



PORTAGE PUBLIC SCHOOLS

CENTRAL MIDDLE SCHOOL & NORTH MIDDLE SCHOOL  
ACOUSTIC WALL PANELS

CONSTRUCTION MANAGER'S  
PROJECT MANUAL

August 25, 2023

Construction Manager:  
**Owen-Ames-Kimball Co.**  
300 Ionia Ave NW  
Grand Rapids, MI 49503  
616.456.1521

Send RFIs and Substitution Requests to: [Danr@oakmi.com](mailto:Danr@oakmi.com)

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### **Referenced Documents Available for Online Viewing**

AIA A132 – 2019 – Standard Form of Agreement Between Owner and Contractor:

<https://tinyurl.com/2p8pnk2b>

Owen-Ames-Kimball Co. Safety Manual:

<https://tinyurl.com/34zxyj49>



## **ADVERTISEMENT FOR BIDS**

### **BID PROPOSAL**

Sealed bids, in triplicate, for the Central Middle School & North Middle School Acoustic Wall Panels, and Portage Public Schools, will be received until noon local time, Tuesday, September 12<sup>th</sup>, 2023 at Owen-Ames-Kimball, 2700 Stadium Dr., Suite 2, Kalamazoo, MI 49008. Bids received after this time will neither be considered nor accepted.

All proposals received by the time and date stated above will be opened and read publicly at 2:00pm local time, Tuesday, September 12<sup>th</sup>, 2023 at Portage Public Schools Administration Building, 8107 Mustang Dr., Portage, MI 49002.

Bids may be mailed to Owen-Ames-Kimball Co., 2700 Stadium Dr., Suite 2, Kalamazoo, MI 49008. Mailed bids must be received prior noon on September 12<sup>th</sup>, 2023. FAXED, EMAILED OR UPLOADED TO BUILDING CONNECTED BIDS WILL **NOT** BE ACCEPTED.

In accordance with Section 1267 of the Revised School Code each bid must be accompanied by a sworn and notarized Familial Disclosure Statement completed by the bidder disclosing any familial relationship between the Owner or any employee of the Bidder and any member of the District's Board of Education or the Superintendent of the District.

### **SITE INSPECTION**

A construction pre-bid meeting will be held at Portage Central Middle School, 8305 S. Westnedge Ave, Portage, MI 49002 at 8:30am local time, Friday, September 1<sup>st</sup>, 2023. All bidders are encouraged to attend.

### **BID DOCUMENTS**

The Bidding Documents may be examined at the following locations:

- Owen-Ames-Kimball Co. Website: <http://www.owen-ames-kimball.com/subcontractors/>
- Builders Exchange plan rooms in Grand Rapids, Kalamazoo, Lansing and Traverse City.

### **BIDDER QUALIFICATIONS**

Bidders submitting a Bid for this Project shall have qualifications as follows:

- a. Shall be a reputable, recognized organization, with at least five (5) years successful experience on work of this type and scope of this project.
- b. Shall have a license where required by public authorities having jurisdiction.
- c. Shall have ample financial resources for work of this magnitude.

### **BID SECURITY - PERFORMANCE BONDS**

Each bid shall be accompanied by good and sufficient bid security or bid bond in an amount not less than 5% of the Bid amount and shall secure the Owner from loss or damage by reason of the withdrawal of the Bid by a Bidder or by failure of the successful Bidder to enter into a Contract with the Owner if his Bid is accepted by the Owner.

Bid securities will not be released or returned until the bid "hold-firm" date or a subcontract has been successfully executed for the specific bid category of work, whichever occurs first.

Bid security may be provided by furnishing a bond from a surety company having a rating of A- or better or certified check. Owen-Ames-Kimball is not responsible for the loss of bid security if provided by certified check.

The successful Bidder will be required to secure Performance, Labor and Material bonds for all contracts exceeding \$50,000, from a surety company having a rating of A- or better, for the full amount of the Contract.



## SUPPLEMENT TO INSTRUCTIONS TO BIDDERS

### STANDARD AIA FORMS

The Instructions to Bidders (AIA Document A701-2018 Edition), Articles 1 through 8, and as herein amended or added to, are a part of the Contract Documents, and shall apply to all Contractors, and/or Subcontractors.

### ARTICLE 1 – DEFINITIONS Add Subparagraph 1.10 as follows:

1.10 All references made to Owner shall be implied to refer to the Construction Manager.

### ARTICLE 3 – BIDDING DOCUMENTS

3.1 Distribution Add Subparagraph 3.1.6 as follows:

3.1.6 The Bidding Documents, including drawings, specifications, and necessary forms, can be examined at the following locations.

- Owen-Ames-Kimball Co. website: [www.owen-ames-kimball.com/subcontractors/](http://www.owen-ames-kimball.com/subcontractors/)
- Builders Exchange plan rooms in Grand Rapids, Kalamazoo, Lansing, and Traverse City.

3.2 MODIFICATION OR INTERPRETATION OF BIDDING DOCUMENTS Revise Subparagraph 3.2.2. as follows:  
Line 2 shall read "...ten days..."

### ARTICLE 4 – BIDDING PROCEDURES

4.1 PREPARATION OF BIDS Revise Subparagraph 4.1.1. and Add Subparagraph 4.1.6.1, 4.1.9 and 4.1.10 as follows:

Bids shall be submitted, in triplicate, on the Bid Proposal Form included within the bidding Documents.

4.1.6.1 Proposals will be accepted for one (1) Bid Category only, or a combination of two (2) or more Categories. If the Bidders wish to have their combined bid considered for separate categories, they must submit separate proposals for the individual category along with their combined bid proposal.

4.1.9 A Pre-Bid Conference will be held in accordance with the following schedule:

Date: Friday, September 1<sup>st</sup>, 2023  
Place: Portage Central Middle School  
Time: 8:30am

4.1.10 In accordance with Section 1267 of the Revised School Code each bid must be accompanied by a sworn and notarized Familial Disclosure Statement completed by the bidder disclosing any familial relationship between the Owner or any employee of the Bidder and any member of the District's Board of Education or the Superintendent of the District.

4.2 BID SECURITY Add Subparagraphs 4.2.1.1, 4.2.1.2 and Revise Subparagraph 4.2.3 as follows:

4.2.1.1 Bid security shall be required for each bid tendered.

4.2.1.2 Bid security shall be in the form of either a CERTIFIED or CASHIER'S CHECK on an open and solvent bank or bid bond issued by surety company payable to the Owner in an amount equal to five percent (5%) of the base bid.

4.2.3 Revise Lines 1 and 2 to read "If a surety bond is provided the attorney-in-fact who ...".

4.3 ADDENDA Revise Subparagraph 4.3.3 as follows:

- 4.3.3 Addenda will be issued no later than two days prior to the date for receipt of Bids except an Addendum withdrawing the request for Bids or one which includes postponement of the date for receipt of Bids.
- 4.4 MODIFICATION OR WITHDRAWAL OF BIDS Revise Subparagraph 4.4.3 as follows:
- 4.4.3 After the time and date of receipt of Bids, a bid may not be modified, withdrawn or cancelled by the Bidder for sixty (60) days.

#### ARTICLE 5 – CONSIDERATION OF BIDS

- 5.3 ACCEPTANCE OF BID (AWARD) Revise Subparagraph 5.3.2 and add Subparagraph 5.3.4 as follows:
- 5.3.2 Revise Line 1 to read “...right to accept Mandatory and Voluntary Alternates in any order...”
- 5.3.3 Owner reserves the right determine which bidders are considered the lowest qualified bidder and to award to said bidder.
- 5.3.4 After the Owner has awarded the Bid Categories the Construction Manager will prepare and send a Notice of Pending Award to the successful Bidders.

#### ARTICLE 6 – POST-BID INFORMATION

- 6.1 CONTRACTOR'S QUALIFICATION STATEMENT Revise Subparagraph 6.1 as follows:  
The Owner, Architect and Construction Manager may make such investigations as they deem necessary to determine the ability of the Bidder to perform the work. The Bidder shall furnish all such information and data for this purpose as the Construction Manager may request within twenty-four (24) hours, including, but not limited to, lists of projects completed, financial statements for the past two (2) years, a current list of work in progress. The Owner reserves the right, based on the advice of the Construction Manager and Architect, to reject any bid if the evidence submitted, or investigation of such Bidder, fails to prove that such Bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.
- 6.3 SUBMITTALS Revise Subparagraph 6.3.1, replace Subparagraphs 6.3.1.1 thru 6.3.1.3 and add Subparagraphs 6.3.1.4 thru 6.3.1.6 as follows:
- 6.3.1 The Bidder shall within ten (10) days upon issuance of a Notice of Pending Award furnish to the Owner through the Construction Manager the following:
- 6.3.1.1 The necessary insurance forms as specified in the Bidding Documents.
- 6.3.1.2 A cost breakdown on the continuation sheets of the “Application and Certificate for Payment”, AIA Document G703 showing all major work items, separated by both material and labor.
- 6.3.1.3 A list of the work which will be performed with the Bidder’s own forces, a list of their subcontractors and a list of work that will be performed by the subcontractor’s forces.
- 6.3.1.4 Names of the manufacturer’s, products and suppliers of principle items, materials or systems proposed for the work.
- 6.3.1.5 Schedule information.
- 6.3.1.6 The Bidder will be notified in writing if any of the above items are not acceptable.

#### ARTICLE 7 – PERFORMANCE BOND AND PAYMENT BOND

- 7.1 BOND REQUIREMENTS Revise Subparagraph 7.1.1 as follows and Delete Subparagraph 7.1.3
- 7.1.1 Revise first sentence to read “For Contracts exceeding \$50,000 the Bidder shall furnish separate Performance and Payment Bonds covering the...”
- 7.2 TIME OF DELIVERY AND FORM OF BONDS Delete Subparagraph 7.2.2

#### ARTICLE 8 – ENUMERATION OF THE PROPOSED CONTRACT DOCUMENTS

8.1 Revise sentence to read: Copies of the proposed Contract Documents will be made available to the Awarded Bidder as modified and would include but not limited to the following documents as issued by the Construction Manager.

#### ARTICLE 9 – INSURANCE

- 9.1 INSURANCE REQUIREMENTS The required insurance will name Owen-Ames-Kimball Co., Owner and Architect, along with their respective officers, agents and employees are named as additional insureds for the auto liability and general liability on a primary and non-contributory basis for ongoing and completed operations. The ONLY acceptable endorsement for the additional insureds requirements is ISO form CG 20 37 07 04.
- 9.1.1 Commercial General Liability – ISO Occurrence form CG 20 10 07 04 and CG 20 37 07 04 are the required forms.

#### ARTICLE 10 – DESCRIPTION OF WORK Add paragraph 10.1 and 10.2

- 10.1 BID CATEGORIES Add Subparagraphs 10.1.1, 10.1.1.1., 10.1.1.2, 10.1.1.3 as follows:
- 10.1.1 Bid Categories have been established to guide Bidders in determining scope of work where trade jurisdiction is not clearly defined. These descriptions are not meant to be all inclusive of work to be included in the Bid. If a conflict in the assignment of work exists between the Bidding Documents and the descriptions of these bid categories, the requirements of the bid category description(s) shall take precedence and the Construction Manager shall immediately be notified of the conflict. Bidders are to familiarize themselves with all Bid Categories.
- 10.1.1.1 Requirements for a specific Bid Category, trade or contract will generally be described in that portion of the Specifications or Drawings related to that trade or contract. Such requirements may, however, be described in other sections of the contract documents. Contractors will be held responsible for having carefully examined all drawings and read all divisions of the specifications and all contract documents to avoid omissions or duplications and to ensure a complete job.
- 10.1.1.2 There is not necessarily a direct relationship between the Bid Category numbers or names and the Specification Division or Section numbers.
- 10.1.1.3 Unless specifically noted as being furnished only, scopes include the complete installation including materials, labor, equipment, interface with the work of other trades, etc.
- 10.2 INDEX OF BID CATEGORIES Add paragraph 10.2
- Bid Category No. 01- Lath, Plaster, Drywall, Acoustical (LPDA)
- 10.3 BID CATEGORY DESCRIPTIONS Add paragraph 10.3
- Bid Categories have been established to guide Bidders in determining scope of work where trade jurisdiction is not clearly defined. These descriptions are not meant to be all inclusive of work to be included in Bid. Unless specifically noted as being furnished only or install only, scope includes complete installation including all labor, material, equipment, etc.

**Bidders are required to familiarize themselves with all Bid Categories and Alternates.**

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**BID CATEGORY NO. 01- LATH, PLASTER, DRYWALL AND ACOUSTICAL**

**Include:**

1. Complete finish and other work as shown on the drawings and as specified in section 09 8413 - Fixed Sound-Absorbing Panels
  2. Supply/Install all panels labeled in green on drawings.
  3. Reference quantity notes in red for Central Middle School and North Middle School as called out on drawings.
  4. Any necessary framing, caulking, touch up painting required to complete scope of work.
  5. Responsible for confirming current site conditions required for install. Field cut as necessary.
- 

**GENERAL COMMENTS**

Support for Building Systems/Components:

1. Any component of the building construction that requires support and/or blocking that is not shown in the Documents shall be provided by the contractor that is responsible for the installation of the component.

Anchor Bolt Locations:

1. After anchor bolts have been placed and concrete foundation work completed in one or more areas of the building, as agreed upon by the Construction Manager, the concrete contractor shall survey/verify the location and elevation of all anchor bolts. Any variation in location and elevation of the anchor bolts shall be noted on the approved anchor bolt layout drawing and shall be given to the Construction Manager who shall forward it to the structural steel contractor. If any anchor bolt is not located properly, and the structural steel contractor agrees that the anchor bolt can remain as located, then, with the approval of the structural engineer, the anchor bolt will not be removed, but the concrete contractor shall bear all costs related to any adjustment necessary in the column base plate. If the anchor bolt is required to be relocated, the concrete contractor shall immediately do so as not to cause delay the installation of the structural steel.

Access Doors:

1. The responsibility for access doors shall be as follows: the general trade's contractor shall furnish all access doors that are shown on the Documents to be installed by the masonry contractor in masonry partitions and by the LPDA contractor in drywall partitions, drywall ceilings or acoustical ceilings. Any access door that is not shown in the Documents, but that are required by the plumbing, fire protection, HVAC or electrical contractor, shall be provided by the contractor that requires the access door. The door shall be furnished to the masonry contractor for the installation into masonry partitions and to the LPDA contractor for installation into drywall partitions, drywall ceilings or acoustical ceilings.

Fireproofing:

1. The LPDA contractor shall include in the base bid return trips to touch-up all spray fireproofing that may be disturbed by other trades during the installation of their work. However, any unreasonable destruction of the fireproofing by the trade contractors will not be considered touch-up and the cost of the repairing these areas shall be the responsibility of the contractor causing damage (backcharge).

Demolition:

1. Dumpsters provided by the Construction Manager for use during construction shall not be available for the disposal of the following items: debris resulting from architectural, structural, mechanical, or electrical demolition

operations; site related materials; paint products, hazardous materials. Contractors generating such materials shall provide dumpsters for them and legally dispose of them off site.

2. Unless specifically noted otherwise the division of demolition work shall be as follows: sitework contractor – site demolition; general trades contractor – architectural and structural demolition; mechanical/plumbing contractor – HVAC and plumbing demolition; fire protection contractor – fire protection demolition; electrical contractor – electrical demolition.
3. Demolition shown on the demolition plans is the responsibility of the Demolition / General Trades Contractor. Patching of items as a result of demolition shown on the Demolition plans is the responsibility of the contractor who is responsible for similar elements throughout the building.
4. Demolition (and related patching) needed but not shown on the demolition plan is the responsibility of the contractor requiring it.

**General Safety:**

1. Your Firm, all employees, subcontractors, and material suppliers onsite will comply with Owen-Ames-Kimball Co.'s Safety Policy and Requirements, INCLUDING BUT NOT LIMITED TO THESE HIGHLIGHTED ITEMS:
  - a. Hard hats are required.
  - b. Contractor safety manuals/books will be kept on-site.
  - c. Contractors must provide their own first aid and fire protection equipment.
  - d. Contractors are responsible for providing the necessary barricades for their work.
  - e. Contractors are responsible for their own fall protection.
  - f. Contractors must comply with the "Right to Know" law.
  - g. Contractors must comply with O.A.K.'s substance abuse policy.
  - h. No Smoking, Tobacco, or E-Cigarettes on School Property.
  - i. A designated competent/qualified person shall be required to be on site for the following but not limited to structural demolition, scaffolding, fall protection & excavations.
  - j. Contractors shall furnish a written job specific Silica Exposure Plan per MIOSHA requirements.
  - k. Contractors required to work in a masonry restricted zone must have proper training.
2. Owen-Ames-Kimball Co. Safety Manual can be viewed in its entirety here:  
<https://tinyurl.com/34zxyj49>

**End of Instruction Bidders**





## **STATEMENT OF PARTICIPATION**

*Owen-Ames-Kimball Co. strives to recognize and represent the community in which you reside and serve through continuous efforts to encourage local participation and inclusive practices on all our construction projects.*

*Owen-Ames-Kimball Co. encourages local participation. We believe we have a responsibility to support the growth of the businesses within the community in which the project resides.*

*Owen-Ames-Kimball Co. practices inclusion. These inclusive practices are established within our organization and in our business endeavors, and strongly promoted on our jobsites. We encourage all of our subcontractors to implement inclusive practices within their organizations and through partnering efforts on our projects.*



## CERTIFICATE OF LIABILITY INSURANCE

DATE (MMDD/YYYY)  
ISSUE DATE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> AGENT'S NAME AGENT'S ADDRESS	<b>CONTACT AGENCY CONTACT INFORMATION</b> PHONE (A/C, No, Ext):      FAX (A/C, No): E-MAIL ADDRESS:  <table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURER(S) AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A : CARRIER NAME</td> <td></td> </tr> <tr> <td>INSURER B : CARRIER NAME</td> <td></td> </tr> <tr> <td>INSURER C :</td> <td></td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : CARRIER NAME		INSURER B : CARRIER NAME		INSURER C :		INSURER D :		INSURER E :	
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INSURER C :													
INSURER D :													
INSURER E :													
<b>INSURED</b> SUBCONTRACTOR'S NAME SUBCONTRACTOR'S ADDRESS													

**COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
X	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	X	X	POLICY NUMBER	EFF DATE	EXP DATE	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/PROP AGG \$ 2,000,000 \$
X	<input checked="" type="checkbox"/> <b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY	X	X	POLICY NUMBER	EFF DATE	EXP DATE	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
X	<input checked="" type="checkbox"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED    RETENTION \$	X	X	POLICY NUMBER	EFF DATE	EXP DATE	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
X	<input checked="" type="checkbox"/> <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	POLICY NUMBER	EFF DATE	EXP DATE	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)**  
 RE: Project Name  
 Owen-Ames-Kimball Co., Owner and Architect, along with their respective officers, agents and employees are named as additional insureds for the auto liability and general liability on a primary and non-contributory basis for ongoing and completed operations per CG2010 07/04 and CG2037 07/04 attached. A waiver of subrogation applies in favor of additional insureds for the general liability, auto liability and workers' comp. Umbrella is following form. A 30-day notice of cancellation or change in coverage will be provided to Owen-Ames-Kimball Co.

