOR ADDITIONAL COST

Subject to the limitations and other time limits contained herein, if Contractor wishes to make a Claim for an increase in the Contract Price, to the extent the Claim is reasonably discoverable, written notice of it shall be given to the Contracting Officer before Contractor proceeds to execute the Work for which the Claim is made. Prior notice is not required for Claims relating to bona fide emergencies endangering life or property. All Claims for adjustment to the Contract Price shall be supported by such documentation as the Contracting Officer shall require and the costing basis therefor shall be determined in accordance with Section 12.3.

18.3 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

18.4 SUBMITTAL OF CLAIMS; RESOLUTION

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

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

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

(End Exhibit C)

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.
 - (a) Take that portion of the Contract Price properly allocable to completed Work, as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage of ten percent (10%) and as such holding of retainage is otherwise subject to Section 9.5.2 and 9.5.3;
 - (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and safely and suitably stored at the site for subsequent incorporation of the Work, less retainage of ten percent (10%) as such holding of retainage is otherwise subject to Section 9.5.2 and 9.5.3, 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;
 - (c) Subtract the aggregate of previous payments made by Owner; and

- (d) 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 Agreement, 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.

(Exhibit D continues next page)

IV. Costing Summary
[Insert]

(End Exhibit D)

EXHIBIT E

ADDRESSES FOR NOTICE

Notices to Contractor shall be sent to:

Name: Enter Name
Title: Enter Title
Company: Enter Company Name
Address: Enter Address
Enter City, State Zip Code
E-mail: Enter E-mail Address

Notices to the Contracting Officer's designee shall be sent to:

Name: Enter Name
Title: Enter Title
E-mail: Enter E-mail Address

(End Exhibit E)

EXHIBIT F

INSURANCE AND BONDS

I. Insurance Coverage Types, Amounts and Endorsements

- a. For the term of this Agreement and until Final Completion and acceptance of the Work, 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"/> Builder's 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 Agreement 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. All insurance policies required by this Agreement shall permit and recognize such waivers of subrogation.
- e. All insurance required by this Agreement 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 Agreement, 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 Agreement shall, in a form acceptable to Owner (ACORD 25 form preferred), be submitted to Owner upon Contractor's execution of this Agreement and at least five (5) Days prior to the expiration dates of expiring policies.
- c. Contractor or its insurer shall provide to Owner thirty (30) Days' written notice of cancellation of any policy required by this Agreement and ten (10) Days' written notice of cancellation due to non-payment of premium.
- d. 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.
- e. Contractor shall be responsible for the payment of all deductibles and/or self-insured retentions contained in any insurance required under this Agreement. The provisions requiring Contractor to carry the specified insurance shall not be construed in any manner as waiving or restricting the liability of Contractor.
- f. If Contractor maintains broader coverage and/or higher limits than the minimums designated in this Agreement, Owner requires and shall be entitled to the broader coverage and/or higher limits maintained by Contractor.
- g. Failure to comply with any term or condition of this Exhibit F shall constitute a material breach of this Agreement.

III. Payment and Performance Bonds

- a. Contractor shall furnish to Owner and maintain for the duration of the construction phase of the Work performance and payment bonds guaranteeing that Contractor shall perform its obligations under the Contract Documents and shall 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 price of the construction Work, 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 prior to the start of the construction Work. Neither Contractor nor any Subcontractor may begin the construction Work until the required bonds are delivered to the Contracting Officer.
- 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 Contracting Officer 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 Agreement, 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)

[INSERT INSURANCE CERTIFICATE]

[INSERT PAYMENT BOND]

[INSERT PERFORMANCE BOND]

