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1. CONTRACT DOCUMENTS

- A. The Contract Documents are defined in Article 3 [Definition of Terms] below. Terms used in the General Conditions have the same meaning as those terms that are defined and used in the Agreement and vice versa. In the event of any conflict between the Agreement and the General Conditions, the Agreement shall govern in all material respects. The Contract Documents represent the entire and integrated agreement between Owner and the Contractor and supersede all prior negotiations, representations, or agreements, either written or oral. The Contract Documents may be amended only by a Modification signed by both Owner and Contractor. The Contract Documents shall, if possible, be construed to render each of its provisions valid and enforceable. However, if any part, term or provision of the Contract Documents are held by the final judgment of any court of competent jurisdiction to be illegal, invalid, or unenforceable, the validity of the remaining portions or provisions shall not be impaired or affected, and the rights and obligations of the parties shall be construed as having been written to include terms that provide the maximum protection for Owner enforceable under law, and shall be enforced as if the Contract Documents did not contain the particular part, term, or provision held to be illegal, invalid, or unenforceable.
- B. The intent of the Contract Documents is to describe a functionally complete Project, and it is intended that Contractor shall furnish all labor, materials, tools, equipment and other items necessary for the proper development, execution, administration and completion of the Work in accordance therewith, including all work incidental to or reasonably inferable from the Contract Documents as being necessary to the complete development and construction of the Project so that it is functional for its intended purpose, unless it is specifically indicated in the Contract Documents that such work is to be performed by others, and to complete the Work in a satisfactory manner, ready for use and operation by Owner. Hence, statements of work or services to be provided or tasks to be undertaken in the Contract Documents are not intended to enumerate each and every item of Work required.
- C. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Omissions from the Contract Documents or the misdescription of details of the Work, which are manifestly necessary to carry out the intent of the Contract Documents, or which are customarily performed, shall not relieve Contractor from performing such omitted work or misdescribed details of the Work but they shall be performed as if fully and correctly set forth and described in the Contract Documents.
- D. Contractor acknowledges that the Contract Documents establish a relationship of trust and confidence between Contractor and Owner, and Contractor and Owner accept this relationship, with the knowledge that Owner is placing its trust and confidence in Contractor. Contractor acknowledges that Owner is relying upon the knowledge, skill, and expertise represented by Contractor in the Bid.
- E. The Contract Documents are intended to constitute a single agreement and the parties shall make every effort to construe such documents as being consistent and not contradictory, and what is required by one shall be binding as if required by all. If there is a conflict between or among any provisions of the Contract Documents, Contractor shall perform the more stringent requirement. If a conflict cannot be resolved by applying this principle, such conflict shall be resolved applying the following order of precedence:

- a. Field Orders and Work Directives in date order, latest first if executed by Engineer, Owner and Contractor;
 - b. Change orders in date order, latest first if executed by Engineer, Owner and Contractor;
 - c. Addenda to the Contract Documents issued after the original documents were released;
 - d. Supplementary Conditions;
 - e. Summary of Work;
 - f. Provisions of Specifications;
 - g. Contract Drawings of Latest Issue;
 - h. Agreement;
 - i. General Conditions;
 - j. Information for Bidders;
 - k. Advertisement; and
 - l. Contractor's Bid.
- F. Notwithstanding anything above, for contractual/administrative issues (as opposed to technical, design, or construction issues) the Drawings and Specifications shall have precedence only over the Contractor's Bid.
- G. The Drawings and Specifications are complementary and what is called for by one shall be as binding as if called for by both. Should the Drawings, Specifications, and/or other instructions be contradictory in any particular manner or should there be any doubt as to the meaning of either, Contractor shall initiate a discussion with Engineer and thereafter request written clarification as required by the Contract Documents. Contractor shall seek such clarification prior to the submission of Contractor's Bid, and Contractor's Bid shall be deemed to have included all written clarifications.
- H. Unless the other Contract Documents provide otherwise, with respect to the Drawings and Specifications, the following apply:
- a. Figures take precedence over scale measurements.
 - b. Large scale details take precedence over smaller scale details, and special drawing details govern over standard details.
 - c. Architectural or Civil Drawings take precedence regarding dimensions when in conflict with other Drawings, except for the size of structural members and dimensions shown on Structural Drawings.

- d. Specifications shall govern over Drawings in matters of material or equipment specified; Drawings shall govern over Specifications in matters of construction or installation detail.
- e. Existing conditions take precedence over Drawings and Specifications for dimensions.
- f. Shown dimensions over figured dimensions. Contractor's use of scaled dimensions is at Contractor's sole and exclusive risk.
- g. When multiple requirements are given for any item, all requirements shall be met.
- h. Terms such as "as shown," "as indicated" and "as noted" mean there are additional requirements given elsewhere in the Contract Documents.
- i. Detailed Specifications shall take precedence over General Specifications.

2. CONTRACT DRAWINGS AND SPECIFICATIONS

- A. The Work to be performed is shown on the accompanying set of original Drawings which are hereby made a part of this Contract, it being mutually understood and agreed that when taken together, the Drawings and Contract Documents, including the Specifications and the General Conditions, are complementary, and what is called for by anyone shall be binding as if called for by all.
- B. The original Drawings may be supplemented by other drawings furnished by Contractor but only if approved by Engineer in writing or supplied to Contractor by Engineer during the progress of the Work as it may deem to be necessary or expedient. All such supplemental drawings or instructions are intended to be consistent with the Contract Documents, true developments thereof and reasonably inferable therefrom.
- C. These original and supplemental drawings constitute the Drawings according to which the Work shall be performed. Contractor shall keep at the site, in sound and legible condition, an approved or confirmed copy of all Drawings and Specifications of each issue and shall always give Engineer or Owner access thereto.
- D. Locations for items shown on the Drawings or described in the Specifications include all mounting, backing, cementing, wiring, plumbing, or other details are included in the Contract Sum, regardless of whether such details are specifically indicated in the Drawings or Specifications.

3. DEFINITION OF TERMS

The following definitions apply to the Contract Documents:

Activity: As used in connection with the CPM Schedule, the term "Activity" means a discrete portion of the Work for a Project that can be identified for planning, scheduling, monitoring, and controlling the Project. "Critical Path Activities" are Activities on the Critical Path; they must start and finish on the planned early start and finish times. A "Predecessor Activity" is an Activity that must be completed before a given Activity can be started.

Addenda: Written or graphic instruments issued prior to the opening of Bids, which clarify, correct, or change the Bidding Documents.

Agreement: The written instrument contained in the Contract Documents which is evidence of the entire and integrated written agreement between Owner and Contractor concerning the Work required by the Contract Documents.

Application for Payment: The form acceptable to Owner, Engineer, and/or RPR as designated by Owner, which is to be used by Contractor when requesting progress or final payments for Work completed and which is to be accompanied by such supporting documentation as is required by the Contract Documents.

Application for Final Payment: The Application for Payment which Contractor submits to Owner after Contractor has completed each of the requirements for Final Payment as set forth in the Contract Documents.

Basis of Design: A summary report containing all calculations, modeling, investigations, baseline conditions, data, assumptions, and recommendations needed to fully substantiate the reasoning and methodology of Engineer's design.

Baseline Conditions Assessment: A summary of the results of a series of reports that describe and assess the existing conditions upon which the design of the Project or parts of the Project is predicated. This may include, but is not limited to, an accurate description of topographic, geologic, geotechnical, hydrogeological, hydraulic, environmental, community, public, and private factors that any aspect of the design depends upon. The Baseline Conditions Assessment shall be included in the Owner's Program, if and when applicable. Contractor acknowledges that Owner may not provide one or more of the foregoing services and may direct Contractor to contract for such services; nonetheless, Contractor shall conduct, at a minimum, soil, water, wetland, and easement investigations to provide obtain sufficient information to perform the Work and carry out the design intent.

Bid: The offer or proposal of the Bidder submitted on the prescribed form identifying the prices for the Work to be performed and agreeing to perform the Work in accordance with the Contract Documents.

Bidder: A company submitting a Bid to perform the Work.

Bidding Documents: The Advertisement, Information for Bidders, the Bid Form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.