<b>CERTIFICATE HOLDER</b>  Owen-Ames-Kimball Co. 300 Ionia Ave., NW Grand Rapids, MI 49503	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE  AGENT'S SIGNATURE
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POLICY NUMBER: SAMPLE

**COMMERCIAL GENERAL LIABILITY**  
CG 20 10 07 04

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Owen-Ames-Kimball Co., Owner and Architect along with their respective officers, agents, employees	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

POLICY NUMBER: SAMPLE

**COMMERCIAL GENERAL LIABILITY**  
CG 20 37 07 04

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Owen Ames Kimball Co., Owner and Architect along with their respective officers, agents and employees	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**Section II – Who is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location

designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

SUBMIT IN TRIPLICATE

**BID FORM**

BID TO: Portage Public Schools  
8107 Mustang Drive  
Portage, MI 49002

BID FROM: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROJECT: Central Middle School & North Middle School Acoustic Wall Panels

Ladies and Gentlemen:

The undersigned, having familiarized themselves with the local conditions affecting the cost of the Work and having examined the site, and Bidding Documents prepared by C2AE, 50 Louis St NW #200, Grand Rapids, MI 49503, hereby propose to furnish all labor, material, equipment, taxes and services required for the proper completion of each of the following categories for this Project, including all addenda issued thereto, for the sum of:

Bid Category No. \_\_\_\_\_ Title \_\_\_\_\_

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_),  
Said amount constituting the Base Bid.

**TOTALS BY LOCATION:** Base bid is split by location as follows:

**Central Middle School:** \_\_\_\_\_ \$ \_\_\_\_\_

**North Middle School:** \_\_\_\_\_ \$ \_\_\_\_\_

**Total \$** \_\_\_\_\_

**TAXES:** Bid sum includes all applicable taxes, including Michigan Sales Tax. Confirm that your company can pay Michigan Sales and Use Tax:  Yes  No

**ALLOWANCES:** Base bid includes applicable allowance cost(s) as set forth in Section 01020 of the General Requirements and as identified in the Instruction to Bidders Bid Category Descriptions.

**COST OF BONDS:** Bid sum includes cost of furnishing a Performance Bond and Labor and a Material Payment Bond, each in the amount of 100% of Base Bid.

SUBMIT IN TRIPLICATE

**ACKNOWLEDGEMENT OF ADDENDA**

The following addenda have been received, are hereby acknowledged, and their execution is included in the above Base Bid:

Addendum No.\_\_\_\_ Dated\_\_\_\_\_Addendum No.\_\_\_\_ Dated\_\_\_\_\_Addendum No.\_\_\_\_ Dated\_\_\_\_\_

Addendum No.\_\_\_\_ Dated\_\_\_\_\_Addendum No.\_\_\_\_ Dated\_\_\_\_\_Addendum No.\_\_\_\_ Dated\_\_\_\_\_

**VOLUNTARY ALTERNATES** (Identify in detail on appropriate attachment any Voluntary Alternates shown here)

A \_\_\_\_\_

B \_\_\_\_\_

C \_\_\_\_\_

**BID SECURITY**

Accompanying this Bid, as required by the Instructions to Bidders, is a bid security in the form of (Certified Check/Cashier's Check/Bidder's Bond) in the amount of:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_), payable to the Owner, which it is agreed, shall be retained as liquidated damages, not as a penalty, by the Owner, if the undersigned fails to execute the Contract in conformity with the form of Contract incorporated in the Contract Documents and fails to furnish specified bonds within ten (10) days after date of issuance of Letter of Intent to the undersigned.

If awarded the Contract, the undersigned agrees to commence Work within ten (10) days after date of issuance of Notice of Pending Award, which shall be considered as the notice to proceed, and agrees to complete the Work in accordance with the Construction Progress Schedule.

**CONSTRUCTION PROGRESS SCHEDULE**

If awarded this Contract, the undersigned:

Endorses the Construction Progress Schedule:\_\_\_\_\_

Amends the Construction Progress Schedule as follows:

\_\_\_\_\_

**INSURANCE AND ENDORSEMENTS REQUIREMENTS:**  
**(Samples are attached to the Supplement to Instructions to Bidders)**

**Acknowledged By:** \_\_\_\_\_

SUBMIT IN TRIPLICATE

**UNIT LABOR RATES**

The undersigned further proposes and agrees that should the amount of work required be increased or decreased where unit prices have not been established, the following labor rates will be the basis for any change order proposal. Labor rates are to include all direct costs without mark-up as defined in Article 7.3 of the General Conditions. Prior to contract award, if requested by the Construction Manager, the successful bidder shall provide documentation substantiating the proposed labor rates.

Job Classification	Hourly Rate	Benefits	Employer's Liability	Payroll Taxes	Total

**FEES FOR ADDITIONAL WORK**

1. There will be a fee of 10% applied to the total cost of materials purchased and work completed by a contractor's own forces. This percentage represents both overhead and profit.
2. There will be a fee of 5% applied to the total cost of work completed by a subcontractor. This percentage represents both overhead and profit.

**CREDIT FOR WORK DELETED**

Should any work be deleted from Contract by order of the Owner, full cost savings realized thereby will be credited to Owner.

**FAMILIAL DISCLOSURE**

See Page 5 of this Bid Form for required statement.

**AFFIDAVIT OF COMPLIANCE**

See Page 6 of this Bid Form for required statement.

**SAFETY SUPPLEMENT FORM**

The apparent low bidder(s) will be required to complete this form and submit to the project manager no later than (3) days after the bid opening or at the time of the post bid interview. Based on the information supplied Owen-Ames-Kimball Co. may require further safety measures at no additional cost prior to award if warranted.

SUBMIT IN TRIPLICATE

**AGREEMENT**

The undersigned agree(s) to provide the post-bid information required within (10) days after notification of the Notice of Award and to execute an agreement for work covered by this Proposal on Construction Manager’s standard Subcontract form/AIA Document A132-2019.

In submitting this bid, it is understood that the Owner reserves the right to reject any or all bids. It is further agreed that this bid is binding for a period of sixty (60) days from the opening thereof.

Respectfully submitted,

Date \_\_\_\_\_, 2023

Firm Name \_\_\_\_\_

By \_\_\_\_\_

Signed \_\_\_\_\_

Title \_\_\_\_\_

Official Address \_\_\_\_\_

(If a corporation, affix seal)

Telephone No. (\_\_\_\_\_) \_\_\_\_\_ ext. \_\_\_\_\_

E-Mail Address \_\_\_\_\_

**Contact Information if there are questions about bid:**

Name: \_\_\_\_\_

Direct or Mobile Phone: \_\_\_\_\_

E-Mail: \_\_\_\_\_



SUBMIT IN TRIPLICATE

Familial Disclosure Statement  
***(Must be completed for bid to be considered)***

In accordance with Section 1267 of the Revised School Code this bid must be accompanied by a sworn and notarized statement disclosing any familial relationship between the Owner or any employee of the Bidder and any member of the District's Board of Education or Superintendent of the District.

\_\_\_ No, there is not a familial relationship between the Owner or any employee of the Bidder and any member of the District's Board of Education or Superintendent of the District.

\_\_\_ Yes, there is a familial relationship between the Owner or an employee of the Bidder and a member of the District's Board of Education or Superintendent of the District. The person(s) and relationship are as follows:

***Bidder***

***Board of Education or Superintendent***

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Subscribed and sworn this \_\_\_\_\_ day of \_\_\_\_\_, 2023

In the County of \_\_\_\_\_ State of \_\_\_\_\_

By \_\_\_\_\_  
Notary Public Signature

My commission expires on: \_\_\_\_\_

Seal or stamp:

SUBMIT IN TRIPLICATE

Affidavit of Compliance – Iran Economics Sanctions Act  
***(Must be completed for bid to be considered)***

Michigan Public Act No. 517 of 2012

The undersigned, the owner or authorized office of the below-named contractor (the "Contractor"), pursuant to the compliance certification requirement provided in the Portage Public Schools ("the School District") Request for Proposals For Central Middle School & North Middle School Acoustic Wall Panels ("the RFP"), hereby certifies, represents and warrants that the Contractor (including its officers, directors, employees) is not an "Iran linked business" within the meaning of the Iran Economics Sanctions Act, Michigan Public Act No.517 of 2012 ("the Act"), and that in the event Contractor will not become an "Iran linked business" at any time during the course of performing any services under this contract.

The Contractor further acknowledges that any person who is found to have submitted a false certification is responsible for a civil penalty of not more than \$250,000.00 or 2 times the amount of the contract or proposed contract for which the false certification was made, whichever is greater, the cost of the School District's Investigation, and reasonable attorney fees, in addition to the fine. Moreover, any person who submitted a false certification shall be ineligible to bid on a request for proposal for three (3) years from the date determined that the person had submitted the false certification.

Contractor:

\_\_\_\_\_

(Name of Contractor)

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

County of: \_\_\_\_\_ State of: \_\_\_\_\_

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2023,

by, \_\_\_\_\_, Notary Public

\_\_\_\_\_ County, \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

Acting in the County of: \_\_\_\_\_



**Safety Data Questionnaire Supplement to Bid Form**

The Safety data listed below shall be submitted no later than three (3) days after the bid opening by the apparent low bidder, or as requested by O-A-K for evaluation. Further documentation may be requested as a part of the evaluation process. Information specified below must be current and accurate.

**COMPANY INFORMATION**

Company Name: \_\_\_\_\_

Company Type: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of your Safety and Health Officer responsible for this project: \_\_\_\_\_

Safety Accreditations: \_\_\_\_\_

Length of experience in this role: \_\_\_\_\_

Safety and Health Officer E-mail: \_\_\_\_\_

Safety and Health Officer Phone: \_\_\_\_\_

Does your company have a written procedure to ensure that adequate safety and health program resources, such as budget, equipment, training, and manpower are included in your bid?

YES  NO

Does your company have a written construction safety program? YES  NO

I acknowledge that my company will provide a written **Site-Specific** safety plan? YES  NO

Does your company have a written Accident/Incident Investigation Procedure? YES  NO

Does your company provide training and proper equipment for fall protection as required by MIOSHA?

YES  NO

Does your company have a safety training program? YES  NO

What mandatory training topics have been covered in the past year?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

What percent of your company's employees have OSHA Training Certification? \_\_\_\_\_ %

Does your company have a written drug and alcohol-free workplace program that includes drug testing? YES

NO



Does your company conduct post-Incident drug and alcohol testing? YES  NO

Has your company ever been removed from a project due to safety concerns within the last 3 years?

YES  NO  *If yes, please briefly explain:*

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Does your company have a written procedure to screen subcontractors based on their past safety performance and history? YES  NO

Explain how you will ensure that subcontractors are following the same safety standards and expectations as your company?

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Please list the PPE that your company will require while on site of all of your company's employees and subcontractors:

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I acknowledge that my Employees, Company, and/or Subcontractors can be removed from the project if safety standards and requirements are not being followed. YES  NO

Has your company received any citations or violations from MIOSHA in the past three (3) years?

YES  NO  *If yes, please list:*

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Has your company received any willful safety violations from MIOSHA in the past five (5) years?

YES  NO

List your company's Workers Compensation Experience Modification Rate for each of the last three (3) years.

20\_\_\_\_\_ 20\_\_\_\_\_ 20\_\_\_\_\_

List the number of man-hours your company worked in each of the last three (3) years.



Building Since 1891

20\_\_\_\_\_ 20\_\_\_\_\_ 20\_\_\_\_\_

List the OSHA recordable injuries your company experienced in each of the last three (3) years.

20\_\_\_\_\_ 20\_\_\_\_\_ 20\_\_\_\_\_

List the Total Recordable Incident Rate (TRIR) your company experienced in each of the last three (3) years.

Calculation: TRIR = (number of OSHA Recordable Incidents) x 200,000 / Total Number of man-hours worked

20\_\_\_\_\_ 20\_\_\_\_\_ 20\_\_\_\_\_

**PROJECT SPECIFIC**

How often will your company perform documented job site safety inspections?

Daily  Weekly  Bi-Weekly  Monthly

Does your company conduct toolbox safety talks or weekly safety huddles? YES  NO

Does your company have a written procedure to ensure that only employees who are qualified by training and experience are allowed to operate equipment, tools, machinery and vehicles? YES  NO

Do you see any potential safety hazards on this project that your company does not have experience with or are concerned about? YES  NO  If yes, please explain:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**COMPANY ACKNOWLEDGEMENT**

I certify that my response and the information provided are true and correct to the best of my personal knowledge and belief and that I have made no willful misrepresentations in the questionnaire, nor have I withheld any relevant information in my statements and answers to questions. I am aware that any information given by me in this questionnaire may be investigated and I hereby give my full permission for and such investigation and I fully acknowledge that any misrepresentations or omissions in my response and information may cause my bid to be rejected.

Furthermore, I acknowledge that O-A-K may, at no additional cost or increase to the bid, require the contractor to perform additional safety requirements if the above information is deemed incomplete, Insufficient, below industry standard, or not to level of safety commitment expected. This may include but not be limited to additional site safety audits and inspections, full time safety supervisor, etc.

**Bidders full name and entity status:**

\_\_\_\_\_  
Signature  
Authorized Representative of Company

\_\_\_\_\_  
Printed Name  
Authorized Representative of Company

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



# AIA<sup>®</sup> Document A232™ – 2019

## General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

**for the following PROJECT:**

*(Name, and location or address)*

Portage Public Schools – construction and improvements described in the relevant application for preliminary qualification of bonds, the ballot language from the August 3, 2021 election, all applicable laws, the approved plans and specifications, the Owner’s fixed budget, and as otherwise approved by the Owner.

**THE CONSTRUCTION MANAGER:**

*(Name, legal status, and address)*

Owen Ames Kimball Co.  
161 E. Michigan Avenue, Suite 102  
Kalamazoo, Michigan 49007

**THE OWNER:**

*(Name, legal status, and address)*

Portage Public Schools  
8107 Mustang Drive  
Portage, Michigan 49002  
Telephone: (269) 323-5000

**THE ARCHITECT:**

*(Name, legal status, and address)*

C2AE  
50 Louis St NW #200  
Grand Rapids, MI 49503

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

\*Any reference to the architect shall be C2AE

Init.

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

**§ 1.1.1 The Contract Documents.** The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, as to contractors, the Contract Documents do not also include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, Owner-accepted portions of the Contractor's bid or proposal, or and portions of addenda relating to bidding or proposal requirements but do not include sample forms. The Architect's execution of the Owner/Architect Agreement and the Construction Manager's execution of the Owner/Construction Manager Agreement shall constitute their acceptance of all terms herein related to the respective parties.

**§ 1.1.2 The Contract.** The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

**§ 1.1.3 The Work.** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Contractor acknowledges and agrees that the Contract Documents are sufficient to provide for the completion of the Work and that the Contract Documents include work (whether or not shown or described) which reasonably may be inferred to be required or useful for the completion of the Work in accordance with applicable laws, codes, and customary standards of the construction industry.

**§ 1.1.4 The Project.** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by other Contractors, and by the Owner's own forces and Separate Contractors.

**§ 1.1.5 Contractors.** Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by the Architect and Construction Manager.

**§ 1.1.6 Separate Contractors.** Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by the Architect and Construction Manager.

**§ 1.1.7 The Drawings.** The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

**§ 1.1.8 The Specifications.** The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

**§ 1.1.9 Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.



**§ 1.1.10 Initial Decision Maker.** The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not ~~show partiality to the Owner or Contractor and shall not~~ be liable for results of interpretations or decisions rendered in good ~~faith~~faith and without negligence.

**§ 1.1.11 Products.** The term "Product(s)" as used in the Contract Documents refers to the materials, systems, and equipment provided by the Contractor for use in the Work of the Project.

**§ 1.1.12 Warranty.** The terms "Warranty" and "Guarantee" as used in the Contract Documents shall have the same meaning and shall be defined as "legally enforceable assurance of satisfactory performance or quality of a product or Work."

**§ 1.1.13 Materials.** Where materials, systems, and equipment items are referred to in the singular, such reference shall not serve to limit the quantity required. The Contractor shall furnish quantities as required by the Contract Documents to complete the Work. Unless specifically limited in the Contract Documents, the words "furnish," "install," and "provide," or any combination thereof mean to furnish and incorporate into the Work, including all necessary labor, materials, and equipment and other items required to perform the Work indicated.

**§ 1.1.14 Project Manual.** The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract, and Specifications.

## **§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. Where responsibility for particular Work is required of the Contractor, the Contractor shall not be released from that responsibility by reason of the specification or drawing which establishes the responsibility. Thus, the Contractor shall be responsible for all Work required of it, even though that responsibility may be shown only in that portion of the documents typically pertaining to another contractor or trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

**§ 1.2.4** If there should be a conflict between two or more of the Contract Documents then the following order of interpretation shall apply:

- 1 Where requirements specifically set forth in the applicable Agreement are in conflict with other Contract Documents, including but not limited to these General Conditions, the Agreement shall govern.
- 2 In all other instances, the conflict shall be resolved by complying with the provision that is most favorable to the Owner (as determined by the Owner in the Owner's sole discretion).
- 3 When a duplicate of material or equipment occurs in the Drawings, the Specifications or other Contract Documents, each Contractor shall be deemed to have bid on the basis of each furnishing such material or equipment. The Owner, with the assistance of the Architect and Construction Manager, will decide which Subcontractor(s) shall furnish the same.

### § 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

~~§ 1.5.1 The Unless otherwise indicated in the Contract Documents or the Owner/Architect Agreement the Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and unless otherwise indicated in the Contract Documents or the Owner/Architect Agreement, the Architect and respective consultants will retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.~~

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### § 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by national overnight courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement. Further, any other written notice delivered with a written acknowledgement of receipt shall be deemed duly served, regardless of method.

Wherever the Contract Documents require the Contractor to give "Notice" or "Timely Notice" to the Architect, Public Authority, and/or others, it shall be the Contractor's responsibility to furnish all such notices sufficiently in advance to allow the party receiving the notice reasonable time to react to such notice, including travel time on the job site as necessary, when such notices require the on-site presence of the Architect, Public Authority, their authorized representatives, or others for field observation of inspections, testing or approvals. Reasonable time shall be defined as no less than 24 hours plus normal travel time from the home office of the party being notified to the job site and must also accommodate known, standard, or reasonable processing periods.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

### § 1.7 Digital Data Use and Transmission

The parties ~~shall~~ may agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties ~~will~~ may use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

### ~~§ 1.8 Building Information Models Use and Reliance~~

~~Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk~~

~~and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

## ARTICLE 2 OWNER

### § 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or ~~authorization~~ authorization subject to parameters of authority established by Owner's board of education. Except as otherwise provided in Section 4.2.1, the Construction Manager and the Architect do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~

### § 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work, and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

~~§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as Owner's information is~~ "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

### § 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, ~~including including, but not limited to,~~ those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit.