EXHIBIT G

GLOSSARY

Agreement	This written design build agreement executed between Contractor and Owner, including its Exhibits A, B, C, D, E, F, G, and H, each such Exhibit which is fully incorporated by reference.
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	The Board of 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, materials, equipment, or other designated items that are to be furnished and incorporated into the Work, as provided in the Contract Documents. Although the scope or the required quantity of any portion of the Work covered by a Cash Allowance is sufficiently detailed in the Contract Documents, it is understood that the required materials, equipment, or other designated items are either of uncertain purchase cost at the time the Agreement is executed or are yet to be specified in more detail by the Contracting Officer. Any remaining balance of the Cash Allowance upon completion of the Work shall be retained by Owner and not paid to Contractor.
Certificate for Payment	A certificate issued by the Contracting Officer certifying the amount of the Progress Payment due to Contractor.
Certificate of Substantial Completion	A certificate prepared by the Contracting Officer 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 Order	A written instrument signed by Owner and Contractor and approved in accordance with the GLWA Procurement Policy that authorizes a change in the Work, an adjustment in the Contract Price and/or any Key Completion Times and/or Contract Time.

Claim	A demand or assertion by Contractor seeking adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract Documents that the procedure for resolution of which is not specifically provided for therein. The term “Claim” also includes all other disputes, controversies and matters in question between or among Owner and Contractor arising out of or in any way relating to the Contract Documents, the Project, or the Work.
Construction Change Directive	A written order prepared by the Contracting Officer that directs a change in the Work which change does not affect the Contract Price and/or any Key Completion Times and/or Contract Time.
Construction Documents	Drawings and Specifications which set forth in detail the indicative requirements for the construction of the Project, including any revisions thereto.
Contract Documents	Those documents specified in Exhibit B and any other documents so designated in the Agreement. 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.
Contracting Officer	The party identified in the Agreement, which shall include the Contracting Officer’s designee.
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.
Contract Time	The duration of time stated in the Contract Documents, including authorized adjustments, allotted to Contractor for the performance of the Work.
Contractor	The party identified in the Agreement
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 the Contracting Officer.
Day	A calendar day unless otherwise specifically designated. “Day” shall not include New Year’s Day, Martin Luther King Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.
Design Documents	All documents that manifest the indicative design for the Project or any portion, component, or element thereof, as the case may be, including revisions thereto.
Drawings	Indicative graphic and pictorial documents depicting the design, location, and dimensions of the elements of the Project.
Engineer	Any registered professional engineer in the State of Michigan, employed by Contractor to design the Work. The Engineer has the rights and authority assigned to the Engineer in the Contract Documents.
Final Completion	The date on or time by which the Work has been completed in accordance with the terms and conditions of the Contract Documents and accepted by the Contracting Officer in writing, as more fully defined in Exhibit C, General Conditions.
Final Payment	Payment made by Owner to Contractor of the entire unpaid balance of the Contract Price as adjusted by Change Orders.
General Conditions	Exhibit C of the Agreement.
Key Completion Times	The times for Substantial Completion, Final Completion, and 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”.
Indemnatee(s)	Owner and its directors, officers, employees, agents, and representatives, each an Indemnatee.

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.
Progress Payment	A periodic payment to Contractor based on the Contracting Officer’s certification of Contractor’s Application for Payment as required pursuant to the terms of the Agreement.
Project	The total undertaking described in Exhibit A of the Agreement to be accomplished for Owner by Contractor which completion of the Work will achieve.
Project Manager	The individual designated by Contractor to manage the Work and the related activities in connection with the Project as designated in the Contract Documents.
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 the Contracting Officer, 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 completion of the Work 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.
Request for Change Order	A request from Contractor for an extension of time or additional compensation served on the Contracting Officer in accordance with the General Conditions
Request for Quotation	A document issued by the Contracting Officer that may include Drawings, Specifications and other information used to solicit a quote for an Owner-initiated change in the Work.
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 Contractor's Applications for Payment.
Specifications	A part of the Contract Documents consisting of written indicative requirements for materials, equipment, construction systems, standards, and workmanship.
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 design deliverables, technical submittals, progress schedules, including the CPM Schedule and the Schedule of Values, and any 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 the Contracting Officer has determined that the Work 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 Agreement 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, 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 GLWA Procurement Policy that orders a change in the Work, an adjustment in the Contract Price and/or 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 design, construct, fixture, operate and maintain the Project. The Work shall be performed in accordance with the Contract Documents. The Work may constitute the whole or a part of the Project.

(End Exhibit G)

EXHIBIT H

SUPPLEMENTAL GENERAL CONDITIONS

[RESERVED]