Boulder: A Boulder is defined as a solid mineral mass with a volume of less than 1.00 cubic yards. All boulder removal includes proper disposal as required and is incidental to the Work of the Project. It is not eligible for separate or added compensation.

Bulletin: Bulletin is defined as an instrument providing clarification, supplemental information, documentation, or other such communication which neither involves Contract Time or Construction Cost adjustments to the Contract, nor changes the general character of the Work as a whole. Further, Bulletin provides means to transmit written information in a manner which is succinct, easily prepared and issued, and simply documented for future reference, as required. Bulletin does not represent, or suggest, a material change to the Contract. Owner, Engineer,

and/or RPR as designated by Owner, may act as the issuing party. If Contractor takes exception to the content of the Bulletin, it may respond accordingly, as provided in the Contract regarding requirements for disputed Work. This additional communication method is provided for reasons of clarity and convenience only and does not in any way replace or alter other existing requirements of the Contract.

Change Order: A written instrument issued by Owner, on a Change Order form furnished by Owner, and signed by Owner, Contractor, RE and/or the RPR as designated by Owner, modifying (1) the scope of the Work, (2) the Contract Sum or any other cost or fee, or (3) the Contract Time and/or updated CPM Schedule. If one or more of the foregoing items (1) through (3) is not specifically addressed in a Change Order, the parties shall be deemed to have agreed that such item is unaffected by the Change Order.

Claim: Any actual, alleged, or threatened loss, complaint, demand for relief or damages, suit, cause of action, proceeding, judgment, deficiency, liability, question regarding the Agreement or Contract Documents, penalty, litigation, cost, or expense, including, but not limited to, attorney fees, engineering fees, witness fees, court costs, investigation expenses, litigation expenses, amounts paid in settlement, and/or other amounts or liabilities of any kind which are imposed on, incurred by, or asserted against Owner, or for which Owner may become legally and/or contractually obligated to pay or defend against, whether direct, indirect, or consequential, whether based upon any alleged violation of the federal or the state constitution, any federal or state statute, rule, regulation, or any alleged violation of federal or state common law, whether any such claims are brought in law or equity, tort, contract, or otherwise, and whether commenced or threatened. A Claim may also include other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract Documents.

Concurrent Delay: Two or more delays that take place or overlap during the same period, either of which occurring alone would have affected the completion date.

Construction Cost: The total cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include compensation and costs of Engineer or other design professionals and other consultants, the cost of land, rights-of-way, or compensation for or damages to properties, or Owner's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.

Construction Schedule: The CPM Schedule for the performance of the Work, as it may be amended from time to time by written Change Order.

Consultant. A person or entity providing professional services for Engineer for all or a portion of the Work pursuant to a contract with Engineer. To the extent required by Michigan law, a Consultant shall be lawfully licensed to provide the required professional services.

Contractor: The person or entity with whom Owner enters into a written agreement covering the Work required to be performed or furnished with respect to the Project.

Contract Documents: Documents that establish the rights and obligations of the parties engaged in construction, which include the Bidding Documents issued by Owner, Agreement between Owner and Contractor, Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award), the Notice to Proceed,

bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, Summary of Work, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all written amendments, Change Orders, Work Directives, Field Orders, and Engineer's written interpretations and clarifications issued on or after the effective date of the Agreement. Unless otherwise designated within the Agreement between Owner and Contractor, Submittals, Shop Drawings returned without exceptions and the Baseline Conditions Report, the Basis of Design, and any other reports including but not limited to any geotechnical report and drawings of subsurface and other physical site conditions are not part of the Contract Documents. The priority of the Contract Documents is set forth in Article 1 [Contract Document].

Contract Sum: The total of all monies payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Agreement.

Contract Time(s): The Contract Time is the number of calendar days described in the Agreement in which (or, alternatively, the date set forth in the Agreement by which) Substantial Completion and/or other milestone dates shall be achieved, subject to any extensions granted in executed Change Orders or otherwise specifically permitted by the Contract Documents. Any references to Contract Time shall be interpreted to mean Construction Time. Contract Time also may refer to the days or the dates identified in the Agreement for Contractor to complete the Work so that it is ready for final payment as evidenced by Engineer's and/or RE's written recommendation of final payment.

CPM Schedule: The term "CPM Schedule" means and refers to the manpower loaded, logic-based progress schedule for the Project using critical path method (or similar, pre-approved method) scheduling technique to create and maintain a current and accurate schedule depicting the actual and expected progress of the Work. All Critical Path items must be shown on the CPM Schedule, regardless of the duration.

Critical Delay: A delay is a "Critical Delay" if and only to the extent it adversely affects the Critical Path of the Work.

Critical Path: The term "Critical Path" means the longest continuous chain of activities through the network schedule that establishes the minimum time to achieve Final Completion of the Work.

Day: The term "day" as used in the Contract Documents means calendar day unless otherwise specifically designated.

Daily Report: The term "Daily Report" as used in the Contract Documents means the written report prepared by Contractor, daily and submitted to Owner on a weekly basis, with copies attached to each Application for Payment.

Defective Work: Work not conforming to the requirements of the Contract Documents including Work, materials, or equipment furnished by, through or under contract with Contractor or any of its Subcontractors, and substitutions not properly "Returned Without Exceptions" and authorized, shall be considered "Defective".

Documents: Data, Reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner for use by Contractor pursuant to this Agreement as well as Data,

Reports, Drawings, Specifications, and other deliverables provided by Contractor where the Contract Documents require Contractor to both design and construct certain aspects of the Work, such as tunnel liners, dewatering, bypass pumping and temporary earth retention systems.

Drawings: That part of the Contract Documents prepared or approved by Engineer or prepared or approved by Contractor's design professionals which graphically show the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.

EGLE: The Michigan Department of Environment, Great Lakes, and Energy, as well as its predecessor, the Michigan Department of Environmental Quality.

Emergency: An event or condition that creates an imminent and immediate risk of significant damage to persons or property (including the Project and/or completed Work). An event or condition only creates a necessity for Emergency Work if a significant injury to persons or property is likely to occur if Contractor stops Work and requests instruction from Engineer. A condition that might pose a threat to persons or property sometime in the future does not create a necessity for Emergency Work.

Engineer: Unless otherwise specifically identified as a design professional under contract with Contractor, Engineer as used herein shall refer to a design professional hired by Owner to prepare Drawings and Specifications for the Project, and to assist Owner in interpreting the Drawings and Specifications during construction. If designated by Owner, Engineer also shall serve as construction contract administrator of the Project for Owner with the authority and responsibilities set out in the contract between Owner and Engineer. Additional services also may be provided at the request of Owner if needed. Contractor understands and agrees that Engineer's obligation under its contract with Owner are obligations to Owner only, and Engineer shall have no independent obligation to Contractor to provide services or to take any action or refrain from taking action on behalf of Contractor.

Equipment: All materials, tools, equipment, consumables, supplies, machinery, and vehicles used in connection with the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated into the Work.

Excusable Event of Delay: A delay warranting an extension of the Contract Time as a result of a Force Majeure Event or Owner Delay.

Field Order: A written order issued by Engineer, RE and/or RPR as designated by Owner, which directs minor changes in the Work but which does not involve a change in the Contract Sum or Contract Time.

Final Completion: Final Completion of the Work or a designated portion thereof will have occurred when the Work is fully and finally completed in accordance with the Contract Documents to the satisfaction of Owner and Engineer and Owner issues a written acknowledgement of such completion in the form of a Certificate of Final Completion. Following the receipt of the Certificate of Final Completion, Contractor shall be entitled to apply for Final Payment.