§ 2.3.2 The ~~Owner shall retain an architect~~ Architect is the person lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project ~~is located,~~ is located if licensed

architecture is required by law for the Project. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect," "Architect/Engineer," "Engineer," or "Design Professional" as used herein means the Architect or the Architect's authorized representative.

§ 2.3.3 ~~The Owner shall retain a~~ construction manager adviser is lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.4 If the employment of the Construction Manager or Architect terminates, the Owner shall employ a successor construction manager or architect ~~to whom the Contractor has no reasonable objection and~~ whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.

§ 2.3.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. ~~The Taking into account the Contractor's experience and expertise, and exercise of professional caution, the~~ Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Unless otherwise addressed in the Contract Documents, the Contractor shall conduct a commercially reasonable inspection to confirm the location of site utilities and existing structures prior to performing Work and is not entitled to additional compensation resulting from its failure to do so.

§ 2.3.6 ~~The~~ Upon specific written request of the Contractor, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. Contracts with other Contractors alone shall not constitute sufficient Owner control for purposes of this section.

§ 2.3.7 Unless otherwise provided in the Contract Documents, the ~~Owner shall furnish to the Contractor~~ Contractor will receive at least one copy of the Contract Documents in pdf format (or another format reasonably approved by the Owner) for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3.8 The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager. Other communication shall be made as set forth in Section 4.2.6.

#### § 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~repeatedly~~ fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. This right shall be in addition to and not in limitation of the Owner's rights under any provision of the Contract Documents.

#### § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ three-day period after receipt of notice from the Owner or the Owner's designee (or immediately in the case of a threat to the safety of persons or property) to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, ~~correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to review by the Construction Manager and prior approval of the Architect, and the Construction Manager or Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the~~ including any claim against the Contractor's Performance Bond, correct such default or neglect. In such case, the Owner may deduct from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses, including any and all legal expenses incurred to effectuate and enforce this provision and compensation for the Construction Manager's and Architect's and their respective consultants' additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the

Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

If the Architect, Construction Manager, Owner, or other contractors or consultants are required to provide additional services due to defects or deficiencies in the Contractor's work or by failure of the Contractor to perform under its agreement, the Contractor shall be responsible for all such costs and fees (including attorney fees), which shall promptly be paid to the Owner. The Owner, Contractor, Architect, and Construction Manager acknowledge that the Owner's receipt of such payment from the Contractor is a condition precedent to the Owner's obligation to make payment to those adversely affected.

This Section 2.5 allows the Owner to withhold payments from a non-performing Contractor irrespective of the termination procedure identified in Section 14.2, and the Owner may pursue either remedy, or both.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 General**

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.1.1 Possession, sale, or consumption of alcoholic beverages on the construction site is strictly prohibited. The unlawful manufacture, distribution, dispensation, possession or use of drugs is prohibited on the construction site.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to section 15.1.7, as

would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 Prior to submitting its bid, the Contractor shall have studied and compared the Contract Documents and shall have reported to the Architect any error, inconsistency, or omission it discovers in the Contract Documents related to its work. It will be presumed that the Contractor's bid and the Contract Sum include the cost of correcting any error, inconsistency, or omission, which could have been discovered by the exercise of reasonable diligence. Unless the Contractor establishes that such error, inconsistency, or omission could not have been discovered by the exercise of reasonable diligence, the Contractor will make such corrections without additional compensation so that the Work is fully functional.

### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, the Construction Manager, and the Architect, and shall propose alternative means, methods, techniques, sequences, or ~~procedures-procedures,~~ specifically including any delays that could impact timely coordination and completion of the Work. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. The Construction Manager shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless the Architect or the Construction Manager objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. The Contractor shall immediately notify the Construction Manager of delays of other contractors that could impact timely coordination and completion of the Work.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Such provision of labor and materials shall occur in sufficient time to satisfy the existing Project schedule. The Contractor agrees to execute the appropriate UCC forms to effectuate the Owner's ownership of the material and equipment furnished pursuant to this Agreement.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.4 The Contractor, Construction Manager, and Architect each respectively agree that neither they nor their subcontractors will discriminate against any employee or applicant for employment, to be employed in the

performance of this contract, with respect to hire, tenure, conditions or privilege of employment, or any matter directly or indirectly related to employment, because of race, age, sex, color, religion, national origin, ancestry or physical disability. Breach of this covenant may be regarded as a material breach of this contract.

### § 3.4.5 Asbestos-Free Product Installation

§ 3.4.5.1 Asbestos may be present within the construction areas. Contractor is required to obtain, review, and understand the Owner's hazardous material report and/or asbestos management plan prior to performing construction work that disturbs the site. Contractor is not to disturb any in-place hazardous materials, except as required to perform the Contractor's authorized scope of work and only as permitted by law, available hazardous materials information, and the Owner or its authorized agents. Contractor must immediately stop all Work and notify the Owner if they reasonably suspect the presence of unknown hazardous materials and/or have unwittingly disturbed any materials reasonably suspected to be hazardous materials.

§ 3.4.5.2 It is hereby understood and agreed that no product and/or material containing asbestos including chrysolite, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos and any combination of these materials that have been chemically treated and/or altered shall be installed or introduced into the Work by the contractor or his employees, agents, subcontractors, or other individuals or entities over whom the Contractor has control. If applicable, the Contractor shall be required to provide a signed certification statement ensuring that all products or materials installed or introduced into the work all be asbestos-free.

§ 3.4.5.3 The Contractor shall also be required to furnish certified statements from the manufacturers of supplied materials used during construction verifying their products to be asbestos-free in accordance with the requirements of Section 3.4.5.1.

§ 3.4.5.4 The Contractor shall complete and submit to the Owner a certification evidencing asbestos-free product installation prior to issuance of the final Certificate for Payment, in a form acceptable to the Owner.

### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner, Construction Manager, and Architect that materials and equipment furnished under the Contract. In addition to any other warranties, guarantees or obligations set forth in the Contract Documents or applicable as a matter of a law and not in limitation of the terms of the Contract Documents, the Contractor warrants and guarantees that:

- .1 The Owner will have good title to the Work and all materials and equipment incorporated into the Work and, unless otherwise expressly provided in the Contract Documents, will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit new;
- .2 The Work and all materials and equipment incorporated into the Work will be free from all defects, including any defects in workmanship or materials;
- .3 The Work and all equipment incorporated into the Work will be fit for the purpose for which they are intended;
- .4 The Work and all materials and equipment incorporated into the Work will be merchantable; and
- .5 The Work and all materials and equipment incorporated into the Work will conform in all respects to the Contract Documents.

If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Construction Manager or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

Upon notice of the breach of any of the foregoing warranties or guarantees or any other warranties or guarantees under the Contract Documents, the Contractor, in addition to any other requirements in the Contract Documents, will commence to correct such breach within seventy-two (72) hours after written notice thereof and thereafter will use its best efforts to correct such breach to the satisfaction of the Owner; provided that if such notice is given after final

payment hereunder, such seventy-two (72) hour period shall be extended to seven (7) days. The foregoing warranties and obligations of the Contractor shall survive the final payment and/or termination of the Contract.

The Contractor shall, at the time of final completion of the Work and as a condition precedent to final payment to the Contractor, assign to the Owner all manufacturers' warranties related to the materials and labor used in the Work. The Contractor further agrees to perform the Work in such manner as to preserve any and all such manufacturers' warranties and deliver to the Owner the warranties, project manuals, operating procedures, and other materials related to each of the building systems and materials included in the Contractor's Work and as required by the Specifications.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contractor shall also pay all state and federal taxes levied on its business, income or property and shall make all contributions for social security and other wage or payroll taxes. The Contractor shall be solely responsible for such payments and shall hold the Owner harmless from same. It is required and understood that the Contractor's Contract Sum includes all applicable taxes and will not be modified as a result of Contractor's failure to include all such applicable taxes or to address a change in Contractor's tax liability.

### § 3.7 Permits, Fees, Notices, and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner, assisted by the Construction Manager, shall secure and pay for the building permit. The Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 ~~If the Contractor performs Work knowing it to be~~ Unless required by the Drawings or Specifications, in which case the Architect or Construction Manager will be responsible, as applicable, if the Contractor performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Drawings and Specifications shall be drafted in compliance with applicable laws and the most recent reasonable interpretation of codes and regulations, acknowledging that a reasonable interpretation may still be rejected by an inspector.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written and dated notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect and Construction Manager will promptly investigate such conditions and, ~~determines~~ determine that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, ~~they~~ will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Owner and the Architect, in consultation with the Construction Manager, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, Construction Manager, and Contractor, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may the Contractor shall submit a Claim as provided in Article 15. The requirements of Section 2 of 1998 PA 57 (MCL 125.1592), as amended, are hereby incorporated into this document. The Contractor shall be alert to any indication or evidence of existing underground or concealed utilities, or structures not shown on the Contract Documents and shall immediately notify the Owner of discovery of such evidence. If the Contractor encounters such utilities or structures, it shall cease operations immediately to minimize damage and shall notify the Owner and Architect. The Contractor shall bear the



cost of damage resulting from its failure to exercise reasonable care in its construction activity or from continuing operations without notifying the Owner.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall ~~notify~~ provide written and dated notification to the Owner, Construction Manager, and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features ~~may be made~~ shall be made, as needed, as provided in Article 15.

### § 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent and any other personnel shall be satisfactory to the Owner in all respects, and the Owner shall have the right to require the Contractor to remove any superintendent or any other personnel from the Project whose performance is not satisfactory to the Owner and to replace such superintendent or other personnel with another who is satisfactory to the Owner.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect, through the Construction Manager, of the name and qualifications of a proposed superintendent. ~~Within The Owner and/or the Construction Manager may reply within~~ 14 days of receipt of the information, ~~the Construction Manager may notify the Contractor,~~ stating whether the Owner, the Construction Manager, or the Architect (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. ~~Failure of the Construction Manager to provide notice within the 14 day period shall constitute notice of no reasonable objection.~~

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner, Construction Manager, or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's ~~consent, which shall not unreasonably be withheld or delayed.~~ consent.

### § 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information, and the Construction Manager's use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. In no event shall the Contractor's Construction Schedule be extended due to action or inaction of the Contractor, except with prior written approval of the Owner within the Owner's sole discretion. The schedule shall

provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Owner's, Construction Manager's and Architect's approval. The Architect and Construction Manager's approval, which approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, ~~and~~ (2) allow the Construction Manager and Architect reasonable time to review ~~submittals~~ submittals, and (3) provide for expeditious and practical execution of the Work. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall participate with other Contractors, the Construction Manager, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

**§ 3.10.4** The Contractor shall perform the Work in ~~general accordance with the most recent schedules submitted to the Owner, Construction Manager, and Architect, and incorporated into the approved Project schedule~~ accordance with the most recent approved project schedule and the most recent work schedule.

**§ 3.10.5** The Contractor shall cooperate with the Construction Manager in scheduling and performing its Work to avoid conflict or interference with the Work of others, and the Contractor shall be responsible for any conflict or interferences that it causes. The Construction Manager and the Contractor acknowledge and understand that the work schedule will be modified from time-to-time with the Owner's approval to coordinate with the work of others and that such schedule changes do not give rise to a claim for damages or additional compensation by the Contractor for delay or otherwise. The Contractor shall be required to conform to the most recent Owner-approved schedule and acknowledges that fact was taken into account when it agreed to the Contract Sum and entered into this Contract.

**§ 3.10.6** The Contractor shall cooperate with the Construction Manager in working out and following the proper sequence of operations between the Work of the Contractor and that of other trades on the site.

**§ 3.10.7** The Contractor shall prosecute the Work undertaken in a prompt and diligent manner whenever the Work (or a part thereof) becomes available, or at such other time as the Owner and/or Construction Manager may direct so as to promote the general progress of the entire construction. The Contractor shall not, by delay or otherwise, interfere with or hinder the Work of the Construction Manager or any other Contractor. Any materials that are to be furnished by the Contractor shall be furnished in sufficient time to enable the Contractor to perform and complete its Work within the time or times provided in the schedule. If the Contractor shall, through its action or inactions, including the actions or inactions of its' subcontractors or suppliers, fall behind in furnishing necessary labor and/or materials to meet the construction needs in accordance with the established schedule, then it shall increase its forces or work such overtime as may be required, at its own expense, to bring its part of the work up to the proper schedule. In the event that the Contractor does not take such action necessary to bring its part of the work up to schedule, as determined by the Construction Manager, then the Owner may supplement the Contractor's forces or take other action permitted under Section 2.4 or Section 2.5. The Contractor shall be responsible for any and all costs of performing or completing the Work, and the Owner may deduct such costs from any payment then or thereafter due Contractor to cover the cost of performing, completing, or correcting such Work. If the amount withheld from payments then or thereafter due Contractor are insufficient to cover such costs, the Owner may bill those costs to the Contractor, and the Contractor shall pay any such sums within ten (10) days of an invoice. Exercise of such rights shall in no way limit or jeopardize the Owner's right to any other remedy, including but not limited to a claim against the Performance Bond of the Contractor.

### **§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field

changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Construction Manager, Architect, and Owner, and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.12 Shop Drawings, Product Data, and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor for submittal to and review by the Architect to illustrate materials or equipment for some portion of the Work. All Work shall be furnished and installed in accordance with the Drawings, Specifications and as additionally required by the manufacturer's printed instructions. The Contractor shall review the manufacturer's instructions, and where conflict occurs between the Drawings or Specifications and the manufacturer's instructions, the Contractor shall request clarification from the Architect prior to commencing the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect and Construction Manager is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which the Construction Manager and Architect are not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Construction Manager or Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Construction Manager, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by the Construction Manager and Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner, Construction Manager, and Architect, that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been reviewed and approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's review and approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Construction Manager and Architect in a detailed writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Construction Manager and Architect on

previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to reasonably rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. ~~Documents, subject to its experience and expertise.~~ The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. ~~The Owner, the Architect, and the Owner shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.~~ The Architect and Construction Manager shall be entitled to reasonably rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, ~~provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy, subject to their professional judgment, experience, and expertise.~~ Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Construction Manager shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Construction Manager and Architect at the time and in the form specified by the Architect.

### § 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, permits, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Only materials and equipment which are to be used for the Project or to carry out the Work shall be stored at the Project site(s). Protection of such materials and equipment shall be the sole responsibility of the Contractor.

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§ 3.13.3 The Contractor shall provide the Owner with seventy-two (72) hours prior written notice if the Work will involve a utility connection or a shutdown of a utility.

### § 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of the Construction Manager, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

### § 3.15 Cleaning Up

§ 3.15.1 The Contractor and its Subcontractors shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 Any areas and/or concurrently occupied space both occupied by the Owner and used in the progress of the Work, whether within the limits of the construction site or the adjacent areas leading to it, shall be maintained in a clean and safe condition and open to travel. Failure by the Contractor to maintain said areas will result in the Owner's cleaning of same, at the expense of the Contractor.

### § 3.16 Access to Work

The Contractor shall provide the Owner, Construction Manager, and Architect with access to the Work in preparation and progress wherever located.

### § 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall ~~hold the Owner, Construction Manager, and Architect harmless from loss on account thereof, indemnify and hold harmless the Owner, the Construction Manager, and Architect from any and all cost, damage, and loss on account thereof, including, but not limited to actual attorneys' fees,~~ but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner, Architect, or Construction Manager. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect through the Construction Manager. The review by the Owner of any method of construction, invention, appliance, process, article, device or materials of any kind shall be for its adequacy as integrated into the Work and shall not be an approval for the use thereof by the Contractor in violation of any patent or other rights of any third person.

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or ~~resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent in any way related to performance of the Work, or the duties or obligations of this Agreement or the failure of the Contractor or the Work to conform with the Contract Documents, caused in whole or in part by any acts or omissions of the Contractor, a Subcontractor, or anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. them or anyone for whose acts of any of them may be liable.~~ The Contractor shall not be obligated to indemnify a party for that party's sole negligence but shall remain liable to the fullest extent of its fault or the fault of a person for whom the Contractor is responsible (e.g., a Subcontractor). The Contractor shall be responsible to the Owner, Construction Manager, Architect, Architect's consultants and agents and employees of any of them from and against all amounts such parties may be required to pay in attorney fees in order to pursue enforcement of this provision against the Contractor or otherwise obtain indemnification from the Contractor provided under the terms of this Section 3.18 or any other applicable Contract Document. Such obligation shall not be construed to negate, ~~abridge, abridge~~ or reduce any other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18 which would otherwise exist as to any party or person set forth in this section. To the fullest extent permitted by law, the Contractor shall indemnify the Owner and save the Owner harmless against all loss by fines, penalties or corrective measures resulting from negligent or wrongful acts or omissions by the Contractor, its Subcontractors, agents, employees or assigns, with respect to the violation of safety requirements of this Contract, including reasonable attorney fees.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts, addition to and not in limitation of the Contractor's other indemnity obligations, the Contractor hereby accepts and assumes exclusive liability for and shall indemnify and save harmless the Owner, Construction Manager and Architect from and against the payment of the following:

All contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the unemployment insurance law of any state, the federal Social Security Act, federal, state, county and/or municipal tax withholding laws, or any other law, measured upon the payroll of or required to be withheld from employees by whomsoever employed, engaged in the Work to be performed and furnished under the Contract Documents

All sales, use, personal property and other taxes (including interest and penalties thereon) required by any federal, state, county, municipal or other law to be paid or collected by the Contractor or any of its Subcontractors or vendors or any other person or persons acting for, through or under it or any of them, by reason of the performance of the Work or the acquisition, ownership, furnishing, or use of any materials, equipment, supplies, labor, services or other items for or in connection with the Work;

All pension, welfare, vacation, annuity and other benefit contributions payable under or in connection with respect to all persons by whomsoever employed, engaged in the Work to be performed and furnished under the Contract Documents.

The Contractor shall indemnify and hold the Owner harmless from any claim, damage, loss or expense, including but not limited to actual attorney fees, incurred by the Owner related to any hazardous material or waste, toxic substance, pollution or contamination brought into the Project site or caused by the Contractor or used, handled, transported, stored, removed, remediated, disturbed or dispersed of by Contractor.

§ 3.18.3 In the event that any claim is made or asserted, or lawsuit filed for damages or injury arising out of or resulting from the performance of the Work, whether or not the Owner is named as a party, the Contractor shall immediately advise the Owner, in writing, of such claim or lawsuit and shall provide a full and complete copy of any documents or pleadings thereto, as well as a full and accurate report of the facts involved.

#### **ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER**

##### **§ 4.1 General**

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. The term "Architect," "Architect/Engineer," "Engineer," or "Design Professional" as used herein means the Architect or the Architect's authorized representative.

§ 4.1.2 The Construction Manager is the person or entity retained by the Owner pursuant to Section 2.3.3 and identified as such in the Agreement.

§ 4.1.3 Duties, responsibilities, and limitations of authority of the Construction Manager and Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Construction Manager, Architect, and Contractor. Owner and the Construction Manager or Architect, respectively. Consent shall not be unreasonably withheld.

##### **§ 4.2 Administration of the Contract**

§ 4.2.1 The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. Payment and with the Owner's written concurrence during the correction period. The Construction Manager and Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or more frequently, as otherwise agreed with the Owner, Owner or as required by law, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in

a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. ~~However, Subject to the Owner/Architect Agreement, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect will keep the Owner and the Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, will guard the Owner against defects and deficiencies in the work, and promptly report to the Owner and Construction Manager known deviations from the Contract Documents, Documents, the Project schedule, and defects and deficiencies observed in the Work.~~

§ 4.2.3 The Construction Manager shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project ~~schedule, schedule and shall supervise construction as required by 1937 PA 306 (MCL 388.851 et seq.).~~

§ 4.2.5 The Construction ~~Manager, Manager and Architect, except to the extent required by Section 4.2.4, and Architect 4.2.4 or by 1937 PA 306 and/or 1980 PA 299, as applicable, will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the Contractor's safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, and Documents. Except as required by their respective agreements with the Owner, neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect Documents and neither will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work. The Construction Manager will schedule and coordinate the work of all Contractors on the Project, including the Contractors' use of the site. The Construction Manager will keep the Contractors informed of the Project Construction Schedule to enable the Contractors to plan and perform the Work in a timely manner.~~

§ 4.2.6 **Communications.** The Owner shall endeavor to communicate with the Contractor and the Construction Manager's consultants through the Construction Manager about matters arising out of or relating to the Contract Documents. The Owner and Construction Manager shall endeavor to include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall endeavor to promptly notify the Architect of the substance of any direct communications between the Owner and the Construction Manager otherwise relating to the Project. Communications by and with the Architect's consultants ~~shall may~~ be through the Architect. Communications by and with Subcontractors and suppliers ~~shall may~~ be through the Contractor. Communications by and with other Contractors shall be through the Construction Manager. Communications by and with the Owner's own forces and Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.7 The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Architect and Construction Manager have authority to reject Work that does not conform to the Contract Documents, and will notify each other about the rejection. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 Utilizing the submittal schedule provided by the Contractor, the Construction Manager shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Owner's consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of the Construction Manager. The Project submittal schedule and any revisions shall be submitted to the Architect for approval.

§ 4.2.10 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.

§ 4.2.11 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

§ 4.2.12 Review of the Contractor's submittals by the Construction Manager and Architect is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Construction Manager and Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Construction Manager and Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. However, should the Construction Manager or Architect discover during the course of such review any inaccuracies, incompleteness, or other irregularities, they shall immediately notify the Owner of the same to determine an appropriate corrective course of action or notify the Contractor of the same to correct the irregularities.

§ 4.2.13 The Construction Manager will prepare Change Orders and Construction Change ~~Directives~~ Directives in consultation with the Architect.

§ 4.2.14 The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.15 ~~Utilizing the documents provided by the Contractor, the~~ The Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner in good condition and reasonably organized upon completion of the Project.

§ 4.2.16 The Construction Manager will assist the Architect in conducting inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.



~~§ 4.2.17 If the Owner and Architect agree, the~~ The Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Construction Manager of any change in the duties, responsibilities and limitations of authority of the Project representatives.

~~§ 4.2.18 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Construction Manager, Owner, or Contractor through the Construction Manager. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.~~

~~§ 4.2.19 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, interpretations, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions so rendered in good faith. faith and without negligence.~~

~~§ 4.2.20 The Architect's decisions interpretations on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents. Documents and acceptable to the Owner.~~

~~§ 4.2.21 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Architect, with the Construction Manager's recommendation. The Architect will review and respond in writing, through the Construction Manager, to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. promptness given the particular circumstances. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.~~

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

~~§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors. The term "Subcontractor" shall also include material and equipment suppliers.~~

~~§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.~~

### § 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

~~§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Construction Manager, for review by the Owner, Construction Manager and Architect, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish supplies, materials or equipment equipment, including those fabricated to a special design. Within 14 days of receipt of the information, the Construction Manager may will notify the Contractor whether the Owner, the Construction Manager or the Architect (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of the Construction Manager to provide notice within the 14 day period shall constitute notice of no reasonable objection.~~

~~The Contractor shall remain, in all instances, jointly and severally liable to the Owner for all acts or omissions of its Subcontractor. All contractual agreements with additional persons or entities serving as a subcontractor shall incorporate the Contract Documents, expressly identify the Owner as a third-party beneficiary, give the Owner all rights against the Subcontractor that it would have against the Contractor, and state that the Owner shall enjoy all third-party beneficiary rights not prohibited by law.~~

~~§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.~~

§ 5.2.3 If the Owner, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner, Construction Manager or Architect makes reasonable objection to such substitution. The Contractor shall notify the Owner, the Architect, and the Construction Manager of any proposed subcontractor substitution a minimum of 10 days prior to such proposed change.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation ~~shall be equitably adjusted for increases in cost resulting from the suspension~~ may be equitably adjusted as negotiated by the parties.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor Contractor or other entity. ~~If the Owner assigns the subcontract to a successor Contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor Contractor's obligations under the subcontract.~~

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to ~~insurance and waiver of subrogation~~ insurance. The Construction Manager and Contractor shall be responsible for coordinating the Work with the work of

other Contractors, including the Owner's own forces or Separate Contractors so as to complete the Work in accordance with the Project schedule.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

~~§ 6.1.3 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.~~

## § 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner's own forces, Separate Contractors, Construction Manager and other Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces, Separate Contractors or other Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Construction Manager and Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor or other Contractors that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Construction Manager and the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's or other Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractors or other Contractors that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities or defective construction. ~~The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.~~

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction, or to property of the Owner, Construction Manager, Separate Contractors, or other Contractors as provided in Section 10.2.5. Should a claim be made that the Contractor wrongfully delayed or caused damage to the Work or property of another contractor (including the Owner's own forces, other Contractors, or Separate Contractors), the Contractor shall promptly settle the dispute with such other contractor. If such other contractor sues the Owner on account of any delay or damage alleged to have been caused by the Contractor, the Construction Manager will notify the Contractor who shall defend such proceedings at the Contractor's sole expense. If any judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for all costs, including attorneys' fees and court costs, which he Owner may have incurred.

§ 6.2.5 The Owner, Separate Contractors, and other Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

## § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up ~~and the Construction Manager, with notice to the Architect, will~~ allocate the cost among those responsible. The Owner's right to clean up shall in no event be deemed a duty, and should the Owner choose not to pursue this remedy, the Contractor necessitating such action shall remain fully responsible for the same.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by Change Order, Construction Change Directive~~Directive, written contract amendment~~, or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Architect and Contractor. A Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

§ 7.1.4 Where a change in the Work requires overtime labor, and the Owner approves in advance such overtime labor in writing, the cost to the Owner of overtime labor shall be no greater than the actual premium wages paid for such overtime labor, over and above the cost of straight time wages, plus payroll charges applicable thereto, plus the cost of direct additional expenses relating to the overtime work, plus a percentage for the Contractor's overhead cost as stipulated in the Contract. No Contractor profit shall be included in such cost. Overtime labor caused by Contractor's failure to timely and/or properly perform shall be at no additional cost to the Owner.

### § 7.2 Change Orders

A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Architect, and Contractor, stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.3 The Contractor's agreement on any Change Order shall constitute its final settlement of all matters relating to the direct and indirect costs associated with such change and any and all related adjustments to the Contract Sum and the Contract Time.

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one or more of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager shall ~~determine~~determine, with the Owner's approval, the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep

and present, in such form as the Construction Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to a reasonable amount of the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Construction Manager and Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** The Contract Time shall be adjusted only if the Contractor demonstrates to the Owner that the changes in the Work required by the Construction Change Directive adversely affect the critical path of the Work. If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Construction Manager of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. Contractor agreements to a Construction Change Directive shall require a follow-up writing or signature as contemplated in Section 7.3.7.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Construction Manager and Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for undisputed Work completed under the Construction Change Directive in Applications for Payment. ~~The For those undisputed portions, the~~ Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The interim determination of ~~cost~~ cost, if agreed to by the Owner in writing, shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of ~~either party~~ the Contractor to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree in writing with a determination made by the Construction Manager and Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the ~~adjustments,~~ adjustments in writing, such agreement shall be effective immediately and the Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### **§ 7.4 Minor Changes in the Work**

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and Construction Manager and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Owner and Construction Manager that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

## ARTICLE 8 TIME

### § 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### § 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for obtaining all supplies, materials, tools and equipment necessary to perform the Work and for properly performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. All work shall be completed in sufficient time to allow for clean-up and preparation for Owner move-in prior to the date of Substantial Completion.

### § 8.3 Delays and Extensions of Time

§ 8.3.1 ~~If~~ Provided the Contractor submits a written request for an extension not more than fourteen days after the occurrence that gives rise to the delay, if the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Architect, Construction Manager, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, fire, government-declared emergencies, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution, litigation, mediation, or arbitration, as applicable; or (5) by other causes that the Contractor asserts and the Architect, based on the recommendation of the Construction Manager, determines justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, may be extended by Change Order. Failure of the Contractor to submit a timely request for an extension shall irrevocably waive the Contractor's right to such an extension of time. If the Contract Time is subject to extension pursuant to this subparagraph, such extension shall be the exclusive remedy of the Contractor and the Contractor shall not be entitled to recover damages from the Owner. Further, minor modifications in Contract Time resulting from adjustments in the Project construction schedule shall not be deemed a sufficient cause for an extension of time under this Section.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

~~§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.~~

### § 8.4 Delay Damage Claims

§ 8.4.1 If the Contractor fails to complete its Work on time resulting in loss or damage to the Owner, the Owner shall be entitled to recover any damages caused by the Contractor's breach, including overhead, profit, extended general conditions, actual attorney fees, etc.

§ 8.4.2 In the event the Contractor is delayed or hindered in the commencement or progress of the Work, including but not limited to those delays caused by the Work or lack of Work of another contractor or subcontractor on the Project, and the Contractor claims monetary damages as a direct and proximate consequence thereof (including, but not limited to, extended general conditions, overhead, profit, overtime, interest, supervision or other costs or profits whatsoever), then the Contractor shall not assert such claims against the Architect, Construction Manager or Owner and, as to the Architect, Construction Manager and Owner, the Contractor's claims of such delay damages are hereby waived. The

Contractor's sole and exclusive remedy regarding claims for monetary delay damages shall be to pursue such claims directly against any contractor(s) and/or subcontractors on the job which may have caused the delay, and with regard to such claims asserted against the Contractor by any other contractor(s) and/or subcontractors, the Contractor hereby waives the defense of absence of contractual privity and hereby assumes liability to other contractor(s) and/or subcontractors arising out of the Contractor's actions or inactions resulting in such delay and claim.

§ 8.4.3 For any delay claims raised against the Owner, the Contractor's sole and exclusive remedy is an extension of time to perform the Work not to exceed the time frame of any proven delay. Under no circumstances is the Contractor entitled to monetary delay damages from the Owner.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably ~~adjusted~~ adjusted, unless the Contractor provided such unit prices as a part of a competitive bid.

### § 9.2 Schedule of Values

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, Before the first Application for Payment, the Contractor shall submit a schedule of values to the Construction Manager, before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Construction Manager and the Architect. This schedule, unless objected to by the Construction Manager-Owner, Construction Manager, or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Construction Manager shall forward to the Owner and Architect the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to the Construction Manager and supported by such data to substantiate its accuracy as the Construction Manager and the Architect may require, and unless objected to by the Construction Manager or the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~

### § 9.3 Applications for Payment

§ 9.3.1 At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment prepared in accordance with the schedule of ~~values, if required under Section 9.2,~~ values for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner, Construction Manager or Architect require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Construction Manager and Architect, but not yet included in Change Orders. A Contractor's request for payment of sums related to work regarding Construction Change Directives shall, unless qualified in writing at the time of request, constitute full and complete consent to the Construction Change Directive(s) and to the issuance of a Change Order.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The Contractor shall submit with each monthly Application for Payment an Affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the previous application was submitted and the Owner might in any way be responsible have been paid or otherwise satisfied.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location

agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Payment to Contractor for materials stored off site is discouraged. When circumstances indicate that the Owner's best interest is served by off-site storage, the Contractor shall make written request to the Owner and Construction Manager for approval to include such material costs in its next progress payment. The Contractor's request shall include the following information:

- .1 A list of the fabricated materials consigned to the Project (which shall be clearly identified, giving the place of storage, together with copies of invoices and reasons why materials cannot be delivered to the site.
- .2 Certification that items have been tagged for delivery to the Project and that they will not be used for another purpose.
- .3 A letter from the Contractor's Surety indicating agreement to the arrangements and that payment to the Contractor shall not relieve either party of their responsibility to complete the Work.
- .4 Evidence of adequate insurance covering the material in storage, which shall name the Owner as additionally insured.
- .5 Costs incurred by the Owner, Construction Manager and Architect to inspect material in off-site storage shall be paid by the Contractor.
- .6 Subsequent pay requests shall itemize the materials and their cost which were approved on previous pay requests and remain in off-site storage.
- .7 When a partial payment is allowed on account of material delivered on the site of the Work or in the vicinity thereof or under possession and control of the Contractor, but not yet incorporated therein, such material shall become the property of the Owner, but if such material is stolen, destroyed or damaged by casualty before being used, the Contractor will be required to replace it at its own expense.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials and equipment relating to the Work.

#### § 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment, with a copy to the Construction Manager; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

§ 9.4.2 Where there is more than one Contractor performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives all of the Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

§ 9.4.2.1 Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either (1) issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager; or (2) issue to the



Owner a Project Certificate for Payment for such amount as the Architect determines is properly due, and notify the Construction Manager and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Construction Manager and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors. As between the Owner and the Contractor, the failure of the Architect or Construction Manager to notify the Contractor or the Owner of a withheld certification does not render such withholding ineffective, and the Owner shall have no obligation to pay a Contractor for uncertified amounts or amounts for which no Certificate for Payment has been issued. If the Contractor does not receive notice of a withheld certification, it shall proceed as provided in Section 9.6.

§ 9.4.3 The Construction Manager's certification of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon the Construction Manager's evaluation of the Work and the data in the Application or Applications for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.4 The Architect's issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and data in the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

§ 9.4.5 The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Construction Manager or ~~Architect~~. Architect, in writing, together with the Certification which the qualification pertains.

§ 9.4.6 The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect ~~has~~ has, unless otherwise required by contract or law, (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## § 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

- .1 defective Work not ~~remedied~~; remedied, or the Contractor is in breach of the Agreement;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

- .5 damage to the Owner or a Separate Contractor or other Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 ~~repeated failure to carry out the Work in accordance with the Contract Documents.~~ Documents:
- .8 the Work not having progressed to the extent set forth in the Application for payment; or
- .9 representations of the Contractor are untrue.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Construction Manager, and both will reflect such payment on the next Certificate for Payment.

§ 9.5.5 If the Contractor disputes any determination by the Owner, Architect, or Construction Manager with regard to any Certificate for Payment, the Contractor shall nevertheless continue to expeditiously perform the Work and such dispute shall provide no basis for any manner of suspension of the Contractor's performance of the Work.

#### § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment or Project Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Construction Manager and Architect.

§ 9.6.1.1 The Owner may, in its sole discretion, choose to make payments to Contractors through the Construction Manager. More particularly, the Owner may distribute funds to the Construction Manager for the Construction Manager to then provide payment to each respective and applicable Contractor. The Owner may discontinue this practice at any time in its sole discretion. The Owner reserves the right to require additional insurance based on its decision on payment management.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner, Construction Manager and Architect on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner, Construction Manager nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4. Owner may, in its sole discretion, after providing Contractor with ten (10) days prior written notice, make direct payments to the Contractor's Subcontractors, material men, laborers or claimants relating to labor or material provided to the Contractor in the event the Subcontractors, material men, laborers or claimants threaten to or actually cease providing labor and/or materials for the Project due to nonpayment such that, in the Owner's determination, progress of the Project and the Project's schedule are jeopardized. All payments made pursuant to this section shall be considered the same as if paid directly to the Contractor and shall constitute partial payment of the

Contract Sum. In the event the Contractor disagrees with the amount proposed to be paid to one or more Subcontractors, material men, laborers or claimants, the Contractor shall provide a bond in the amount the Contractor believes the Owner will overpay, within ten (10) days of receipt of notice, or be barred from making any claim that the amount of the direct payment was incorrect. Payment under this provision shall not jeopardize any other remedy available to the Owner.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.6.9 Subject to applicable law, if a petition in bankruptcy or any other arrangement or proceeding regarding insolvency, assignment for the benefit of creditors, trust, chattel mortgage, or similar state or federal proceeding, whether voluntary or involuntary, shall be filed with respect to the Contractor, the Owner may withhold the final balance, or any other payments, whether or not an application for progress payment has been properly filed, until expiration of the period of any guarantees or warranties required for the Contractor, and the Owner may pay out such funds the amount necessary to satisfy any claims or costs that otherwise would have been covered by such guarantees or warranties.

### § 9.7 Failure of Payment

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the ~~Contractor~~, Contractor and without justifiable basis under the Contract Documents, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Construction Manager and Architect or awarded by binding dispute resolution, ~~then the Contractor may, upon seven~~ unless the Owner, in good faith, disputes the amount certified, then the Contractor may, upon twenty-one additional days' notice to the Owner, Construction Manager and Architect, stop the Work until ~~payment of the amount owing has been received. (1) the Contractor receives payment of the amount owing, or (2) the Contractor receives notice from the Architect, Construction Manager, or Owner of a full or partial withheld certification as provided herein.~~ The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. The Owner shall have no obligation to pay the Contractor unless it receives a Certificate for Payment for the amount certified. The Owner may withhold payment from a non-performing Contractor irrespective of the issuance of a Certificate for Payment.

### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and when all required occupancy permits, if any, have been issued, so the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Architect a comprehensive list of items to be completed

or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the list, the Architect, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item ~~upon notification by the Architect, immediately.~~ In such case, the Contractor shall then submit a request for another inspection by the Architect, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Architect, assisted by the Construction Manager, determines that the Work of all of the Contractors, or designated portion thereof, is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute, a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 Notwithstanding Sections 9.8.1 and 9.8.2, as a condition precedent to establishing the date of Substantial Completion, the Contractor shall prepare and submit to the Architect and Construction Manager a comprehensive list of items to be completed or corrected (a "punch list"). The Contractor shall respond immediately to correct Work deficiencies and/or punch list items. Should the Contractor fail to make corrections in a timely fashion, but not later than thirty (30) calendar days from the date of Substantial Completion or notification of the required corrections, whichever is earlier, such Work may be corrected by the Owner at the Contractor's sole expense, and the Contract Sum may be adjusted accordingly.

#### § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, ~~provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Construction Manager shall jointly prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect after consultation with the Construction Manager complete. The Contractor shall proceed with the work in such a manner as reasonably directed and shall cooperate with the Owner to limit interruptions.~~

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Construction Manager, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon completion of the Work, the Contractor shall forward to the Construction Manager a notice that the Work is ready for final inspection and acceptance, and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager shall perform an inspection to confirm the completion of Work of the Contractor. The Construction Manager shall make recommendations to the Architect when the Work of all of the Contractors is ready for final inspection, and shall then forward the Contractors' notices and Application for Payment or Project Application for Payment, to the Architect, who will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final ~~payment~~ payment, (5) an affidavit that states the Work is fully completed and performed in accordance with the Contract Documents and is satisfactory to the Architect and the Owner, (6) in the event of Contractor bankruptcy, at the Owner's option, an order entered by the court having jurisdiction of the Contractor's insolvency proceeding authorizing such payment, (7) a general release executed by the Contractor on a form provided by the Construction Manager, (8) all close-out documents and warranties have been provided in a reasonable and acceptable manner, (9) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and ~~(6), (10)~~, if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and ~~reasonable~~ actual attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall ~~constitute a waiver of Claims by the Owner except those arising from~~  
~~.1 — liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~  
~~.2 — failure of the Work to comply with the requirements of the Contract Documents;~~  
~~.3 — terms of special warranties required by the Contract Documents; or~~  
~~.4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment not constitute a~~  
waiver of any Claims by the Owner.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of all claims by that payee except those previously made in writing and identified by that payee as being unsettled and being an exception to the waiver of this section at the time of final Application for Payment.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

### § 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 construction or operations by the Owner, Separate Contractors, or other Contractors.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss. The Contractor shall take all reasonable safety precautions with respect to its Work and the work of others, shall comply with all standard industry safety measures and shall comply with all applicable laws, ordinances, rules, regulations and orders of any public authority and all other requirements of the Contract Documents, including those applicable to the safety of persons or property. The Contractor shall be responsible for the safety of all of the Contractor's employees and the safety of all of the Contractor's Subcontractors, suppliers, and their employees. The Contractor shall report in writing to the Construction Manager any injury to any of Contractor's or its Subcontractors' employees at the site within one (1) day after the occurrence of such injury. The Contractor acknowledges receiving, or having access to an opportunity to review, health and safety information about the Project site(s), including any applicable asbestos management plan and any other environmental information it deems necessary to perform the work.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, ~~reasonable~~ reasonable, necessary, or appropriate safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor shall be solely and fully responsible for any and all damage claims and for defense of all actions against the Owner relating to such explosives, hazardous materials and/or unusual methods.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (~~other than damage or loss insured under property insurance required by the Contract Documents~~) to property referred to in Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3 and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner, Construction Manager and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 Injury or Damage to Person or Property

If ~~either party~~ the Contractor suffers injury or damage to person or property because of an act or omission of the ~~other party~~ Owner, or of others for whose acts ~~such party~~ the Owner is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the ~~other party~~ Owner within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the ~~other party~~ Owner to investigate the matter. ~~The Contractor's failure to do so shall be an irrevocable waiver of any claim against the Owner arising out of such injury or damage. Injury or damage to persons or property suffered by the Owner because of an act or omission of the Contractor or others for whose acts the Contractor is legally responsible shall be subject to the limitations provisions established by Michigan law.~~

§ 10.2.8.1 The Contractor causing damage to the Work of another Contractor shall be responsible for the repair and replacement of such damaged Work. Back charges may be made against the Contract sum of the damaging Contractor when corrections are not made promptly.

§ 10.2.8.2 The Owner reserves the right to pay the Contractor suffering damage from monies due the Contractor who is responsible for the Work required by same and shall deduct it from the Contract amount due the said responsible Contractor.

§ 10.2.9 If the Contractor or any Subcontractor chooses to use any systems, equipment, facilities, or services which have been incorporated in the Project as a permanent part thereof by any other, the Contractor shall assume full responsibility for damages caused to said systems, equipment, facilities or services, and have damages repaired as required, so that in no case will the performance of the used systems, equipment, facilities or services be diminished from the specified criteria as a result of such use.

§ 10.2.10 The Contractor acknowledges that the safety of the Owner's students, employees and guests is of the utmost importance. The Contractor will take no action which would jeopardize the safety of the Owner's students, employees and guests and, without the Owner's written approval, shall take no action which would interfere with the Owner's activities. Without limiting the foregoing provisions, the Contractor shall comply with all laws applicable to students and/or school safety.

#### § 10.3 Hazardous Materials

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner, Construction Manager and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner in its discretion shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall ~~shall, as a courtesy,~~ furnish in writing to the Contractor, Construction Manager and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and

Contractor. By Change Order, the Contract Time shall be extended appropriately ~~and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~  
to address shutdown, delay, and start-up.

~~§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Architect, their consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, 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), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.~~

**NOT USED**

~~§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances site. To the extent the Contract requires the removal, transport and disposal of hazardous materials, the Contractor agrees that it assumes responsibility for said tasks as a part of the Agreement.~~

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

~~§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.~~

**§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's reasonable discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. Nothing in this section will be construed as relieving Contractor from the cost and responsibilities for emergencies covered hereby.

**§ 10.5 Notification of Utility Companies**

§ 10.5.1 At least five (5) working days prior to the start of work in areas which may involve existing utility lines, the Contractor shall notify the MISS DIG notification system of the planned work.

§ 10.5.2 The utility company should, upon receipt of notice, stake, mark or otherwise designate the location (and depth) of their lines, or temporarily move the line(s).

§ 10.5.3 The Contractor shall immediately report to the respective utility company any break or leak in its lines, or any dent, gouge, groove or other damage to the utility line or to its coating or cathodic protection made or discovered in the course of the Work.

§ 10.5.4 The Contractor shall immediately alert the Owner, Construction Manager, Architect and occupants of nearby premises of any and all emergencies caused or discovered in the utility line(s) in the course of the Work.

**ARTICLE 11 INSURANCE AND BONDS**

**§ 11.1 Contractor's Insurance and Bonds**

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the ~~Agreement or elsewhere in the Contract Documents.~~ Agreement, as described elsewhere in the Contract Documents, as required by law, or as reasonably required by the Owner in light of the nature of services performed and insurance obligations of its other contractors and consultants. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Construction ~~Manager and Manager.~~ Construction Manager's consultants, and the Architect. ~~Architect, and~~



Architect's ~~consultants, consultants~~ shall be named as additional ~~insureds~~-insured under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. On all insurance contracts under which the Contractor is obligated to have its insurance company name the Owner as additional insured, the Contractor shall require such insurance company to add to the policy the following clause: "The insurance afforded to the Additional Insured is primary insurance. If the Additional Insureds have other insurance which is applicable to the loss on an excess or contingent basis, the amount of the insurance company's liability under this policy shall not be reduced by the existence of such other insurance." Certificates of insurance acceptable to the Owner shall be submitted by Contractor to the Owner and Construction Manager prior to commencement of Work and thereafter upon renewal or replacement of each required policy of insurance.

§ 11.1.2 The Contractor shall provide bonds covering faithful performance of 100% of the Contract and payment of 100% of the obligations arising thereunder as stipulated in bidding requirements or specifically required by the Contract Documents or by law on the date of the Contract. The Contractor shall provide such additional surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is ~~located~~-located and that are reasonably acceptable to the Owner. The Construction Manager shall obtain copies of the Performance Bond and Payment Bond required by the Agreement from the Contractor prior to Contractor beginning performance pursuant to the Agreement. The Contractor's obligation to provide such bonds shall not be waived in any fashion, including any failure to secure such bonds prior to Contractor beginning performance pursuant to the Agreement.

§ 11.1.3 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice directly to the Owner, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform both the Contractor and the Construction Manager, separately and in writing, prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may reasonably delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. ~~In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner.~~ The cost of the insurance shall be charged to the Owner by a Change Order. ~~If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~

§ 11.2.2.1 The Contractor shall at the Contractor's own expense provide insurance coverage for materials stored off the site after written approval of the Owner at the value established in the approval, and also for portions of the Work in transit until such materials are properly delivered to the site.

§ 11.2.2.2 The insurance required by Section 11.2 is not intended to cover machinery, tools or equipment owned or rented by the Contractor that are utilized in the performance of the Work, but not incorporated into permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance for owned or rented machinery, tools or equipment.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to the Construction Manager, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; and (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. may be adjusted by negotiation between the parties. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** ~~The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Construction Manager and Construction Manager's consultants; (3) the Architect and Architect's consultants; (4) other Contractors and any of their subcontractors, sub-subcontractors, agents, and employees; and (5) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, other Contractors, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. is not waiving any rights its insurer(s) may have to subrogation. To the extent any terms in the General Conditions or any other Contract Documents are contrary to the aforementioned, such terms shall be deemed void and unenforceable.~~

~~**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~

### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. ~~The Owner waives all rights of action against the Contractor, Architect, and Construction Manager for loss of use of the Owner's property, due to fire or other hazards however caused.~~

### **§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, ~~as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Construction Manager, Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Construction Manager, Architect and Contractor shall make payments to their consultants and~~

~~Subcontractors in similar manner insureds.~~ The Owner shall use its best efforts, with consultation of the Construction Manager, to reach a quick and fair settlement for all interested parties, with the insurance companies after a loss.

~~§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Construction Manager's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their examination and be replaced at the Contractor's expense without change in the Contract ~~Time~~ Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Construction Manager or Architect has not specifically requested to examine prior to its being covered, the Construction Manager or Architect may ~~request request, with the Owner's consent,~~ to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the ~~Contractor shall be entitled to an equitable adjustment to~~ Owner shall reasonably adjust the Contract Sum and Contract Time as may be appropriate. appropriate. At the time Owner's consent is sought as described herein, the Architect and/or Construction Manager shall notify the Owner that additional costs may apply if the Work is in accordance with the Contract Documents. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

### § 12.2 Correction of Work

#### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If any portion of the Work is determined by the Owner, Construction Manager or Architect, either during performance of the Work or during any applicable warranty period, to be defective or not in compliance with the contract requirements, the Construction Manager or Owner shall notify the Contractor in writing that such Work is rejected. Thereupon, the Contractor shall immediately replace and/or correct such Work by making the same comply strictly with all the requirements therefor. The Contractor shall bear all costs of correcting such rejected Work, including work of other Subcontractors and including compensation for the Architect's and Construction Manager's additional services and any delay or related damage to the Owner made necessary thereby. The Construction Manager shall have the right to charge the Contractor for any compensation payable for the Architect's or Construction Manager's additional services required by the Contractor's rejected Work and deduct the payment from the next payment due the Contractor.

#### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within the Contractor's applicable correction period (which shall be one year after the date of Substantial Completion of the Work or designated portion thereof, thereof), or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner or Construction Manager to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner or Construction Manager shall give such notice promptly after discovery of

the condition. During ~~the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor that correction period, if the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, Construction Manager or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 ~~The one-year Contractor's applicable correction period for correction of the Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.~~

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner, Separate Contractors, or other Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the ~~one-year~~ two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 The Contractor shall respond immediately to correct Work deficiencies and/or punch list items. Failure to correct Work deficiencies and/or punch list items in a timely fashion shall be a substantial breach, and the Owner may terminate the Contract immediately without following the procedure identified in Section 14.2. As used in this Section 12.2.6, "timely" means the Contractor shall begin correction within three days of receiving the punch list or notice of work deficiency, and correction will be completed in a commercially reasonable time in accordance with the direction of the Construction Manager. Whether or not the Contract is terminated, if the Contractor fails to make corrections in a timely fashion, such Work may be corrected by the Owner, in its sole discretion, at the Contractor's expense and the Contract Sum may be adjusted by backcharge accordingly. The Contractor shall promptly notify the Construction Manager, in writing, when the Work deficiencies and/or punch list items are completed. Upon the review of the Work by the Construction Manager after such notification by the Contractor, if Work deficiencies and/or punch list items shall continue to exist, the Contractor shall reimburse any cost incurred by the Owner, including the Construction Manager's and Architect's fees for reinspections of the Work. Failure to pay such costs within ten (10) days of receipt of a demand regarding the same shall permit the Owner to withhold such amounts from the unpaid portion of the Contractor's contract.

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be ~~effected~~ affected whether or not final payment has been made. The acceptance of nonconforming Work by the Owner shall be by written Change Order, specifically referencing that it addresses nonconforming work, acceptable to the Owner's authorized representative, and signed by all parties. Acceptance of nonconforming Work may only occur pursuant to such written Change Order.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.State of Michigan in all respects, except that claims and causes of action brought by the Owner shall not be deemed untimely if filed within six (6) years of substantial completion.

## § 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

## § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

§ 13.3.2 No action or failure to act by the Owner, Construction Manager, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

## § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Construction Manager, Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Construction Manager and Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract ~~Documents, Documents or applicable law~~, all costs made necessary by such failure, including those of repeated procedures and compensation for the Construction Manager's and Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Architect.

§ 13.4.5 If the Construction Manager or Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Construction Manager or Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid ~~unreasonable~~ delay in the Work.

### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.6 The Contractor agrees that time is of the essence and to start work when directed by the Construction Manager and to furnish sufficient materials and a sufficient number of properly skilled workers, so as not to delay the work of any other Contractor or completion of the Project.

§ 13.7 Notwithstanding any provisions within the Contract Documents, nothing shall be deemed a waiver of any immunity granted to Owner by law or statute, including but not necessarily limited to, governmental immunity under MCL 691.1407.

§ 13.8 The Owner, being a governmental unit, is protected by the Michigan Void Construction Contracts Act, MCL 691.991.

§ 13.9 The Owner may, at its sole discretion, suspend the Project (and its payment obligations concerning the Project) in the occurrence of an event beyond the reasonable control of the Owner, which could include: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; tornado; storm; fire; civil disobedience; pandemic; insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by any governmental authority or utility or the inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals, in each case if not caused by the fault of the Owner. The Owner will provide the Architect, Construction Manager, and Contractors written notice if it suspends the Project under this Section 13.9.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days for reasons within the Owner's control through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, ~~for which may include~~ any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 ~~An act of government, such as a declaration of national emergency, that requires all Work to be stopped; Not Used;~~
- .3 ~~Because the Construction Manager has not certified or the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents, subject to justifiable withholding of payment as described herein or in the Contract Documents; or~~
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and ~~profit~~ direct costs on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive ~~days~~ days, for reasons within the Owner's control and through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees, or any other persons performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the

Contractor may, upon seven additional days' notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3. The Contractor may not terminate the Contract unless it has submitted claims for the delays and sought an extension of time for each delay.

#### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper ~~materials; materials to~~ the point of negatively impacting the Project and/or the related schedule;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract ~~Documents; Documents; or~~
- .5 the Contractor fails to prosecute the Work or any part thereof with promptness and diligence or fails to perform any provisions of this Contract, or goes into bankruptcy, liquidation, makes an assignment for the benefit of creditors, enters into a composition with its creditors, or becomes insolvent.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, after consultation with the Construction Manager, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, ~~seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety;~~ three days' notice, terminate the Contractor's right to proceed with the Work, or such part of the Work as to which such defaults have occurred, and may take any one or more of the following actions::

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

The notice required by this Section 14.2.2 shall not give the Contractor a right to cure defective Work or to cure other grounds for termination under Section 14.2.1. Further, the Owner's failure to strictly comply with the formal requirements of termination (e.g., by providing less than three days' notice of termination) shall not be a substantial breach by the Owner.

In the event the Contractor's surety bond requires notice of intent to declare a default of the Contractor and if such bond notice is provided by the Owner, such notice shall be adequate to satisfy the three (3) day written notice described above in this section.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Construction Manager's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner in pursuing termination and completion of the Work, including actual attorney and legal fees and costs, and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this Contract.

#### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the ~~termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~ termination.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 Claims

§ 15.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the ~~Contract.~~ Contract, including but not limited to additional sums, additional time for performance, or damages for delay. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents. The Contractor shall not knowingly (as "knowingly" is defined in the Federal False Claims Act, 31 USC 3729, et seq.) present or cause to be presented a false or fraudulent Claim. As a condition precedent to making a Claim by the Contractor, the Claim shall be accompanied by an affidavit sworn to before a notary public or other person authorized to administer oaths in the State of Michigan and executed by an authorized representative of the Contractor, which states that: "The Claim which is submitted herewith complies with subparagraph 15.1.1 of the General Conditions, as amended, which provides that the Contractor shall not knowingly present or cause to be presented a false or fraudulent claim." Claims of the Owner shall be governed by the relevant Michigan statutory limitations period.

#### § 15.1.2 Time Limits on Claims

~~The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2, in accordance with Section 13.1 and Section 15.1.2.1, regardless of any other time frames identified in this Agreement. The Contractor shall commence all claims and causes of action in accordance with Section 15.1 and, if shorter, any other provisions of this Agreement and Michigan law.~~

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by ~~either the Owner or Contractor~~, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party Owner and to the Initial Decision Maker with a copy sent to the Construction Manager and Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party the Contractor under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant Contractor first recognizes the condition giving rise to the Claim, whichever is later. Failure to timely and properly initiate a claim shall be an irrevocable waiver of such claim. Claims by the Owner shall be governed by the applicable statute of limitations period, except as such time frame may be longer in accordance with Section 13.1 and Section 15.1.2.1.



§ 15.1.3.2 Claims by ~~either the Owner or Contractor~~, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by written notice to the other party. In such event, no decision by the Initial Decision Maker is required. Claims by the Contractor under this Section 15.1.3.2 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Failure to timely and properly initiate a claim shall be an irrevocable waiver of such claim. Claims by the Owner shall be governed by the applicable statute of limitations period, except as such time frame may be longer in accordance with Section 13.1 and Section 15.1.2.1.

#### § 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, including by mediation and/or litigation, as applicable, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time ~~shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15.~~ may be adjusted as mutually agreed by the Owner and Contractor. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost. If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Failure to provide such notice shall serve as an absolute bar against a claim for such an increase in the Contract Sum. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. A Project delay shall not be a basis for a Claim for additional cost. Delay claims against the Owner may be remedied only through an extension of time per Section 8.4.2 and Section 8.4.3.