Force Majeure Event: The term "Force Majeure Event" means, and is limited to, the following: (1) strikes, lockouts, or picketing (legal or illegal) of an area-wide, trade-wide, owner-wide, or

industry-wide nature (a strike, lockout or picket (legal or illegal) specific to the Project site, or directed at Contractor or one or more of Contractor's Subcontractors or suppliers shall not be considered an area-wide, trade-wide or industry-wide strike, and does not constitute Force Majeure); (2) governmental action (other building laws, regulations or like actions) and condemnation; (3) riot, civil commotion, insurrection, and war; (4) fire or other casualty not the fault of Contractor, accident, acts of God or the public enemy; (5) extremely unusual adverse weather conditions not reasonably expected for the location of the Work and the time of the year in question, such as tornados, earthquakes, floods and similar events where Contractor is restricted from accessing the Project site by such adverse conditions for more than one-half the consecutive working days per month (historically severe weather, including, but not limited to temperature extremes, excessive precipitation, and excessive wind shall not be considered Force Majeure weather and must be accounted for in the Bid and all Schedules); (6) abnormal unavailability of fuel, power, supplies or materials that is not the fault of Contractor; or (7) the passage or unexpected interpretation or application of any statute, law, regulation, or moratorium of any governmental authority that has the effect of delaying the Work, excluding any building statute, law, or regulation as to which any public or advance notice was available prior to its adoption or issuance. "Force Majeure" does not include (a) the unavailability of any building material, equipment, or supply which is necessary for the Project or Work, nor of any supplier, Subcontractor, laborer or other entity or person required for the completion of the Work, except where a sole source material, equipment, or supply is specified in the Contract Documents and no other source of such material, equipment, or supply is available in sufficient time to avoid a delay to the Critical Path of the Project Work or (b) the impacts or effects on the Project of any epidemic or pandemic, whether or not there exists a government-mandated shut down, stop work order, or the like, including, without limitation, any CDC, federal, local, state, county, city, or other governmental executive or agency orders relative to construction site operations due to such epidemic or pandemic, such as mask wearing, social distancing, training, health screenings, cleaning and disinfecting, job site access and administration which are in effect as of the Effective Date of this Agreement.

General Conditions: That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.

Gross Negligence: Any act or failure to act that deviates from the standard of care of a reasonable person under circumstances where the actor was consciously indifferent or had actual awareness that a risk of harmful consequences could be involved, but nevertheless proceeded with a wanton, reckless, or willful disregard of such consequences.

Laws and Regulations: Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, authorities, and courts having jurisdiction over the Project.

Lump Sum Price: Lump Sum Price also shall include a "Stipulated Sum" or a Fixed Price" and shall mean the total amount to be paid by Owner to Contractor, for the full and complete performance of the Work, or for an identified and defined portion, or element thereof. Owner shall pay Contractor the Lump Sum Price upon completion of the Work, or according to the payment terms of the Contract.

Modification: A Modification can mean (1) a written amendment to the Agreement signed by both parties, (2) a Change Order, (3) a Work Directive, or (4) a Field Order.

Notice of Award: A written notice from Owner to Contractor awarding the Contract to Contractor.

Notice of Claim: A formal written notice, containing information as required herein and as may be further requested by Owner, from Contractor to Owner, on a form approved by Owner putting Owner on notice of Contractor's Claim for an extension of time or damages.

Notice of Intent to Award: A written notice sent by Owner expressing its intention to award Contract to a particular Bidder. A Notice of Intent to Award is for informational purposes only and does not create any liability or obligation of Owner, either to issue or award the Contract, or for any other cause.

Notice of Non-Compliance: A notice issued by Owner, Engineer, RE or RPR to Contractor informing Contractor of Defective Work and/or non-compliance with the Contract Documents, including schedule progress and similar matters.

Notice to Proceed: A written communication from Owner to Contractor informing Contractor of the date that Contractor may begin Work on the Project. The Contract Time shall begin to run from the date of the Notice to Proceed. Owner may withdraw a Notice to Proceed and issue a new Notice to Proceed if deemed necessary in Owner's sole discretion. If a Notice to Proceed is withdrawn, the Contract Time shall begin to run from the date of the new Notice. Withdrawal of a Notice to Proceed or the issuance of a new Notice to Proceed shall not create a basis for Contractor to request a time extension or additional compensation.

Observer: A field representative authorized by Owner who may be the Resident Engineer, RPR, Owner's Inspector or another person.

OCIP: Owner-Controlled Insurance Program.

Owner: The Oakland County Water Resources Commissioner, County Agency for the County of Oakland, and/or the statutory Drainage District including its members, employees, agents, and representatives.

Owner Delay: An "Owner Delay" is an actual delay to the Contractor's performance of the Work to the extent caused by one or more of the following: (1) Modifications (excluding minor changes in the Work and interpretations), (2) the Owner's failure (or that of any other person for whom Owner is responsible to Contractor) to provide in a reasonable manner any product, service, data or information requested by Contractor, in writing, that is reasonably necessary for Contractor to perform the Work and is Owner's obligation to provide (so long as Owner and any other responsible person are given adequate time to respond); (3) the failure or inability of Owner to provide access to the Project Site or critical portions thereof due to a failure to obtain a necessary easement or other cause for an unreasonable and unanticipated period of time; or (4) unreasonable and unanticipated interference by Owner or persons for whom it is responsible with Contractor's performance of the Work which continues after written notice to Owner of such interference. Contractor shall not claim an Owner Delay as a result of a condition Contractor discovered or should have discovered prior to Contractor's submission of its Bid and/or prior to Contractor beginning the Work (or any part of the Work).

Owner's Inspector: An individual from Owner's staff assigned to assist Owner and Engineer with certain construction administration, observation, or other tasks at the Site or elsewhere during the Construction Phase of the Project.

Owner's Safety Representative: An individual from Owner's staff or a third party appointed by Owner that will represent Owner in connection with safety matters on the site.

Project: The project referenced and described in the Agreement and Contract Documents.

Punch List: A list of incomplete or non-conforming items of Work that do not impact Substantial Completion, which do not interfere with the use or occupancy of any part of the Work for its intended purpose. Contractor must complete the items on the Punch List prior to Owner's acknowledgment of Final Completion of the Work.

Record Drawings: The Drawings issued for construction on which Engineer, RE and/or RPR as designated by Owner, shall show changes due to Addenda or Change Orders or other information which Engineer, RE and/or RPR considers significant. The Record Drawings shall be prepared and updated during the prosecution of the Work. Engineer, RE and/or RPR as designated by Owner, shall maintain said Record Drawings in good condition and shall use colored pencils or other methods reasonably acceptable to Owner to mark-up said set with "record information" in a legible manner to show: (1) deviations from the Drawings made during construction; (2) details in the Work not previously shown; (3) changes to existing conditions or existing conditions found to differ from those shown on any existing Drawings based on information provided by Contractor or Observer, including dimensioned locations of any uncovered underground lines, if encountered; (4) the actual installed position of various components of the Work; (5) omissions, including Work omitted by Change Order or accepted alternates; and (6) such other information as Owner may reasonably request.

Recovery Plan: Shall have the meaning set forth in Article 40 [Progress of Work].

Resident Engineer ("RE"): The authorized representative of Engineer to provide, among other things, comprehensive management and administration of the Agreement between Owner and Contractor either on a full-time or part-time basis as designated by Owner, as more fully described in Owner's form 9-RE-391 – Resident Engineer Services.

Resident Project Representative ("RPR"): The authorized representative of Owner or Engineer assigned to assist Owner and Engineer with certain construction administration, observation, or other tasks at the Site or elsewhere during the Construction Phase. As determined by Owner, the RPR will either be an agent or employee of Engineer or Owner and under the direct supervision of the party contracting for the RPR's services. As used herein, the term RPR includes any assistants of the RPR agreed to by Owner. If the RPR is an agent of Engineer, such services are more fully described in Owner's form 10-RPR-391 – Resident Project Representative Services.

Request for Information ("RFI"): A written communication from Contractor to Engineer and/or RPR as designated by Owner, requesting clarification of design Drawings, Specifications, or other Contract Documents, or requesting information needed to perform the Work and not included in the Contract Documents. Contractor also shall submit an RFI if Contractor discovers a conflict or inconsistency in the design documents that cannot be resolved by a thorough review of the Contract Documents or application of the priority of documents provisions set out herein.

Returned Without Exceptions: Where used in conjunction with the response of Engineer or Owner to submittals, requests, applications, inquiries, reports, and claims by Contractor, the meaning of the term "returned without exceptions" shall indicate that Owner or Engineer has, as indicated: (1) reviewed with no exceptions noted, (2) reviewed with exceptions noted and

resubmission not required, (3) reviewed with exceptions noted and resubmission required, or (4) rejected with resubmission required. In no case shall review or "approval," "accepted" or "returned without exceptions" by Owner or Engineer be interpreted as a release of Contractor from responsibilities to fulfill the requirements of the Contract Documents. Owner and Engineer do not adopt items "approved," "accepted" or "returned without exceptions" as design documents. Owner and Engineer shall have no liability or responsibility for the failure of an item or procedure to fit or function as intended or to conform to the requirements of the Contract Documents.