#### § 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, additional notice as provided in Section 15.1.3 shall be ~~given~~ given in addition to the general requirements for filing a claim. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of ~~the Work~~ the Work due to the increase in Contract Time sought. In the case of a continuing delay only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

~~§ 15.1.7 Waiver of Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes~~

- ~~1— damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and~~
- ~~2— damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.~~

~~This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~

#### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial ~~decision-interpretation~~. The Architect will serve as the Initial Decision ~~Maker, unless otherwise indicated in the Agreement- Maker.~~ Except for those Claims excluded by this Section 15.2.1, an initial ~~decision-interpretation~~ shall be required as a condition precedent to mediation of any Claim. If an initial decision or litigation of any Claim brought by the Contractor against the Owner. If an initial interpretation has not been

rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a ~~decision-an interpretation~~ having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not ~~decide-interpret~~ disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to ~~resolve the Claim-~~ interpret the Claim. Within ten (10) days of a written request, the Contractor shall make available to the Owner or its representative all of its books, records, or other documents in its possession or to which it has access relating to a Claim and shall require its subcontractors, regardless of tier, and materialmen to do the same.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker ~~will will, based on its interpretation,~~ either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial ~~decision-interpretation~~ approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial ~~decision-interpretation~~ shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, the Construction Manager, and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. ~~The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution-interpretation shall be subject to the parties' agreed upon binding dispute resolution process.~~

§ 15.2.6 ~~Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. Regardless of any other time frames identified herein, claims and causes of action brought by the Owner shall be governed in accordance with the statute of limitations periods under Michigan law, except for such longer periods of time as may be permitted in Section 13.1.~~

~~§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days of receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

§ 15.2.7 ~~In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~ **Surety Notice and Prior Approval**

Except where otherwise expressly required by the terms of the Agreement, the Contract Documents or the General Conditions, exercise by the Owner of any contractual or legal right or remedy without prior notice to or approval by the Contractor's surety shall in no way bar or prohibit the Owner's ability to pursue such right or remedy. Further, pursuit of such a right or remedy without prior notice to or approval of surety shall in no way compromise, limit or bar any claim by the Owner against a surety bond of the Contractor. The Owner's claims against a Contractor's surety bond shall be governed by Section 13.1 with respect to any limitations periods.

~~§ 15.2.0 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.~~

### § 15.3 Mediation

~~§ 15.3.1 Claims, Except as otherwise agreed in writing by the parties, claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~

~~§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of commencement of the parties' agreed upon binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. ~~If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~~~

~~§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision. NOT USED~~

~~§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

### ~~§ 15.4 Arbitration~~

~~§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~

~~§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~

~~§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 15.4.3 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~

### § 15.4.4 Consolidation or Joinder

~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration. The Owner, at its sole discretion, may consolidate a mediation conducted under this Agreement with any other arbitration-mediation to which it is a party provided that (1) the arbitration-mediation agreement governing the other arbitration-mediation permits consolidation, (2) the arbitrations-mediations to be~~

consolidated substantially involve common questions of law or fact, and (3) the ~~arbitrations-mediations~~ employ materially similar procedural rules and methods for selecting ~~arbitrator(s)-mediator(s)~~.

~~§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party~~ The Owner, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, mediation, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration-mediation involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~ Contractor further agrees to include similar dispute resolution provisions in all agreements with the independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include similar dispute resolution provisions in all agreements with subcontractors, all subconsultants, suppliers or fabricators so retained, thereby providing for a consistent method of dispute resolution between the parties to those agreements. Subject to the other limitations periods identified in these General Conditions which are understood to govern over this sentence, no demand for mediation shall be made after the date when the applicable statutes of limitation would bar legal or equitable proceedings. During the pendency of any mediation, all applicable limitations period shall be tolled until the conclusion of that process.

The Owner reserves the right in its discretion to require consolidation or joinder of any mediation arising out of or relating to this Agreement with another mediation involving a person or entity not a party to this Agreement in any event the Owner believes such consolidation or joinder is necessary in order to resolve a dispute or avoid duplication of time, expense or effort. In the event the Owner is involved in a dispute which is not subject to mediation involving a person or entity not a party to this Agreement, the mediation provisions applicable to the parties shall be deemed to be void and nonexistent in the event Owner, in its discretion, determines the Contractor should become a party to that dispute by joinder or otherwise. Any mediation hearing shall be held in the general location where the Project is located, unless another location is mutually agreed upon.

Modified; 02/21/22; 3:33pm

## DIVISION I – GENERAL REQUIREMENTS

### 01010 SUMMARY OF WORK

#### 01010.1 WORK COVERED BY CONTRACT DOCUMENTS

- A. The Project consists of New Acoustic Panels for Portage Central Middle School and North Middle School.
- B. The Instructions to Bidders, Project Manual, Request for Proposals, dated August 25, 2023 issued by owner, General Conditions AIA A232-2019, General Requirements and Owner-Contractor Agreements, are a part of all divisions and all contract documents. The order of precedence for interpretation shall be the Agreement between Owner and Contractor, RFP, the Instruction to Bidders, the Project Manual, the General Conditions and the Contractor's Proposal. Execution of the Contract signifies that the Contractors are fully knowledgeable with all requirements of all divisions and documents. No claims for additional compensation will be entertained or paid to any Contractor on account of its failure to be fully informed of all requirements of all Contract Documents.

#### 01010.2 CONTRACTS

- A. Construct the work of each contract under a separate lump-sum/fixed price contract with the Owner. Coordination of the work will be provided as specified herein.
- B. Contractors shall carefully examine all drawings and read all divisions of the specifications and Contract Documents and shall include all Work required of them for a complete project.
- C. Requirements for a specific trade or contract will generally be described in that portion of the Specifications or Drawings related to that trade or contract. Such requirements may, however, be described in other sections of the Contract Documents. Contractors will be held responsible for having carefully examined all drawings and read all divisions of the specifications and all contract documents to avoid omissions or duplications and to ensure a complete job.
- D. Each Contractor is deemed to be fully informed about conditions relating to the construction of the Project and the employment of labor thereon by execution of the Contract. The Contractor will not be relieved of its obligation to furnish all material and labor necessary to carry out the provisions of the Contract.
- E. Any claim by the Contractor of an inability to meet any requirement set forth on the Contract Documents, or that any requirement of these documents is impractical or unreasonable, will not be recognized, unless the claim was made at the time the Contractor's proposal was submitted, and specific provision is made for such claim in the Contract.
- F. Unless otherwise specified, the Contractor shall supply all labor, supervision, materials, transportation, apparatus, fuel, energy, and tools, necessary for the entire and proper completion of the Work. It shall perform all Work herein described in a workmanlike manner in accordance with the Contract Documents and shall provide everything properly incidental thereto as shown on the drawings, stated in the specifications, or reasonably implied there from.
- G. Each Contractor shall be responsible for its own Work and every part thereof, and all Work of every description used in connection therewith. It shall specifically and distinctly assume all risks of damage or injury from whatever cause to property or persons used or employee on or in connection with his Work, and undertake and promise to indemnify, defend, and hold harmless the Owner, Architect and Construction Manager against all claims rising out and or on account of any such damage or injury.
- H. Each Contractor shall be held responsible for the execution of a satisfactory and complete piece of Work in accordance with the true intent of the drawings and specifications. It shall provide without extra charge all incidental items required as a part of its Work, even though not particularly specified or indicated. If it has good reason for objecting to the use of any material, application or method of construction as shown or specified, it shall make report of such objection to the Construction Manager and obtain proper adjustment before the Contract is executed.

- I. Should any material or workmanship be found defective or in any way contrary to the Contract, it may be rejected by the Owner regardless of its state of completion and same must be remedied or removed by the Contractor at no additional cost or expense to Owner.

01010.3 WORK BY OTHERS

- A. Work on the Project which is excluded from this Contract is as follows:
  - (1) Materials testing
  - (2) Asbestos abatement

01010.4 WORK SEQUENCE

- A. Construct Work in stages to accommodate the Owner's use of the premises during the construction period, as applicable. The Construction Manager shall (1) coordinate detailed sequencing and scheduling with the Owner, and (2) provide overall scheduling and coordination for the entire project. All Bidders shall acknowledge the Construction Manager's right to establish and set up, or subsequently modify, the sequencing and scheduling of all work for the earliest possible completion and benefit to the Owner.
- B. Initial sequencing and scheduling detail are provided in the Construction Manager's Preliminary Project Schedule that is included at the end of these General Requirements/bound with the Documents. This schedule represents the general order and time frames for work to be followed by the Construction Manager. Bidders are to assume that their Work will be coordinated in a manner consistent with industry practice and the efficient coordination of all trades and that are to recognize that the sequence and pace of their work may be dictated by other trades.
  - (1) Calendar dates associated with the completion of work of any particular contract are not assured.
  - (2) All Bidders recognize and will accept modifications to the schedule which, in the opinion of the Construction Manager, are reasonable for the general interest of the Project because of allowable time extensions (formally or informally approved) in any contract, and that such modifications are inherent to the construction process and shall not qualify as a basis for extra compensation from the Owner.
  - (3) The Bidder, in submitting a proposal for a particular bid category, agrees to commit the necessary resources to complete the Work activities of the bid category within a period not longer than the planned duration. Work included in a bid category, but not specifically defined by a work activity, is to be accomplished in a reasonable manner in conjunction with other work of the bid category, and in such a way as to avoid complication of or to delay the work of other bid categories.

01010.5 CONTRACTOR USE OF PREMISES

- A. Each Contractor shall limit its use of the premises for Work and for storage related specifically to the Work, to allow for Work by other Contractors.
- B. Use of the premises will be coordinated by the Construction Manager.
- C. Each Contractor shall assume complete responsibility for the protection and safekeeping of their products stored on site.
- D. Each Contractor shall move its stored products, which interfere with operation of the Owner or separate Contractor as directed by Construction Manager.
- E. Each Contractor shall obtain and pay for the use of additional storage or Work areas if needed for operations.

01010.6 PARTIAL OWNER OCCUPANCY

- A. Each Contractor shall schedule his operations for completion of portions of the Work, as designated in Schedule for the Owner's occupancy prior to substantial completion of the entire work.
- B. Each Contractor shall execute Certificate of Substantial Completion for portions of the work prior to Owner occupancy.

- (1) After Owner's occupancy, each Contractor shall allow:
  - (a) Access for Owner's personnel
  - (b) Access for receiving of Owner's equipment and furnishings
  - (c) Operation of the HVAC and electrical systems
- (2) Upon occupancy, the Owner will provide:
  - (a) Operation of the HVAC and electrical systems
  - (b) Adjustment of insurance coverage in accordance with General Conditions Article 11, Item 11.3.9.

01040  
01040.1

PROJECT COORDINATION  
GENERAL

- A. It shall be the responsibility of the Construction Manager to coordinate and expedite all phases of construction. All separate Contractors shall fully cooperate with the Construction Manager.
- B. Contractors shall assist the Construction Manager in coordinating, scheduling, and timing of construction activities to ensure orderly progress of the Work.
- C. Temporary Omission of Work. If any materials and finish are of such nature that it is necessary to temporarily omit certain portions of Work in order to make final installation, the Contractor whose Work is involved shall omit such parts of this Work or finishes as are necessary until other said Work and/or materials have been installed and shall then return and install such omitted parts of its Work as part of this contract and without additional cost or expense to the Owner.
- D. Equipment and Furnishings
  - (1) Copies of equipment specifications and drawings shall be made available to the Construction Manager for determining the amount of Work to be done as described herein.
  - (2) Each Contractor shall receive, inventory, store, and when spaces are acceptable, shall set equipment in the rooms for which it is intended.
    - (a) Arrangements shall be made by Contractor to obtain storage space for equipment and furnishings. This space shall be available to him on or before date of delivery and shall be at his disposal until all the equipment is moved to the building.
    - (b) Contractor shall provide the Construction Manager with the name and address of the storage facility and obtain insurance coverage protecting all stored equipment from loss or damage.
    - (c) Contractor shall be responsible for receiving, unloading, and placing into storage all items of equipment shipped by the equipment suppliers.
    - (d) Contractor shall inspect bills of lading for all items of equipment received, shall inspect all equipment, and shall immediately notify the shipping company and the supplier of items damaged or missing. The Construction Manager should be notified of any damaged or missing items.
    - (e) When the Construction Manager determines that rooms are ready for installation or placing of equipment, the required equipment shall be set in place. Equipment transported from the storage facility shall be insured against damage or loss by each Contractor. Each Contractor shall be responsible for receiving, unloading, and placing and installing equipment in the rooms designated for the specified items of equipment.
  - (3) The Construction Manager shall cooperate with the supplier's installation personnel by providing unobstructed areas in which they may assemble and install equipment.
  - (4) The responsibilities of the Electrical and Mechanical Contractors shall be as follows, unless noted otherwise in Contract Documents:

- (a) Final connections of equipment to building electrical and mechanical rough-ins will be made by the Electrical and Mechanical Contractor (interconnection between items of equipment will be done by the installing personnel, not by the Electrical or Mechanical Contractor). Equipment requiring only plug-in connections shall have outlets installed in accordance with the Contract Documents.
- E. Each Separate Contractor shall
  - (1) Within ten (10) days of receipt of Notice of Pending Award of Contract, submit to the Construction Manager a list of the Contractor's principle staff, including on-site superintendent.
  - (2) Coordinate the work of its employees and Sub-contractors.
  - (3) Expedite its Work to assure compliance with schedules.
  - (4) Coordinate its Work with that of other separate Contractors and Work by Owner. Contractor will prepare and submit coordination drawings wherever close and careful coordination is required.
  - (5) Comply with directions and instructions of the Construction Manager.
  - (6) Verify dimensions shown on the drawings and obtain all measurements required for proper execution of Work.
  - (7) Place sleeves and inserts correctly for pipes, conduits and similar items required for its Work, in forms, walls, partitions, and floors. All said Work shall be done in cooperation with the affected Contractors. All items shall be placed in ample time so as not to delay concrete operations. Do not place sleeves so they pass through beams, girders, and similar construction, unless locations are approved by the Architect.
  - (8) See that sleeves and inserts are kept in their proper positions and not displaced by the placing of concrete or other construction Work. The separate Contractors of the Mechanical and Electrical Work involved shall be responsible for inclusion of these items in the Work and shall advise the Construction Manager and Architect of all changes of sleeves and inserts locations.

01040.2 CONSTRUCTION ORGANIZATION AND START-UP

- A. Construction Manager shall establish on-site lines of authority and communications. Construction Manager will:
  - (1) Conduct the pre-construction meetings.
  - (2) Conduct progress meetings.
  - (3) Establish procedures and lines of communication:
    - (a) Submittals
    - (b) Reports and records
    - (c) Recommendations
    - (d) Coordination drawings
    - (e) Schedules
  - (4) Contract Documents:
    - (a) Consult with Architect to obtain interpretation.
    - (b) Assist in resolution of questions or conflicts which may arise.
    - (c) Transmit written interpretations to other Contractors, and to other concerned parties.
  - (5) Assist in obtaining permits and approvals:
    - (a) Building permits and special permits required for permanent improvements or for temporary facilities.
    - (b) Verify that Contractors and Sub-Contractors have obtained permits for inspections and for temporary facilities.
  - (6) Control the use of the Site:
    - (a) Supervise field engineering and site layout.



- (b) Allocate space for each Prime Contractor's use for field offices, sheds, and work and storage areas.
- (c) Establish access, traffic and parking allocations and regulations.
- (d) Monitor the use of the site during construction.

01040.3 CONSTRUCTION MANAGER'S DUTIES

- A. Construction Schedules
  - (1) Prepare a detailed schedule of basic operations.
  - (2) Coordinate the schedules.
    - (a) Each Contractor shall prepare sub-schedules to comply with critical phases.
- B. Process Shop Drawings, Coordination Drawings, Product Data and Samples
  - (1) Prior to submittal to Architect, Construction Manager will review for compliance with Contract Documents.
  - (2) After the shop drawings are reviewed the Construction Manager will submit to Architect for approval.
  - (3) If shop drawings are incomplete or unacceptable, Construction Manager will return them to Contractor, with comments and recommendations, for revising and to be resubmitted.
- C. Inspection and Testing
  - (1) The Construction Manager will assist the Architect in inspecting the Work to assure that it is performed in accordance with requirements of Contract Documents.
  - (2) Coordinate Testing Laboratory Services.
- D. Monitor the Use of Temporary Utilities
  - (1) Verify that adequate services are provided.
  - (2) Administer the use of Owner furnished utilities and facilities.
- E. Monitor Contractors' periodic cleaning; enforce compliance with Specifications.
- F. Provide Cost Control for the Project
  - (1) Revise and refine the approved estimate of construction cost periodically:
    - (a) Record actual costs and estimates for uncompleted Work.
    - (b) Incorporate approved changes as they occur.
    - (c) Develop cash flow reports and projections.
  - (2) Maintain cost accounting records for authorized work performed under:
    - (a) Unit costs.
    - (b) Actual costs for labor and materials.
    - (c) Other basis requiring accounting records.
  - (3) Implement procedures for review and processing of contractors' applications for progress payments and for final payments.
- G. Maintain Reports and Records at Project Site, Available to Architect and Owner.
  - (1) Daily log of progress of Work of each Contractor.
  - (2) Records:
    - (a) Contract Documents.
    - (b) Materials and equipment records.
    - (c) Samples, Product Data and Shop Drawings.
    - (d) Record Documents.
  - (3) Maintain file of record documents.

01040.4 CONSTRUCTION MANAGER CLOSE-OUT DUTIES

- A. Coordinate Mechanical and Electrical Equipment Start-Up
- B. At completion of the Work of each Contract, conduct an inspection to assure that:
  - (1) Specified cleaning has been accomplished.
  - (2) Temporary facilities have been removed from the Site.
- C. Substantial Completion

- (1) Conduct an inspection to confirm or supplement each Contractor's list of Work to be completed or corrected.
- (2) Assist Architect in his inspection.
- (3) Supervise the correction and completion of Work as established in the Certificate of Substantial Completion.
- D. When Owner occupies a portion of the Project Site prior to final completion, administer the established responsibilities of the Contractors and the Owner.
- E. Final Completion
  - (1) When each Contractor determines that Work is complete, assist the Architect in his inspection to verify completion of the Work.
- F. Administration of Contract Closeout
  - (1) Receive and review Contractors' final submittals.
  - (2) Transmit final submittals to Architect.
  - (3) Review all close out documentation required under Contract Documents.

01045

CUTTING AND PATCHING NEW WORK

- A. Each Contractor whose Work requires it, shall be responsible for all cutting, fitting and patching, including excavation and backfill, required to complete the Work in accordance with Contract Documents or to:
  - (1) Properly fit parts together or to receive Work of other Contractors.
  - (2) Uncover portions of the Work to provide for installation of ill-timed Work.
  - (3) Remove and replace defective Work.
  - (4) Remove and replace work not conforming to requirements of Contract Documents.
  - (5) Provide routine penetrations of non-structural surfaces for installation of piping and electrical conduit.
- B. Preparation
  - (1) Provide adequate temporary support as necessary to assure the structural value or integrity of the affected portion of the Work.
  - (2) Provide devices and methods to protect other portions of the Project from damage.
  - (3) Provide protection from the elements for that portion of the Project which may be exposed by cutting and patching work and maintain excavations free from water.
- C. Performance
  - (1) Execute cutting and demolition by methods which will prevent damage to other Work and will provide proper surfaces to receive installation of repairs.
  - (2) Execute excavating and backfilling by methods which will prevent settlement or damage to other Work.
  - (3) Employ the original installer or fabricator to perform cutting and patching in accordance with Contract Documents for:
    - (a) Weather-exposed or moisture-resistant elements.
    - (b) Sight-exposed finished surfaces.
  - (4) Execute fitting and adjustment of products to provide a finished installation to comply with specified products, functions, tolerances and finishes.
  - (5) Restore Work which has been cut or removed; install new products to provide completed Work in accordance with requirements of Contract Documents.
  - (6) Fit Work airtight to pipes, sleeves, ducts, conduit and other penetrations through surfaces.
  - (7) Maintain Fire Wall penetrations.
  - (8) Refinish entire surfaces as necessary to provide an even finish to match adjacent finishes:
    - (a) For continuous surfaces, refinish to nearest intersection.
    - (b) For an assembly, refinish the entire unit.