Risk Register: The Risk Register is a document identifying planned and potential Project circumstances and events that could adversely impact the Work, Construction Schedule, and public. The Risk Register includes: an estimate of the severity of impact; mitigation strategies; the identity of parties potentially impacted by each risk; and the governmental agencies affected by, or with jurisdiction over, the event, risk, or circumstance. Engineer shall use the Risk Register as a risk management tool throughout the life of the Project.

Rock: A solid mineral mass with a total volume of greater than 1.00 cubic yard. Rock removal will be paid for on a Time and Materials basis. Solid masses with a volume of less than 1.00 cubic yard are incidental to the Work and all costs to remove and dispose of the Rock properly by Contractor is included in the Contract Sum.

Samples: Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portions of the Work will be judged. Samples shall be protected and remain available until after Final Completion.

Safety Director: A qualified or competent person, whichever is required pursuant to the Michigan Occupational Safety and Health Administration ("MIOSHA") safety and health standards for the work being performed, appointed by Contractor to oversee safety on the job site.

Schedule: The term "Schedule" means and refers to the CPM Schedule required by the Contract Documents.

Schedule of Submittals: A schedule, prepared and maintained by Contractor, of required submittals and the time requirements for Engineer's review of the submittals.

Schedule of Values: A schedule, prepared and maintained by Contractor, allocating portions of the Contract Sum to various portions of the Work, and used as the basis for reviewing Contractor's Application for Payment.

Site: Land or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for Contractor's use.

Shop Drawings: All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to Engineer for review and response. Shop Drawings illustrate some portions of the Work. Engineer shall transmit a final reviewed copy of the Shop Drawings to Owner and RPR.

Specifications: That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.

Standard of Care: The level of performance established by Section 2 of the Engineering Services Agreement Standard Terms and Conditions between Owner and Engineer, which requires, among other things, that Engineer perform its services using employees, agents, and consultants who are experienced and suitably skilled in their profession and that Engineer's services meet or exceed the professional skill and care ordinarily provided by Engineers and Consultants practicing in the same profession, in the same or similar locality, under the same or similar circumstances.

Subcontractor: An individual or entity having a direct Contract with Contractor or with any other Subcontractor for the performance of a part of the Work.

Submittal: A written or graphic document, prepared by or for Contractor, which the Contract Documents require Contractor to submit to Engineer, or that is indicated as a Submittal in the Schedule of Submittals accepted by Engineer. Submittals may include Shop Drawings and Samples; schedules; product data; Owner-delegated designs; sustainable design information; information on special procedures; testing plans; results of tests and evaluations, source quality-control testing and inspections, and field or Site quality-control testing and inspections; warranties and certifications; Suppliers' instructions and reports; records of delivery of spare parts and tools; operations and maintenance data; Project photographic documentation; record documents; and other such documents required by the Contract Documents. Submittals, whether or not approved or accepted by Engineer, are not Contract Documents. Change Proposals, Change Orders, Claims, notices, Applications for Payment, and requests for interpretation or clarification are not Submittals.

Substantial Completion: The time at which the Work (or a specified part thereof) has progressed to the point, where, in the opinion of Owner, Engineer, RE and/or RPR as designated by Owner, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended and Contractor has (1) submitted the final versions of all operations and maintenance manuals, and/or other information that may be required by the Contract Documents, embodying such corrections and modifications from initial versions as Owner shall reasonably request, (2) completed all training and start up requirements in the Contract Documents; and (3) completed all other requirements for Substantial Completion as may be defined in the Contract Documents including the Close-out Procedures in the Specifications, as evidenced by Owner's execution and acceptance of a Certificate Substantial Completion. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

Supplementary Conditions: That part of the Contract Documents which amends or supplements the General Conditions.

Unit Price: A Unit Price is an all-inclusive total amount to be paid by Owner to Contractor for the full performance of each unit of an element of the Work, identified and described in the Contract Documents as Unit Price work items.

Work: The entire completed construction or the various separately identifiable parts thereof including but not limited to all labor, materials, and equipment required to be provided under the Contract Documents to construct the Project. Work includes and is the result of performing or furnishing labor, services (including design services), and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into

such construction, all as required by the Contract Documents. The scope of the Work also shall include any or all deviations in the Contract Documents required to meet job conditions and to complete the Work in conformance with the intent of the specific Contract requirements. The Work shall not include activities to be performed, or labor, services, materials, supplies, and equipment to be supplied, by Owner hereunder.

Work Directive: A written directive to Contractor issued on or after the effective date of the Agreement and signed by Owner, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Directive will not change the Contract Sum or the Contract Times but may be issued when the parties expect that the change directed or documented by a Work Directive may be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Sum or Contract Times. A Work Directive also may be issued when Contractor and Owner are in a dispute as to whether there is a change in the Contract Documents, or whether a change is compensable to Contractor, or requires a credit to Owner. In such case, the Work Directive requires Contractor to proceed with the Work addressed therein, without any determination or evidence of any intent to enter into a Change Order, or right to an increase in the Contract Sum or additional time.

4. ENGINEER'S STATUS

- A. Engineer has authority to recommend to Owner that the Work be stopped, whenever such stoppage may be necessary to ensure the proper execution of the Contract.
- B. Engineer also shall have authority to reject all Work and materials that do not conform to the Contract, and to decide questions that arise in the execution of the Work.
- C. Engineer shall serve as the construction contract administrator for Owner and all communications between Owner and Contractor shall be through and/or by Engineer. Engineer also shall fulfill the roles specifically prescribed to Engineer elsewhere in the Contract Documents, and as may be assigned in writing by Owner.
- D. Engineer shall not have authority to bind Owner but shall only communicate Owner's decisions and/or instructions.
- E. Engineer shall review and approve or take other appropriate action upon the design calculations and drawings submitted by Contractor's design professionals as required by the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Engineer's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of Contractor. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, all of which remain the responsibility of Contractor as required by the Contract Documents.
- F. At Owner's discretion, the authority, rights, and responsibilities granted or assigned to Engineer in this Article and throughout the Contract Documents may be assigned to an RPR under direct contract with Owner. In those instances in which Owner elects to (1) assign certain authority or responsibilities to such RPR or (2) authorize the RPR to receive certain information or documentation from Contractor, including, but not limited to, test results or submittals, Owner will identify to Contractor which provisions in these

General Conditions, the Supplementary Conditions or the other Contract Documents fall within the responsibilities of the RPR rather than Engineer, or those provisions which are deemed a joint responsibility of Owner's RPR and Engineer.

- G. Notwithstanding the above, Contractor's duties and responsibilities as set forth in the Contract Documents, including those of Contractor's design professionals, shall at no time be in any way diminished by reason of any approval by Engineer, RE, RPR, or Owner of any design documents, construction documents, or other submittals required by the Contract Documents to be furnished by Contractor, nor shall Contractor be released from any liability by reason of such approval by the Engineer, RE, RPR, or Owner, nor shall such review relieve Contractor of responsibility for compliance with the requirements of the Contract Documents it being understood that Owner, Engineer, and RPR at all times are ultimately relying upon the skill and knowledge of Contractor and its design professionals in preparing such design documents, construction documents, and all other deliverables of Contractor to be provided hereunder.

5. OBSERVER'S STATUS

- A. Engineer may appoint on the job Observers who shall be under the direction of Engineer. The Observers of the Work will inform Engineer as to the progress of the Work, the way it is being done, and the quality of the materials being used. The Observer may call to the attention of Contractor any failure to follow the Drawings and Specifications that may be observed but will have no obligation to Contractor to do so. The Observer shall have the authority to reject materials or suspend the Work until questions on the performance of the Work can be referred to and decided by Engineer but will have no obligation to Contractor to do so. The Observer shall have no authority to direct Contractor's Work or workmen, to supervise Contractor's operations or to change the Plans or Specifications, unless otherwise noted in the Contract Documents.
- B. In no instance shall any action or omission on the part of the Observer constitute a direction to perform changed or extra Work, create any obligation for Owner to provide additional compensation to Contractor, nor release Contractor from the responsibility of completing the Work in accordance with the Contract Documents.
- C. To assist Contractor to comply with the Drawings and Specifications, Engineer is authorized, but not required to, issue a "Notice of Non-Compliance" to Contractor, advising Contractor of possible elements of Work that may not be in conformance with the Contract Documents, and/or which require correction. Engineer shall take such actions in its sole discretion.

6. CONTRACTOR'S RESPONSIBILITY

- A. Contractor shall assume full responsibility for the Work and take all precautions for preventing injuries to persons and property on or about the Work; shall bear all losses resulting to it on account of the amount or character of the Work or because the conditions under which the Work is performed are different, or because the nature of the ground in which the Work is performed is different from that which was estimated or expected, or on account of the weather, floods, elements, or other causes. Contractor shall assume the defense of and save harmless Owner, its individual officers and agents and all other parties to whom Contractor owes an indemnity obligation under the Contract Documents from (at times, "Indemnified Parties"), all claims relating to design

services provided, labor provided and materials furnished for the Work; to inventions, patents, and patent rights used in doing the Work; to injuries to any persons or property received or sustained by or from Contractor, its agents or employees in doing the Work or arising out of the Work performed or to be performed and to any act, or neglect of Contractor, its design professionals, agents or employees; and as otherwise provided in these Contract Documents.

- B. The mention of any specific duty or liability of Contractor in this or in any part of the Contract Documents shall not be construed as a limitation or restriction upon any general liability or duty imposed on Contractor by the Contract Documents, or in law or equity.
- C. When Contractor is required to provide engineering or design services under the Contract Documents, including, without limitation, preparation of the drawings and specifications relating tunnel liners, dewatering, bypass pumping and temporary earth retention systems, Contractor shall cause such services to be provided by properly licensed design professionals, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professionals. 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 Engineer. Contractor's design professionals shall be bound by the same Standard of Care that Owner imposes on the Engineer. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, and neither shall be responsible for such engineering or design services, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. The agreements between Contractor and its design professionals shall be in writing. These agreements, including services and financial arrangements with respect to this Project, shall be promptly and fully disclosed to Owner.
- E. If Owner furnishes the services of geotechnical engineers to perform test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations, Contractor may only rely on the technical data contained in such reports except where indicated otherwise in the Contract Documents.
- F. Contractor shall draw its own conclusions as to Site, underground or soil conditions from its review of any geotechnical reports provided, own experience, independent knowledge, and investigation of the Site, and it should secure such other and additional information and data as it considers necessary or desirable to check and supplement the provided underground data for specific locations. Contractor shall complete the Work under any job or field condition, which was ascertainable prior to executing this Agreement.
- G. If Contractor wishes to conduct any additional underground or site exploration or testing it shall do so at its own expense as necessary. Contractor shall obtain Owner's written permission before proceeding.

- H. All Work, either incidental or directly related to the Agreement, shall be performed for the Contract Sum regardless of the soil conditions encountered when such soil conditions were ascertainable prior to executing this Agreement.
- I. Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, Subcontractors and Sub-Subcontractors of any tier and their respective agents and employees, and other persons or entities, including design professionals, performing any portion of Contractor's obligations under the Contract Documents. Reference in the Contract Documents to the Work, obligations, acts, or omissions of Contractor shall be interpreted to apply to those of its Subcontractors, Sub-Subcontractors of any tier, material suppliers, design professionals and their respective agents and employees irrespective of whether such other entities are specifically identified in such reference.
- J. Contractor shall obtain from each of its design professionals and furnish to Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (1) are consistent with the Project Specifications set forth in the Contract Documents, except to the extent specifically identified in such certificate, (2) comply with applicable Standard of Care, and (3) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project as they are in effect at the commencement of the Project; and (b) that Owner and Engineer shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.
- K. Contractor shall supervise and direct the Work, using Contractor's best skill and attention. 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If Contractor determines that such means, methods, techniques, sequences, or procedures may not be safe, Contractor shall give timely written notice to Owner and Engineer and shall not proceed with that portion of the Work without further written instructions from Engineer. If Contractor is then instructed in writing to proceed with the required means, methods, techniques, sequences, or procedures without acceptance of changes proposed by Contractor, Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences, or procedures.
- L. Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.
- M. Contractor shall submit Daily Reports to Owner on a weekly basis. The Daily Report shall, at a minimum, include the following:
- N. A description of Contractor's Work activities for the day; a work force count by trade for Contractor and Contractor's Subcontractors;

- O. A listing of any deliveries;
- P. A listing of all equipment on the Project and the use of each piece of equipment for that day;
- Q. A listing of all persons who visited the Project;
- R. Any safety violations or suspected safety violations;
- S. A description of any event or other matter that has or may adversely impact Contractor's ability to perform the Work in accordance with the Contract Documents and its actual or anticipated impact on the Work.
- T. In addition to any other applicable requirements in the Contract Documents, Contractor's right to submit a claim for any Critical Delay or other matter that adversely impacts the Work is conditioned on Contractor's submission of its Daily Report describing the matter, and Contractor waives and releases any claim in connection with a matter that is not adequately described in Contractor's Daily Reports. Contractor's Daily Reports shall not serve as a substitute for, or relieve Contractor of its obligation to provide, formal written notice to Owner as required elsewhere in the Contract Documents of any Critical Delay or other matter that has or may adversely impact Contractor's ability to perform the Work in accordance with the Contract Documents, and Contractor waives any claim that does not strictly comply with such requirements and agrees that Owner's actual or constructive notice of the claim will have no effect on the claim or Contractor's waiver of it.

7. PERMITS AND REGULATIONS

- A. Contractor shall secure, at no cost to Owner, all permits and licenses necessary for the prosecution of the Work. Contractor shall keep itself fully informed of all laws, ordinances, and regulations in any manner affecting those engaged or employed in the Work, or the materials used in the Work, or in any way affecting the conduct of the Work, and of all orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.
- B. At all times, Contractor shall observe and comply with and shall cause all its agents and employees to observe and comply with all existing and future laws, ordinances, regulations, orders, and decrees. Provided, that if the Drawings and Specifications are at variance therewith, Contractor shall promptly notify Engineer in writing and any necessary changes shall be adjusted as provided in the Contract Documents.
- C. Contractor shall comply with the requirements of the Part 91 of Public Act 451 of 1994, as amended, the Soil Erosion and Sedimentation Control Act. The work, consisting of measures and practice to minimize erosion damage to the work area while the Contract is in force, including, but not limited to, the installation and maintenance of silt fence, sediment traps, or other measures that may be required, shall comply with Public Act 451. Owner is an authorized public agency and will perform Soil Erosion and Stormwater Operator inspections for the Project at no cost to Contractor.
- D. During construction, Contractor shall provide a flagman as may be required for the safety and convenience of the public. Traffic controls required shall be in accordance

with the Michigan Manual of Uniform Traffic Control Devices, latest Edition, by the Michigan Department of Transportation (MDOT). The cost shall be considered incidental.

8. SUBCONTRACTS

- A. Contractor is responsible for the performance of all Work by Subcontractors and retained design professionals, if any, and to ensure that all Subcontractors and design professionals comply with each requirement of the Contract Documents that is applicable to their Work or services. If Contractor shall cause any part of the Work under this Contract to be performed by a Subcontractor or design professional, the provisions of this Contract shall apply to such Subcontractor and/or design professional and their respective officers and employees in all respects as if it and they were employees of Contractor, and Contractor shall not be in any manner thereby relieved from its obligation and liabilities; and the Work, services and/or materials furnished by the Subcontractor or design professional shall be subject to the same provisions as if furnished by Contractor.
- B. Contractor shall include in all subcontracts or design service agreements such terms and conditions as necessary to require compliance by Subcontractors and design professionals with all requirements of the Contract Documents, including without limitation, Insurance Provisions, Dispute Resolution Provisions, and all requirements set out in the Information for Bidders.
- C. Contractor may not subcontract portions of the Work for which Contractor was required to list a Subcontractor under the provisions of the Information for Bidders and did not list any Subcontractor, or listed its own name, to perform the Work without the written consent of Owner. Such consent shall not be unreasonably withheld.
- D. Assignment or subletting any portion of this Contract shall not operate to release Contractor or its surety hereunder from any of the Contract obligations.
- E. Contractor shall not employ any Subcontractor or design professional that Engineer or Owner may object to as not responsible, insufficiently qualified, or otherwise unacceptable in the sole and absolute discretion of Owner. Neither Owner nor Engineer shall have any liability as a result of their objection to a Subcontractor or design professional, and Contractor shall defend, indemnify and hold harmless Owner and Engineer to the full extent set out in the indemnity clause in the Contract Documents in the event that any person or entity makes a claim or files any form of legal action based on such objection to a Subcontractor or design professional and/or the subsequent replacement of that Subcontractor or design professional in relation to this Project.