01050

FIELD ENGINEERING

01050.1

GRADES, LINES, LEVELS

- A. Information pertaining to preliminary investigations, such as soil borings, location of utilities, existing structures and existing grades appear on the drawings. While such data has been collected with reasonable care, there is no expressed or implied guarantee that conditions so indicated are entirely representative of those actually existing or that unforeseen developments may not occur. Each Contractor must make its own interpretation on results of such investigation and shall satisfy itself as to materials to be excavated and materials upon which fill or other Work may be placed. Where underground services, utilities, structures, etc., are located on the drawings or given at the site, they are based on available records, but are not guaranteed to be complete or correct. They are merely given to assist each Contractor.
- B. Each Contractor shall immediately upon entering the Site for purpose of beginning Work, locate general reference points and take such action as is necessary to prevent their destruction. Each Contractor shall lay out its own Work and be responsible for all lines, elevations and measurements of the building, utilities and other Work executed by it under the Contract. It must exercise proper precaution to verify figures on the Drawings before laying out Work and will be held responsible for any error resulting from its failure to exercise such precaution.
- C. Using datum furnished by the Owner, the lot lines and present levels have been established as shown on the Construction Documents.
- D. The Construction Manager shall employ a registered land surveyor to lay out the building corners on the site and establish a main floor benchmark elevation.
- E. The Construction Manager shall make provision to preserve property line stakes, benchmarks or datum point. If any are lost, displaced, or disturbed through neglect of any Contractor, or his agents or employees, the Contractor shall notify the Construction Manager at once and the Contractor shall be responsible for the cost of restoration.
- F. Each Contractor, as it applies to its Contract, shall verify grades, lines, levels, locations, and dimensions as shown on drawings and report any errors or inconsistencies to the Construction Manager before commencing Work. Starting of Work by the Contractor shall signify its acceptance to the condition of the Site.

01095 REFERENCE STANDARDS AND DEFINITIONS

01095.1 ABBREVIATIONS AND TRADE NAMES

- A. Trade associations names and titles are frequently abbreviated. Where acronyms or abbreviations are used in the Specifications or other Contract Documents, they mean the recognized name of the trade association, standards generating organization, authority having jurisdiction, or other entity applicable to the text provision. Refer to the "Encyclopedia of Associations" published by the Gale Research Co., found at most libraries.
- B. Review building, mechanical, electrical and fire safety codes as noted by C2AE.

01095.6 EQUAL OPPORTUNITY FOR EMPLOYMENT (MICHIGAN)

- A. Each Contractor will comply with all applicable provisions of the Federal Civil Rights Act and the Michigan Fair Employment Practices Act, and the violation of either shall be cause for cancellation of this contract.
- B. Each Contractor, in accordance with the Michigan Fair Employment Practices Act, to the extent such act is applicable, shall not discriminate against any employee or applicant for employment, to be employed in the performance of such contract, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment because race, color, religion, national origin or ancestry (or age or sex, except where based on a bona fide occupational qualification). Contractor shall not maintain or provide for his employees any segregated facilities.

01200 PROJECT MEETINGS

01200.1 PRE-BID MEETINGS (Conducted by the Construction Manager, scheduled as indicated in Instruction to Bidders.)

- A. Introduction of Owner, Architect, and Construction Manager
- B. Agenda may include the following:
  - (1) Safety to Persons and Property
  - (2) Bonding Requirements
  - (3) Monthly Invoice Requirements
  - (4) Insurance Requirements
  - (5) Testing, Permits, and Inspection Requirements
  - (6) Clean Up
  - (7) Temporary Utilities and Services
  - (8) Lay Out of Project
  - (9) Alternates
  - (10) Addendum Items
  - (11) Bid Packages
  - (12) Schedule
  - (13) Bid Forms
  - (14) Bid Date
  - (15) Shop Drawing Procedures
  - (16) Correspondence
  - (17) Questions and Answers

01200.2 PRE-CONSTRUCTION MEETING (Conducted by Construction Manager)

- A. Attendance
  - (1) Owner's Representative.
  - (2) Architect and consultants.
  - (3) Construction Manager, including Field Superintendent, General Superintendent and Project Coordinator.
  - (4) Contractor's Superintendent(s).
  - (5) Major Sub-contractors.
  - (6) Major suppliers.
  - (7) Others as appropriate.
- B. Agenda may include the following:
  - (1) Distribution and discussions of:
    - (a) List of major sub-contractors and suppliers.
    - (b) Project construction schedules.
  - (2) Critical Work sequencing.
  - (3) Major equipment deliveries and priorities.
    - (a) Indicate request for color charts for materials requiring color selection.
  - (4) Project Coordination.
    - (a) Designation of responsible personnel.
    - (b) Establish proper lines of communication.
  - (5) Procedures and processing of:
    - (a) Field decisions.
    - (b) Proposal requests.
    - (c) Submittals.
    - (d) Change Orders.
    - (e) Applications for Payment.
  - (6) Procedures for maintaining Record Documents.
  - (7) Use of premises:
    - (a) Use of site during construction.
    - (b) Office, work and storage areas.
    - (c) Owner's requirements.
  - (8) Temporary utilities.

- (9) Security procedures.
- (10) Housekeeping procedures.
- (11) Quality and work standards.

01200.3 PROGRESS MEETINGS

- A. The Construction Manager shall represent the Owner and conduct a job progress meeting on the Site every two weeks. The Construction Manager will confer with the Owner, Architect and Contractors at the pre-construction meeting to schedule regular time and day of the week to conduct such meetings.
- B. The Construction Manager, as a representative of the Owner, shall preside at these meetings and record the minutes of the meeting. Typed minutes shall be sent to the Owner, Architect, and each Contractor, and one (1) copy shall be on file at the Project Site. Each meeting shall, at the discretion of the Construction Manager, include as a minimum the following information.
  - (1) Date, time and place of meeting.
  - (2) Name, title and company affiliation of each participant.
  - (3) Discussion of Contractors' construction progress of each trade since last meeting.
  - (4) Contractor's schedule of Work proposed before next meeting.
  - (5) Review of Contractor's schedule relative to current construction progress.
  - (6) Coordination problems and methods of resolving same.
  - (7) Information required from the Owner for the timely execution of the work.
  - (8) Specific directions by the Contractor to his subcontractors relative to the execution of the work.
- C. Each Contractor and his Subcontractors currently working on the project shall be represented at these meetings. Decisions rendered and instructions given during these meetings shall be binding on the Contractor and on his Subcontractors.

01300 SUBMITTALS (All submittals shall be made to the Construction Manager)

01300.1 CONSTRUCTION SCHEDULES

- A. The Construction Manager has included a preliminary construction schedule at the end of this Division. Within ten (10) days of Notice of Pending Award of Contract the Contractor shall submit (upon request by the Construction Manager) the following forms which will be distributed by the Construction Manager with the Notice of Pending Award:
  - (1) Shop Drawing - Item Delivery Schedule
  - (2) Manpower Requirements
  - (3) A list of critical phasing requirements as it relates to other trades
  - (4) Schedule concerns
- B. The Construction Manager will finalize the Construction Schedule based upon Contractor's input without altering the original completion dates shown on the preliminary schedule.
- C. The Construction Manager will periodically update the construction schedule. It is each Contractor's responsibility to maintain the schedule as it relates to their work.

01300.2 SHOP DRAWINGS, PRODUCT DATA, SAMPLES

- A. All submittals shall be clearly identified with project name and location, and Contractor's name. The Construction Manager shall indicate its review by means of his stamp, with his initials and date of review, prior to submitting to the Architect for review.
- B. Shop drawing details shall be identified by reference to sheet and detail, schedule of room or door numbers shown on Contract Documents.
- C. Product data copies shall be clearly marked to identify pertinent products, models, or part numbers; shall show performance characteristics and capacities, dimensions and clearances required, and during or piping diagrams and controls.
- D. Samples shall be of sufficient size and quantity to clearly illustrate functional characteristics of the product with related parts and attachment devices, showing full range of color, texture and pattern.

- E. Shop drawing submissions unless otherwise noted, shall be electronically transmitted.
- F. Product data submissions, unless otherwise noted or otherwise instructed at the pre-construction meeting, shall be electronically transmitted.
- G. Sample submissions, unless otherwise noted or otherwise instructed, shall consist of three (3) physical samples.
- H. Each Contractor shall submit a list of dates for the proposed shop drawings delivery schedules for the Construction Manager's review within ten (10) days of Notice of Pending Award.
- I. Allow three (3) weeks for initial review. Allow additional time if further review is required with other disciplines.
- J. It is the Contractor's sole responsibility to submit shop drawings, coordination drawings, product data and samples in a timely fashion for review and approval, including resubmittals if necessary. No time extensions will be allowed for failure to submit these items.

01400

QUALITY CONTROL

01400.1

TESTING LABORATORY SERVICES

- A. The Owner, through the Construction Manager will select, employ, and pay an independent testing laboratory to perform specified and/or required services.
- B. Related requirements specified elsewhere:
  - (1) Testing and inspections required by laws, ordinances, etc., as required by the General Conditions.
  - (2) Tests and standards as may be required by subsequent specification sections.
  - (3) Testing, adjusting and balancing of equipment.
- C. Testing, inspection, and/or sampling which may be required for the Project and may be obtained by the Owner include the following:
  - (1) Soils Compaction Control.
  - (2) Bituminous surfacing or asphaltic concrete.
  - (3) Concrete.
  - (4) Masonry blocks.
  - (5) Masonry mortar and/or grout.
  - (6) Lightweight insulating decks.
  - (7) Steel, structural welding.
  - (8) Fireproofing.
  - (9) Built-up roofing.
  - (10) Electrical: Buss ducts and ground fault.
  - (11) Mechanical: HVAC units acceptance tests.

(The above list is not intended as a complete list and does not relieve each Contractor from responsibility for providing his Work in accordance with the Contract Documents, completely.)
- D. Contractor's Responsibilities
  - (1) Each Contractor shall cooperate with laboratory personnel, provide access to Work, and to manufacturer's or supplier's operations.
  - (2) Each Contractor shall provide to laboratory preliminary representative samples of materials to be tested, in required quantities.
  - (3) Each Contractor shall furnish casual labor and facilities:
    - (a) To provide access to work to be tested.
    - (b) To facilitate inspections and tests.
    - (c) For laboratory's exclusive use for storage and curing of test samples.
  - (4) Each Contractor shall notify Construction Manager and laboratory at least twenty-four (24) hours in advance of operations to allow for his assignment of personnel and scheduling of tests.
  - (5) Each Contractor shall employ, and pay for, services of a separate, equally qualified, Independent Testing Laboratory to perform additional inspections, sampling and testing required:

- (a) For Contractor's convenience.
  - (b) When initial tests indicate work does not comply with Contract Documents.
- E. Laboratory Qualifications
  - (1) Laboratory shall meet "Recommended Requirements for Independent Laboratory Qualifications", latest edition, published by the American Council of Independent Laboratories.
  - (2) Meet approval of requirements for project time schedule and particular Project demands, including available personnel.
- F. Laboratory Duties and Limitations of Authority
  - (1) Cooperate with Construction Manager and Contractor's; provide qualified personnel promptly on 24-hour notice.
  - (2) Perform specified inspections, sampling and testing of materials and methods to establish degree of compliance with Contract Documents.
  - (3) Promptly notify Construction Manager and Contractor of irregularities or deficiencies of work, which are observed during performance of services.
- G. The laboratory shall promptly submit five (5) copies of tests and/or inspections to the Construction Manager including:
  - (1) Date issued.
  - (2) Project title and number.
  - (3) Testing laboratory name and address.
  - (4) Name and signature of Inspector.
  - (5) Date of inspection or sampling.
  - (6) Record of temperature and weather.
  - (7) Date of test.
  - (8) Identification of product and specification section.
  - (9) Type of inspection or test.
  - (10) Observations regarding compliance with Contract Documents.

01500

TEMPORARY UTILITIES

- A. Each Contractor, or other Sub-contractor shall furnish and install temporary service to its own temporary office.
- B. The Electrical Contractor shall provide, install and maintain a 200A, 120/240V-1Ph temporary service, and provide, install and maintain temporary wiring in all areas of new construction. Existing building service may be used to the extent possible until new construction would require removal of existing electrical service.
  - (1) Provide at minimum, a main panel on each level of the building to allow for 240v lighting and other distribution as noted below.
  - (2) For general use of power hand tools and task lighting, provide temporary 4-gang ground fault outlets at each floor level, spaced so that each area of work can be reached with a 100-foot extension cord. Provide separate, 120V, 20-amp circuit for each 4-gang outlet (4 outlets per circuit).
  - (3) For general temporary lighting in construction areas, provide as per MIOSHA requirements but not less than (1) 200-watt incandescent lamp per 1000 square foot of floor area, uniformly distributed, or provide equivalent illumination of a similar nature. Provide not less than 100-watt incandescent lamps in corridors and similar traffic-ways, spaced not more than 50 feet apart, except provide (1) lamp at each stairway or ladder landing.

- (4) Temporary lighting system shall be circuited and controlled so that the lighting level in each portion or floor of the building can be reduced to provide security lighting during non-working hours and on weekends and holidays. The level of lighting for security purposes shall be in accordance with all federal, state and local regulations. The control of the temporary lighting will be such that the lighting is turned on at the beginning of each workday and the normal working lighting is reduced to the security lighting level at the end of each workday.
  - (5) Any special voltage requirements for construction equipment shall be furnished and paid for by the Contractor requiring same
  - C. Contractors and their Sub-contractors requiring 120-volt, localized lighting and simple phase power shall furnish their own extension cords and lamps. The Electrical Contractor shall furnish wiring and lamps for general temporary lighting and power distribution only.
  - D. Contractors and their Sub-contractors shall be allowed to use the service provided for general temporary lighting and fractional horsepower hand tools at no cost to them.
  - E. Contractors and their Sub-contractors shall compensate the Electrical Contractor for wiring of construction equipment, which requires circuits larger than 20-amp, 120-volt, single phase. Arrangements shall be made with Electrical Contractor before this type of equipment is used.
  - F. Contractors and their Sub-contractors requiring lighting or other electrical service outside of the building, other than for temporary offices, shall pay for the installation and removal of service, maintenance charges, and energy consumed.
  - G. Contractors and their Sub-contractors requiring services for construction equipment and testing in excess of the capacity of the temporary construction service shall make their own arrangements and pay all costs.
  - H. The Electrical Contractor shall expedite the Work under its contract to install and connect the permanent wiring system and panels to permanent heating and ventilating equipment in time to test and operate as temporary heat when the building has been enclosed. Permanent wiring and connections may be used at permanent equipment. However, the use of the permanent system during construction shall in no way affect any part of the guarantee period. If the permanent wiring system is not available for connection to permanent heating and ventilating equipment, the Electrical Contractor shall provide all wiring to connect this equipment to the temporary electrical system.
  - I. After completion of the permanent electrical system and building wiring by the Electrical Contractor, permanent receptacles may be used during finishing work, except this wiring shall not be used for motors larger than 1/2 HP, or for welding equipment. Power for larger motors and welding equipment shall be provided by special circuits to mains of electrical panels at the expense of Contractors requiring them, provided that special permission is obtained from the Architect and the installation is made by the Electrical Contractor.
  - J. After the permanent lighting fixtures are installed and connected to the permanent distribution system, they shall be lamped and used for construction lighting. All burned out lamps shall be replaced by the Electrical Contractor at the time of substantial completion of the project.
  - K. Cost of temporary electrical energy shall be provided by the Owner.
- 01500.1 TEMPORARY HEATING COOLING AND VENTILATING
- A. Heating of Buildings during Construction  
(Note: Heating and covering protection required during the construction period prior to protection of enclosed building spaces is not considered as temporary heat but shall be classified as cold weather protection as described elsewhere in the applicable specification divisions).
    - (1) ENCLOSURE: The building shall be considered as enclosed for temporary heating purposes, when the following are in place:
      - (a) The exterior walls completely erected, the roof deck complete with roofing. All doorways, windows, and other wall and roof openings not completed shall be protected.



- (b) If the Boiler Room is remotely located from the areas to be furnished with temporary heat, the Boiler Room shall be enclosed to provide weather protection for all mechanical equipment installed for use as the temporary heating system.
- B. Temporary Enclosures, Partitions and Doors
- (1) The Construction Manager shall be responsible for erecting and maintaining all temporary structures or closures required to enclose the working areas of the building, and Boiler Room.
    - (a) Temporary closures required at roof openings for rooftop mechanical units or other rooftop equipment, shall be erected and maintained by the Contractor installing the equipment.
    - (b) Provide such temporary protection at doorways, and other openings during the temporary heat phase of the work sufficient to retain the temporary heat provided by the Mechanical Contractor until such time as permanent doors, windows and other enclosures are installed.
    - (c) Advise Mechanical Contractor when enclosure is sufficient to retain temporary heat.
    - (d) Coordinate enclosure and temporary heat to ensure that sufficient temporary heat is provided considering temporary nature of protection at doorways, windows and other openings.
  - (2) All windows, curtain walls, storefronts and entrance sidelights and transoms shall be glazed, either with the required glass or opaque panels; or with temporary reinforced sheet plastic securely fastened to wood frames by Contractor responsible for installing permanent systems.
  - (3) All building entrances, or openings to uncompleted corridors or other uncompleted sections of the building shall have temporary partitions erected, (with tight fitting doors as required, to provide adequate access into and out of the working areas). Partitions shall be built of substantial 2" x 4" wood framing, braced and anchored into the opening in such a way that finished surfaces will not be marred or damaged.
  - (4) Unless the temporary partition is at an exterior opening all framing lumber shall be rated to be fire-retardant. Frame shall be covered on the exterior face with fire rated gypsum board, fire-rated plywood, or other non-combustible surfacing, which shall be sealed by caulking at perimeters and joints. Batt insulation minimum 2" thick, shall be secured to the wood framing. Include a rated door and closure.
  - (5) Temporary doors shall be equipped with substantial hinges, shall have a self-closing device, and a substantial locking device.
- C. Temperatures Required
- (1) The following minimum temperatures shall be maintained, and apply to heating of enclosed spaces during construction:
    - (a) 35 degrees F. for concrete masonry units and brickwork, with this temperature to be maintained for 48 hours after masonry is erected.
    - (b) 50 degrees F. for plastering work, drywall work, hand tile work, with this temperature to be reached before work is begun, maintained during the application, and maintained until the installation is cured.
    - (c) 55 degrees F. for three days prior to and during the application of interior woodwork, resilient tile, paint, acoustical ceilings and similar interior finishes; to be maintained until the project is completed.
    - (d) Unless otherwise called for above or in the technical specification divisions, a minimum temperature of 50 degrees F. shall be maintained in the enclosed spaces during non-working hours, and a minimum temperature of 55 degrees F. shall be maintained within the enclosed working area during working hours.
  - (2) Capacities of equipment and fuel consumption shall be based on local design conditions and degree days as published in the current edition of the ASHRAE Handbook.

- (3) The use of the air conditioning system shall not be available to the Contractors during the Construction Period, and shall only be operated for start-up, testing and adjustment.

D. Ventilation

- (1) The Mechanical Contractor shall provide ventilation of the enclosed space for workmen in accordance with State and Federal Occupational Safety and Health Standards or other applicable laws. He shall also provide ventilation of the enclosed space as required to facilitate drying of plaster, poured decks and floors, or other materials requiring ventilation in accordance with manufacturer's directions.

- (a) If the permanent ventilation system is used, the Mechanical Contractor shall assume full responsibility for maintenance of the permanent equipment and shall keep the system clean, furnish and change filters as needed and turn the complete new heating-ventilation system over to the Owner in a clean condition when the project is completed.

Permanent equipment shall not be used for temporary ventilation unless maintained and operated as follows:

- (1) Return air ducts shall not be used.
- (2) All supply air to each unit shall be filtered.
- (3) Filters shall be constantly checked and changed as necessary.
- (4) Operation of permanent equipment for ventilation shall not negate the normal one-year guarantee and warranty called for after acceptance of the system by the Owner.

E. Temporary Heat

- (1) All heating required after enclosure of the building, or any designated portion shall be classified as TEMPORARY HEAT.
- (2) After the building or any designated portion has been entirely enclosed, and temporary heat is required, the Mechanical Contractor shall provide all temporary heat using one or more of the three (3) following methods:
  - (a) Method (1) - The permanent heating system may be used for temporary heating where available. If the permanent system is used, this Contractor shall install in their permanent location heating coils or convectors, etc., as approved by the Architect. Provide such controls as necessary to maintain the temperature required. Provide necessary insulated piping to the enclosed space when the boiler is remotely located.

Temporary filters shall be used in the permanent system. Provide bases, shields, etc., around heating elements where required to prevent too rapid drying of adjacent concrete, masonry or plaster. Some of the permanent heating system equipment may require relocation by this Contractor as required during construction to prevent interference with continuing construction where authorized by the Architect. All equipment so used shall be cleaned and restored to new conditions, except for ordinary wear, prior to final acceptance, and its use shall in no way affect the Owner's guarantee periods as specified in this Division and Division 23.

If the permanent system is not fully operable or does not have sufficient controls to maintain the necessary heat considering existing conditions, this Contractor shall furnish, install and maintain temporary units connected to the permanent system. Install and maintain safety controls to protect the permanent system from damage. All temporary units including their connections, which are not part of the permanent heating system shall be removed by this Contractor after they are no longer necessary. Coordinate this work with the other trades involved.

Method (2) - If the permanent system is not fully operable or does not have sufficient controls to maintain the necessary heat considering existing conditions, this Contractor shall furnish and install a temporary heating system. The temporary heating system shall consist of approved boilers, unit heaters, etc., as required to maintain temperatures specified. Each unit shall be installed complete, with safety controls, venting, power and fuel connections, room thermostat and necessary ductwork and piping approved by the Architect. All portions of the temporary heating system shall be removed by this Contractor after they are no longer necessary. The temporary heating equipment shall be relocated by this Contractor as required during construction to prevent interference with continuing construction. This Contractor shall correlate this work with the other trades involved.

(b) Method (3) - If the permanent system is not fully operable or does not have sufficient controls to maintain the necessary heat considering existing conditions, this Contractor shall provide, maintain and supervise the operation of approved temporary portable units, such as oil or gas fired unit heaters, furnaces, direct fired make-up air units, or similar equipment. Note: No direct gas-fired units (i.e.: Torpedo Heaters) will be allowed. All such units shall be properly vented to the exterior, piped, and wired, and shall be provided with thermostat for temperature control and with all required safety controls.

(3) All electrical wiring required for temporary or permanent heating shall be furnished and installed by the Electrical Contractor from temporary wiring service.

F. Cost of Temporary Heat

(1) The cost of temporary heat shall be determined as follows.

(a) The cost of furnishing and installing the temporary heating system in accordance with methods 1, 2 and/or 3 above, (including relocation and/or removal) shall be included by the Mechanical Contractor in his base bid.

G. The cost of Fuel for the Temporary Heating System shall be determined as follows:

(1) The Construction Manager shall provide the fuel used in the operation of the temporary heating system.

01500.2 TEMPORARY TELEPHONE SERVICE

A. Contractors are to provide their own telephone services.

01500.3 TEMPORARY WATER

A. As soon as possible after award of its Contract, the Mechanical Contractor shall make arrangements for temporary connections and extension of water service facilities. When connecting into an existing water service, connection shall be made by means of an approved back-flow preventor. As soon as possible, the Mechanical Contractor shall install the permanent main into the building and provide a temporary gate valve, extend piping, provide temporary water meter, if required, and provide two 3/4" hose bibs, located where directed by the Construction Manager for use of all Contractors. Permanent risers may be used for temporary services.

B. Each Contractor shall provide his own hose or piping with leak free connections from hose bibs.

01500.4 TEMPORARY SANITARY FACILITIES

A. The Construction Manager shall provide and maintain sanitary temporary toilets in sufficient number required to accommodate all employees working on the project. The toilets shall comply with Federal, State and Local Code requirements.

- B. As soon as conditions will allow, Mechanical Contractor shall provide and maintain temporary toilets, using temporary fixtures, within the building, with connections to cold water and sanitary sewer. The General Trades Contractor will provide a temporary wood enclosure with doors. All temporary facilities will be removed, and permanent fixtures installed when directed by the Construction Manager.

01500.5 TEMPORARY FIRST AID FACILITIES

- A. Each Contractor or Sub-contractor shall provide first aid facilities as required by Federal, State, or Local Safety Regulations.

01500.6 TEMPORARY FIRE PROTECTION

- A. Each Contractor shall provide, maintain and have readily accessible, approved type extinguishers when working adjacent to hazardous areas such as painting or welding, or when torches or open flames for heating or cutting. All personnel working on the project shall be familiarized with the locations and operation of fire extinguishers.

01500.7 WATER CONTROL

- A. All pumping necessary to keep excavations and trenches free from water during the entire progress of this work, from a point five (5) feet outside of building proper, shall be the responsibility of the Contractor who is responsible for said excavations and trenches. Do not discharge water on adjoining property.

01500.8 DEBRIS CONTROL

- A. The Construction Manager will provide dumpsters for general refuse. Major demolition items, masonry, concrete, hazardous materials (including paint products), and earthwork items will not be allowed to be disposed of in these dumpsters.
- B. It shall be the duty of each Contractor to keep the premises free of accumulations of surplus materials and rubbish collection location on the site on a daily basis. If the Contractor fails to clean up within 24 hours after directed by Construction Manager, the debris will be removed, and the cost thereof shall be charged to the Contractor.
- C. Every Friday morning between 8:00 AM until 10:00 AM there will be a mandatory clean up. All contractors that are on site are required to participate in the clean up. Each Contractor shall perform an overall cleanup of the entire site, including a broom cleaning of all appropriate surfaces, clean up can also occur more often depending on site conditions. The number of people required to clean up for each contractor is determined by the table below.

<u>Crew Size</u>	<u>Required Number of People</u>
<b>1 to 5 people</b>	<b>1-2 person</b>
<b>6 to 10 people</b>	<b>2-3 people</b>
<b>11 to 15 people</b>	<b>3-4 people</b>
<b>16 to 20 people</b>	<b>4-5 people</b>
<b>21 to 30 people</b>	<b>5-6 people</b>
<b>31 to 40 people</b>	<b>6-7 people</b>
<b>41 or more people</b>	<b>7-8 people</b>

- D. Burning of rubbish on site will not be permitted.
- E. Rubbish shall not be thrown through window openings or from any great heights but shall be conducted to ground by means of approved chutes or other means of controlled conveyance.

01500.9 PROJECT IDENTIFICATION AND SIGNS

- A. The Construction Manager shall furnish a sign for the entire Project. Sign will be located as agreed upon by the Construction Team. No other signs will be permitted without Team's approval. Sign shall be removed at the completion of the project.
- 01500.10 FIELD OFFICE AND SHEDS
- A. The Construction Manager shall provide temporary office for his own use and adequate for use at progress meetings.
- B. Other Contractors shall provide own offices as needed. Locate offices as directed by the Construction Manager. If a portable office trailer is used it must be of recent modular type of good appearance made specifically for this use.
- 01500.11 TEMPORARY STORAGE AND SHOP FACILITIES
- A. Each Contractor shall provide their own protection against the elements for suitable storage of their materials or equipment delivered to the site. Each Contractor requiring on-site storage or shop facilities shall provide his own sheds, trailers or other structures located as directed by the Construction Manager.
- B. All storage facilities shall be removed from the Site when no longer required. Any spaces in the project building used for storage of materials or as shop space shall be completely cleaned and restored to a new condition prior to final inspection. Any space required to be vacated for following trades, tenant work, or Owner operations shall likewise be cleaned and restored.
- 01500.12 PROTECTION OF PERSONS AND PROPERTY
- Each Contractor shall be responsible for providing the following for their portion of the Work:
- A. Barricade open excavations and post with warning lights for the safety of persons. Operate warning lights during hours from dusk to dawn each day.
- B. Protect structures, utilities, sidewalks, pavements and other facilities immediately adjacent to excavations from damages caused by settlement, lateral movement, and undermining, washout and other hazards.
- C. Take precautions and provide necessary bracing and shoring to guard against movement or settlement of existing improvements or new construction. The Contractor is entirely responsible for the strength and adequacy of bracing and shoring, and for the safety and support of construction and for damage or injury caused by the lack thereof or by movement or settlement.
- 01500.13 SPECIAL SCHOOL CONSTRUCTION POLICIES
- A. There will be no Radios, Boom Boxes, CD Players, or similar items allowed on the jobsite. Failure to comply can result in the removal from site.
- B. There will be no smoking or tobacco allowed on school grounds. Failure to comply can result in the removal from site.
- 01600 MATERIAL AND EQUIPMENT
- 01600.1 MANUFACTURER'S INSTRUCTIONS
- A. When Contract Documents require that installation of Work shall comply with manufacturer's printed instructions, obtain and distribute copies of such instructions to parties involved in the installation, including two copies to Construction Manager.
- (1) Maintain one set of complete instructions at the job site during installation and until completion.
- B. Handle, install, connect, clean, condition and adjust products in strict accord with such instructions and in conformity with specified requirements.
- (1) Should job conditions or Specifications conflict with manufacturer's instructions, consult with Construction Manager for further instructions.
- (2) Do not proceed with Work without clear instructions.

- C. Perform Work in accord with Manufacturer's instructions. Do not omit any preparatory step or installation procedure unless specifically modified or exempted by Contract Documents.

01600.2 TRANSPORTATION AND HANDLING

- A. Arrange deliveries of products in accord with Construction Schedules, coordinate to avoid conflict with work and conditions at the site.
  - (1) Deliver products in undamaged condition, in manufacturer's original containers or packaging, with identifying labels intact and legible.
  - (2) Immediately on delivery, inspect shipments to assure compliance with requirements of Contract Documents and approved submittals, and products are properly protected and undamaged.
- B. Provide equipment and personnel to handle products by methods to prevent soiling or damage to products or packaging.

01600.3 STORAGE AND PROTECTION

- A. All cement, caulking materials, paint materials, lime, plaster, adhesives for resilient floors, acoustical materials, and all similar materials shall be delivered and stored on the job or at off-site storage locations in original sealed containers, unopened, with seals unbroken and with labels plainly indicating manufacturer's name, brand, type, and grade of materials. If materials are unacceptable, they shall be immediately removed from the premises. Store all the above-mentioned materials above ground and protected from dampness, weather, and other damage. Materials suitably stored off-site shall be bonded to protect Owner's title to materials.
- B. Materials such as reinforcing steel, wood, steel, masonry, piping, roofing, insulation, gypsum board, etc. shall not be stored directly on the ground.
- C. Store loose granular materials in a well-drained area on solid surfaces to prevent mixing with foreign matter.
- D. Special care shall be exercised to assure that danger to persons or damage to property is avoided by handling or storage of materials which are volatile or toxic.
- E. In addition to the requirements of the General Conditions, Supplementary and other Specification Sections, the following special requirements for protection of the new work shall apply:
  - (1) Each Contractor shall at all times protect all Work from damage by rainwater, spring water, ground water, backing up of drains, or sewers, and all other water that may or could be admitted to any Work. He shall provide all pumps, other equipment and closures to provide this protection. He shall do all pumping necessary to keep the work free of water.
  - (2) Each Contractor shall be responsible for closing any of his openings in wall or roof which would admit water to the building.
  - (3) Each Contractor shall provide protection to their Work against weather, floods, rain, wind, storms, frost, cold, or heat to maintain all work materials, apparatus and fixtures free from injury and damage.
  - (4) After roofing is installed all Work on the roof shall be done over planking or other substantial protection to spread construction loads and to isolate traffic from the roof surface. Each Contractor shall provide his own protection when working on the roof.

01650 STARTING OF SYSTEMS

- A. See specifications for requirements on starting, testing, adjusting and balancing of equipment and systems appropriate to the Scope of Work associated with each Bid Category.

01700 CONTRACT CLOSE OUT

01700.1 SUBSTANTIAL COMPLETION

- A. Before Contractor requests inspection for certification of substantial completion, complete the following:
  - (1) Complete all Work within the area to be inspected.

- (2) Obtain and submit releases enabling the Owner unrestricted use of the Work and access to services and utilities; including occupancy permits, operating certificates and similar releases.
  - (3) Make changeover of permanent locks and transmit keys to the Owner. Advise the Owner's personnel of change over in security provisions.
  - (4) Deliver tools, spare parts, extra stock, and similar items.
  - (5) Complete start-up and testing of systems and provide instructions to the Owner's operating and maintenance personnel. Discontinue or change over and remove temporary facilities from the site, along with construction tools, mock-ups and similar elements not needed for final completion.
  - (6) Complete final clean-up requirements as directed by Construction Manager, including touch-up and otherwise repair and restore marred exposed surfaces.
- B. Inspection by the Architect will proceed upon receipt of a request for inspection. The Architect will either proceed with the inspection or advise the Contractor on unfilled requirements. Upon inspection the Architect will prepare the Certificate of Substantial Completion. The following items must be completed before final acceptance and final payment is made:
- (1) All Work and Punch List items must be completed.
  - (2) Final Application for Payment must be submitted and approved for payment.
  - (3) All guarantees and warranties must be submitted.
  - (4) Final waiver of lien and sworn statements must be submitted with Application for Payment.
  - (5) Record drawings, maintenance manuals, and similar record documentation must be submitted.
  - (6) All items of Work for Contractor must be approved by regulatory agencies such as, but not limited to, the State Fire Marshall, Health Department, Mechanical Inspector and Electrical Inspector.
  - (7) Submit a copy of the Architect's final punch list signed by Contractor's representative, stating that each item has been completed or otherwise resolved for acceptance.
  - (8) Consent of surety to final payment must be submitted.

01700.2 CLEANING

- A. The Construction Manager will schedule final cleaning at the completion of the Project.
- B. Each Contractor is responsible for expediting the cleaning, washing, waxing, and polishing required within the technical sections of the Specifications governing work under his contract. In addition, each Contractor shall perform final cleaning of the entire project to remove all foreign matter, spots, soil and construction dust, so as to put the project in a complete and finished condition ready for acceptance and use intended. He shall remove all marks, stains, fingerprints, and other soil or dirt from all painted, enameled or varnished work and all other exposed finished surfaces.
- C. Painting Contractor, at the completion of other trades, shall be responsible to touch-up and restore all damaged paint or wallpaper surfaces.
- D. The Glazing Contractor shall remove all excess glazing compound and sealant, stains and paint from all glass, and wash and polish glass. Take care not to scratch glass. The Glazing Contractor will replace all damaged, broken, or scratched glass. Cost of glass replacement shall be borne by the party who caused the damage. This work is included as part of the cleanup requirements.
- E. Each Contractor shall similarly perform at such time an equivalent thorough cleaning of work and equipment provided under their contracts.
- F. If damage cannot be attributed to a specific party, the cost shall be prorated between all Contractors as their interests or exposure may occur.

01700.3 OPERATING AND MAINTENANCE DATA

- A. Each Contractor shall provide two (2) duplicate sets covering each and every item of equipment and device furnished or erected by him. This shall consist of the following:

- (1) Catalogue date or literature.
  - (2) Manufacturer's operating instructions.
  - (3) Manufacturer's maintenance instructions.
  - (4) Installation instructions.
  - (5) Index of Sub-contractors, including their addresses and phone numbers.
- B. In each of these, the correct model number and the data for the model number shall be checked off in ink where the literature covers more than one model number. For items assembled by Contractor for special functions, Contractor shall write up and provide duplicate operating and maintenance instructions.
- C. Material shall be suitably organized, indexed, bound and delivered to the Construction Manager.
- 01700.4 WARRANTIES AND BONDS
- A. Each Contractor shall provide specified warranties and bonds, signed and co-signed where applicable in accordance with Contract Documents. Assemble duplicate copies, indexed and neatly bound into binders, and deliver to the Architect.
- 01700.5 SPARE PARTS AND MAINTENANCE MATERIALS
- A. Each Contractor shall retain all loose and small detachable parts of the apparatus and equipment furnished under his contract, as well as keys and tools required for maintenance, until the completion of the work. Each Contractor shall then turn same over to the Owner, or his representative designated to receive them and obtain from him an itemized receipt thereof in triplicate. He shall retain one copy of this receipt for finally payment for the work.

END OF GENERAL REQUIREMENTS





**SUBCONTRACTOR SUBMITTAL FORM**

**\*If this form does not accompany your submittals with the correct information, your submittals will be returned.**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Project Name: \_\_\_\_\_ Job Number: \_\_\_\_\_

Bid Category Name and Number: \_\_\_\_\_

Submittal Number & Title: \_\_\_\_\_

Specification Section No: \_\_\_\_\_

Specification Description: \_\_\_\_\_

Manufacturer/Supplier: \_\_\_\_\_

Material Lead Time from date of Approval: \_\_\_\_\_

Type of Submittal & Number of Copies:

\_\_\_\_\_ Plans      \_\_\_\_\_ Product Data      \_\_\_\_\_ Shop Drawings      \_\_\_\_\_ Test Results

\_\_\_\_\_ Samples      \_\_\_\_\_ LEED (LEED submittal form must be attached)

Is this a Re-submittal?

\_\_\_\_\_ Yes      \_\_\_\_\_ No      If this is a Re-submittal reference original submittal #: \_\_\_\_\_

Remarks:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Sent Via:

\_\_\_\_\_ E-Mail      \_\_\_\_\_ Hand Delivery      \_\_\_\_\_ Mail      \_\_\_\_\_ UPS

**\*If this form does not accompany your submittals with the correct information, your submittals will be returned.**