9. OTHER WORK - COORDINATION

- A. Owner may perform other Work related to the Project at the Site by Owner's own forces, have other Work performed by utility owners or let other direct contracts therefore which shall contain General Conditions similar to these. If the fact that such other Work is to be performed was not noted in the Contract Documents, written notice thereof will be given to Contractor prior to starting any such other Work; and, if Contractor believes that such performance will involve additional expense to Contractor or requires additional time and the parties are unable to agree as to the extent thereof, Contractor may make a claim in

strict conformance with the requirements of the Contract Documents.

- B. Contractor shall afford each utility owner and other contractor who is a party to such a direct contract (or Owner if Owner is performing the additional Work with Owner's employees) proper and safe access to the Site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such Work and shall properly connect and coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering their work and will only cut or alter their work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Article are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If any part of Contractor's Work, for proper execution or results, depends upon the work of any such other contractor or utility owner (or Owner), Contractor shall inspect and promptly report to Engineer in writing, any delays, defects, or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. Contractor's failure to report will constitute an acceptance of the other work as fit and proper for integration with Contractor's Work except for latent or non-apparent defects and deficiencies in the other work.
- D. If Owner contracts with others for the performance of other work on the Project at the Site, the person or company who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Specifications, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the Specifications. Unless otherwise provided in the Specifications, neither Owner nor Engineer shall have responsibility, nor shall Engineer have any authority, in respect to such coordination, and Contractor shall be deemed responsible for coordinating the work on the Site.

10. GENERAL REQUIREMENTS FOR MATERIALS AND WORKMANSHIP

- A. Unless otherwise stipulated in the Specifications, all equipment, materials, and articles incorporated in the Work covered by this Contract are to be new and of the best grade of their respective kinds for the purpose. Contractor shall, if required, furnish such evidence as to kinds and quality of materials as Engineer may require. Any equipment or materials which are defective or non-conforming shall be replaced by Contractor at its own expense. Contractor shall cause the replacement of such defective or non-conforming equipment and materials so as not to cause a Critical Delay to the Project.
- B. Contractor shall furnish suitable tools and building appliances and employ competent labor to perform the Work, and any labor or tools or appliances that are not, in the judgment of Engineer, suitable or competent to produce the intended result may be rejected by Engineer, and such labor or tools or appliances shall promptly be replaced by Contractor with such labor, tools or appliances as will be determined to be without exceptions by Engineer.

- C. If not otherwise provided in the Specifications, all equipment, material, or Work called for in this Contract shall be furnished, performed, applied, installed, connected, erected, used, cleaned, and conditioned in accordance with well-known established industry practices and standards recognized by Engineer, and the trade. In the absence of specific installation instructions in the Specifications, the manufacturers' recommendations shall govern.
- D. If any type of machinery, equipment, or tools are specifically needed to prosecute the Work in an orderly, workmanlike manner, Engineer may so direct Contractor to procure same before Work is continued.
- E. Contractor will have full responsibility for maintenance, storage, security, scheduling, expediting, and coordinating deliveries of all equipment and materials as required to achieve the Substantial and Final Completion Dates set forth in the Agreement and any other milestone dates set forth in the Construction Schedule.
- F. Contractor shall be responsible for arranging all shipments of Contractor-supplied equipment and materials to the Site in a timely manner so as not to cause any delay to the Work on the Critical Path of the Construction Schedule. Contractor shall not be entitled to an adjustment of the Contract Time or Contract Sum in the event that Contractor fails to timely place equipment or material orders. Contractor shall consign such shipments to itself as consignee at the Project shipping address, freight fully prepaid. Contractor shall be responsible for making demurrage agreements and settlement with carriers for its shipments. Contractor shall advise Owner in writing, in advance of major shipments of Contractor's equipment and materials, and shall coordinate with Owner the arrival, unloading, and release of carriers' equipment. Contractor shall promptly unload its shipments and promptly release carrier's equipment.
- G. Equipment and materials will be stored to ensure the preservation of their quality and fitness for the Work and to facilitate prompt and accessible inspection.
- H. In the event Owner purchases any equipment or materials before the Parties execute the Agreement, Owner shall assign to Contractor all rights, benefits, and obligations of Owner, as purchaser, under any purchase orders issued by Owner for such materials and equipment, including, without limitation, any warranties or guarantees related to such equipment or materials. Contractor assumes all rights, benefits and obligations of Owner, as purchaser, under such purchase orders, as of the date of this Agreement.
- I. Equipment and materials furnished by Owner and delivered after the execution of the Agreement, if any, shall be received by Contractor in the presence of the RE, RPR and/or Owner's Inspector and quantities and the fitness thereof shall be checked jointly by Contractor and the RE, RPR and/or Owner's Inspector. The delivery and acceptance of all such equipment and materials shall be recorded in writing, and Contractor shall evidence receipt and acceptance of such equipment and materials by signing forms satisfactory to Owner. The inspection of any such deliveries by the RE, RPR and/or Owner's Inspector shall not operate as a waiver nor relieve Contractor of its obligation to perform the Work and deliver the completed Project in accordance with the Contract Documents. Under no circumstance shall Contractor schedule the delivery of, nor receive any materials or equipment at the Site, unless and until the required property insurance is in place.

- J. Contractor shall carefully note any visible damage to equipment and material, whether furnished by Owner or Contractor, prior to Contractor's acceptance of delivery. After Contractor has accepted delivery of such equipment and materials, Contractor shall assume full responsibility for any loss of or damage to such equipment and materials but shall not be precluded from making a claim under an applicable builder's risk insurance policy. To the extent defects or deficiencies in the materials or equipment are discovered after acceptance of delivery, whether related to the Work performed under the Agreement or otherwise, Contractor shall retain the obligation to correct such defects including the enforcement of warranties or guarantees under the Agreement. Contractor shall look solely to the supplier or manufacturer for any recourse arising or resulting from any defects or deficiencies in any Owner-furnished equipment and materials and Contractor waives and releases any claims against Owner arising under the purchase order and shall indemnify, defend, and hold Owner harmless from and against any claims resulting from such defects or deficiencies. Likewise, Owner shall not be responsible for any defects or deficiencies in any equipment or materials sole sourced by Owner and Contractor's remedies and obligations in this Article shall apply equally to such sole sourced equipment or materials. Contractor acknowledges that the Contract Sum includes consideration paid by Owner to Contractor for the assumption of these risks and obligations.
- K. Contractor shall notify Owner of any equipment and materials supplied to Contractor by Owner which are surplus and, without additional compensation, shall cooperate with Owner in the disposition of such surplus as directed by Owner.
- L. Contractor shall notify Owner of any lack of, or requirement for, equipment and materials required under this Agreement to be supplied by Owner, if any, in sufficient time for Owner to furnish said equipment and material in advance of Contractor's need. In the event Owner-furnished equipment and materials are non-conforming or defective, Contractor shall promptly notify Owner of such defect or non-conformance.
- M. If applicable, Contractor shall take all reasonable steps to avoid standby time due to such defective, non-conforming or lack of Owner-furnished equipment and materials and continue progress of other portions of Work pending correction of such defective, non-conforming or delivery of such missing equipment and materials. If misfit or lack of Owner-furnished equipment or materials causes delay to the Critical Path of the Construction Schedule, Contractor shall be entitled to an adjustment of the Contract Time as provided in Article 27 [Schedule Changes (Force Majeure Events and Owner Delay)].

11. TESTING AND SAMPLING

A. Where called for in the Specifications, samples of materials in the quantity named shall be submitted to Engineer and returned without exceptions or modified to address any exceptions taken. Where tests are required, testing shall be made at the expense of Contractor, except as specifically and expressly otherwise called for in the Specifications. For materials covered by ASTM or Federal Specifications, unless otherwise stipulated, the required tests are to be made by the manufacturer and its certificate submitted to Engineer. The times for those activities shall be reflected in the Schedule of Submittals.

12. EQUIPMENT CERTIFICATION

- A. Contractor shall establish and maintain documented procedures to control, calibrate, and maintain inspection, measuring, and test equipment that Owner will use to inspect the Work. Contractor also shall provide documentation of the required training of personnel performing the Work.
 - a. Contractor shall identify all inspection, measuring, and test equipment to be utilized in the scope of the Work per Owner's Specifications and/or the requirements of the Contract Documents.
 - b. Contractor shall identify inspection, measuring, and test equipment with a suitable indicator or approved identification record to show the calibration status (a serial number traceable to the device calibration record meets the intent of the requirement).
 - c. A qualified in-house laboratory or a qualified commercial/independent laboratory shall conduct calibration of inspection, measuring, and test equipment every six (6) months, or sooner as needed. The Contractor shall maintain records as evidence of control. Accuracy will be as recommended by the manufacturer in its published literature, or if not published it will be +/- one percent (1%) or better.
 - d. The performance limits of all equipment being used must meet or exceed the requirements of the respective test. See specific Specifications for further details.
 - e. Subcontractors will be held to the same standard as provided in this Article 12 [Equipment Certifications].
- B. Documentation will be submitted upon request to Owner.

13. LINES AND GRADES

- A. Owner will establish principle reference lines or lot lines, benchmarks and all other lines and levels necessary to the location and construction of the Work under the Contract. Contractor shall give Owner and Engineer seventy-two (72) hours (three (3) business days) notice when construction stakes will be required.
- B. Engineer will set suitable stakes and marks showing the locations and elevations of the various parts of the Work and will furnish Contractor with ""cut sheets"" referring to the reference points. No Work shall be undertaken until such stakes and marks shall have been set by Engineer. Contractor shall take due and proper precautions for the preservation of these stakes and marks and shall see to it that the Work at all times proceeds in accordance therewith and shall provide all labor and material to set required batter boards and locate the Work accurately with reference to the above points.
- C. Owner will provide one set of line and grade stakes for sewer and water main construction. The cost of additional staking will be charged to Contractor.

14. PROTECTION OF WORK AND PROPERTY

- A. Contractor shall continuously maintain adequate protection of all its Work from damage and shall protect all public and private property abutting the Site from injury or loss arising in connection with this Contract. Contractor shall, without delay, make good any such damage, injury or loss, and shall defend and save the Owner and all other Indemnified Parties harmless from all such damages or injuries occurring because of the Work. Contractor shall furnish and maintain all passageways, barricades, guard fences, lights, and danger signals, provide watchmen and other facilities for protection required by public authority or by local conditions or as directed by Engineer, all at no additional cost to Owner.
- B. In an Emergency affecting the safety of life or of the Work or of adjoining property, Contractor, without special instruction or authorization from Owner, shall take such action as may be necessary to prevent such threatened damage, injury, or loss. Contractor shall immediately notify Engineer of all Emergency conditions, confirmed in writing within twenty-four (24) hours, and shall follow the instruction (if any) of Engineer; however, Contractor shall not allow the endangerment of life, or of the Work or of adjoining property while attempting to notify Engineer or waiting to determine whether Engineer will provide any instructions.
- C. In all cases, Contractor shall respond to all non-Emergency claims from property owners or the public within three (3) Days. Contractor shall immediately notify Engineer of all non-Emergency claims and shall follow the instruction (if any) of Engineer.
- D. Contractor shall assume full responsibility for loss or damage to the Work during the entire construction period resulting from caving earth and from storms, floods, frosts, and other adverse weather conditions, and from all other causes whatsoever not directly due to the acts or neglect of Owner, including fire, vandalism and malicious mischief, and shall turn the finished Work over to Owner in good condition and repair, at the time of the Final Payment but such responsibility shall not preclude the Contractor from making a claim under any builder's risk insurance policy. This provision shall not modify definition of Force Majeure, as defined in the Contract Documents. For the purpose of this Article, the decision of Engineer, with respect to existing conditions and for the need for corrective action by Contractor, shall be final.
- E. Unless coverage is provided for under an OCIP furnished by Owner, Contractor shall be responsible and shall cause each Subcontractor at any tier to be responsible for ensuring against any loss or damage to all owned, borrowed or rented property, including but not limited to tools, materials, supplies, equipment, forms, scaffolding, towers, staging, bunkhouses and other temporary structures including their contents, which do not form a permanent part of the Project. Owner shall in no event be liable for any loss or damage to any of the aforementioned items, or the Work connected with Contractor or Engineer, or employees, agents, or servants of same, which is not to be included in and remain a permanent part of the Project.

15. RESPONSIBILITY FOR ADJOINING STRUCTURE AND TREES

- A. Contractor shall assume full responsibility for the protection of all pavements, curbs, bridges, railroads, poles, buildings, and any other surface structure and all water mains,

sewers, telephone, gas mains, and other underground services and structures along and near the Work which may be affected by its operations, and shall indemnify, defend, and save harmless Owner and all other Indemnified Parties against all damages or alleged damages to any such structure arising out of its Work. Contractor shall bear the cost of repair or replacement of any such structure damaged as a result of its operations.

- B. No trees or shrubbery of any kind shall be removed or destroyed by Contractor unless otherwise specifically stipulated in the Contract Documents. Contractor will be held fully responsible for any damages caused by its Work to trees and shrubs adjoining the Work. Ample precautions shall be taken by Contractor to protect such trees and shrubs as are to remain in place by surrounding them with fences or other protection before construction Work begins. Shrubby that must be removed shall be preserved and replaced in a manner acceptable to Owner, or as specified by the Contract Documents.

16. MAINTENANCE OF SERVICE

- A. Drainage through existing sewers and drains shall always be maintained during construction and all nearby gutters shall be kept open for drainage. Where existing sewers are encountered in the line of the Work which interfere with the construction, the flow in the sewers, including both dry weather flow and storm flow, shall be maintained by constructing a satisfactory flume or by any other means allowed in writing by Engineer.
- B. All detours shown on the Drawings or required because of Contractor's operations shall be built and maintained at the Contractor's expense and fully comply with the requirements of authorities having jurisdiction over the Project.
- C. Safety precautions shall be followed at all street openings; substantial barricades shall be erected as deemed necessary to prevent accidents to vehicular or pedestrian traffic and red flags by day and red lights by night shall be diligently posted by Contractor at all points of possible danger. In case detours or other traffic instructions are necessary, suitable warning or direction signs shall be erected and maintained by Contractor. In all cases, the detour roadways shall be maintained and kept free from undue dust and ice conditions and reasonably graded.
- D. Barricades, flags, and other traffic control devices shall be in accordance with the current edition of the Michigan Manual of Uniform Traffic Control Devices.
- E. During the progress of the Work, Contractor shall accommodate both vehicular and foot traffic and shall provide free access to fire hydrants, water, and gas valves. Except as otherwise specified herein or as noted on the Drawings, street intersections may be blocked but only one-half at a time, and Contractor shall lay and maintain temporary driveways, bridges, and crossings that are, in the opinion of Engineer, necessary to reasonably accommodate the public.
- F. In the event Contractor fails to comply with these provisions, Owner may, with notice, cause the same to be done, and will deduct the cost of such work from any money due or to become due Contractor under this Contract, but the performance of such work by Owner, or at its insistence, shall serve in no way to release Contractor from its general or particular liability for the safety of the public or the Work.

17. STORAGE OF MATERIALS

Materials and equipment distributed, stored, and placed upon or near the Site of the Work shall at all times be so located so as not to interfere with the prosecution of Work or the work of other contractors under contract with Owner, if any; street drainage; fire hydrants or access thereto; or unreasonably inconvenience the public from access to or use of their property. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the site by the Contractor. All storage of materials and equipment shall comply with the manufacturer's recommendations, unless otherwise set forth in the Contract Documents. After equipment is no longer required for the Work, it shall be promptly removed from the site. Unless coverage is provided for under an OCIP furnished by Owner, protection of construction materials and equipment stored at the Site from weather, theft, damage, and all other adversity is solely the responsibility of Contractor. Contractor shall comply with all related local ordinances and obtain any necessary permits. Contractor also shall abide by all rules, regulations, and limitations regarding the use of the Site adopted by Owner, if any.

18. RELATION TO OTHER CONTRACTORS

Contractor shall prosecute the Work so as not to interfere with or injure the work of other contractors or workmen employed on adjoining or related work. Contractor shall promptly make good any injury or damage which may be done to such work by Contractor, its employees, agents, or anyone for whose conduct it is responsible. Should a contract for adjoining work be awarded to another contractor and should the work of one of these contracts interfere with that of the other, Owner shall work with both contractors to coordinate their respective work to minimize and mitigate any delay to their respective schedules.

19. SAFETY AND PROTECTION

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. Contractor's safety program shall comply with the provisions of MIOSHA Construction and Health Standards. Contractor shall provide the Owner's Safety Representative with a copy of Contractor's written safety plan prior to the commencement of the Work. Owner's Safety Representative shall have no duty to review the plan and shall assume no duty by doing so. Contractor also shall comply with Owner's safety and security requirements for the Project, as contained in the Contract Documents. Contractor shall comply with all safety policies, directions and requirements and shall not claim or assert entitlement to additional time or compensation for such compliance.
- B. Contractor shall take all reasonable precautions for the safety of and shall provide all reasonable protection to prevent damage, injury, or loss to the following:
 - a. All persons on the Work Site and all other persons who may be affected thereby
 - b. All Work, materials, and equipment to be incorporated therein, whether in storage on or off the Site, under the care, custody, or control of Contractor
 - c. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction

- d. The property of Owner or other separate contractors
 - e. All damage, injury, or loss to any of the above-mentioned property caused directly or indirectly, in whole or in part by Contractor and/or Contractor's Subcontractors, suppliers or any parties employed by any of them, shall be remedied by Contractor, at its sole expense.
- C. Prior to any excavation, Contractor shall contact MISS DIG for the location of underground pipeline and cable facilities and shall also notify representatives of other utilities located in the vicinity of the Work. MISS DIG requires three (3) working days advance notice for the staking of utilities.
- D. Contractor shall notify owners of adjacent properties when prosecution of the Work may affect them.
- E. Contractor shall erect and maintain, as required by law, or authorities having jurisdiction, all safeguards for the safety and protection of persons and property, including but not limited to, the posting of danger signs and other warnings against hazards, promulgate safety regulations, and notify owners and users of adjacent utilities of potentially dangerous conditions. At the end of each working day, Contractor shall be responsible for checking and confirming that the construction area is made as safe as possible for the public, that open trench areas are fenced and/or barricaded, that traveled roadways along the construction areas are secured with barricades, flashers, etc., and that equipment is stored and material stockpiled adequately away from roads, and that adequate sight distances are maintained.
- F. When the storage of hazardous materials or equipment is necessary for the execution of the Work, Contractor shall exercise the utmost care and shall carry on such activities under the supervision of properly qualified personnel. Persons involved in these activities shall be properly trained and licensed. Contractor is responsible for confirming such persons have proper qualifications. Explosives are banned from the Work Site. If Contractor wishes to use explosives, it shall obtain written permission to do so from Owner, submitting a plan to safely do so. Owner will determine in its sole and unfettered discretion, what additional insurances and safeguards will be required of Contractor to allow the use of explosives. Contractor shall not be entitled to any increase in the Contract Sum or Contract Times due to conditions imposed by Owner to allow explosives on Site.
- G. Owner's Safety Representative as defined above shall not have control over, or charge of, and shall not be responsible for safety precautions and programs in connection with the Work. Nonetheless, Owner's Safety Representative shall have the right, among others, to review and provide comment on Contractor's written safety plan, observe the implementation of Contractor's safety program while the Work is in progress, require Contractor's Safety Director to report on Contractor's safety measures and accident reporting procedures, and to stop the Work in the event Contractor is engaged in an unsafe practice and/or is failing to comply with applicable safety rules and regulations while prosecuting the Work. Any actions taken by Owner or its Safety Representative relative to safety on the Project site shall not constitute the assumption of, nor relieve Contractor of its obligation to comply with its contractual and statutory obligations to provide a safe workplace as provided in the Contract Documents. Contractor acknowledges and understands that Owner is relying on Contractor's experience,

knowledge and expertise in all matters pertaining to safety. The issuance by Owner's Safety Representative of any instruction or directive to improve safety at the site shall not be cause for Contractor to claim entitlement to additional time or compensation.

- H. Contractor shall designate a Safety Director as defined above. The responsibilities of the Safety Director shall include, but not be limited to the following:
 - a. Formulate, administer, and make necessary changes in Contractor's accident prevention program.
 - b. Make regular monthly reports to Contractor and Owner's Safety Representative of the safety process.
 - c. Maintain accident record system, make accident reports, investigate accidents, and check to see if corrective action is taken.
 - d. Assist in training employees in safety.
 - e. Make personal safety inspections and supervise safety inspections made by safety committees and others for the purpose of discovering and correcting unsafe work practices before they cause accidents.
 - f. Make certain that Contractor, its subcontractors, and employees comply with applicable federal, state, and local safety laws or ordinances.
 - g. Initiate and conduct activities that will stimulate and maintain the interest of employees of Contractor and its subcontractors in safety.
 - h. Work with safety committees, if any.
- I. Contractor certifies that Contractor, its employees, agents, subcontractors, and assigns will strictly follow all MIOSHA safety and health standards relevant to the Work performed for the Owner, its drainage districts, municipal customers, private systems, or other customers, at any and all times while the Work is being performed.
- J. If the Safety Director or other qualified or competent person is not present on the job site, then Work must not proceed until such person is present. Owner shall not be responsible for any delays and Contractor shall not be entitled to any additional time or compensation resulting from Contractor's failure to comply with this obligation.
- K. Prior to the commencement of the Work, Contractor shall provide Engineer and Owner's Safety Representative with the name of the Safety Director and a list of other qualified or competent persons who can serve in the capacity of the Safety Director should the Safety Director be absent from the site.
- L. If at any time, any of the information provided to Owner or Owner's Safety Representative regarding the identity of the Safety Director or any other qualified safety representatives of Contractor changes, Contractor shall notify Owner or Owner's Safety Representative in writing prior to the performance of any further Work on a job site.
- M. In any Emergency affecting the safety of persons or property, Contractor shall act

immediately, at Contractor's discretion, to prevent threatened damage or loss. The Contractor shall immediately stop any activity or operation affecting safety until the condition is corrected. If the Project is found not to follow safety standards, Contractor must take immediate action to bring the Project into compliance and complete the remedial action as soon as possible.

- N. Contractor hereby guarantees, as minimum standards to Owner, that all materials, supplies and equipment listed in the Bid, Agreement or purchase order meets the requirements, specifications and standards as provided for under the Michigan Occupational Safety and Health Act, Public Act No. 154 of 1974, as amended, and in force at the date hereof and all other applicable ordinances, codes, standards, etc. including the Michigan Right to Know Law.
- O. Contractor shall coordinate Safety and Protection programs with the authorities having jurisdiction over the construction sites (i.e.: MDOT, RCOC, etc.).
- P. Contractor also shall comply with all OCIP requirements and with the OCIP Safety Manual, if applicable to the Project.
- Q. Prior to the start of construction, Contractor shall submit a copy of its Confined Space Entry Program, complying with OSHA/MIOSHA requirements, to Owner's Safety Representative for review and approval.

20. CONTRACTOR'S SUPERVISION AND ORGANIZATION

- A. The Work under this Contract shall be under the direct charge and direction of Contractor. Contractor shall give efficient project management and superintendence to the Work, using its best skill and attention. Contractor shall, always during the prosecution of the Work, employ and maintain a competent full-time on-site superintendent and a full-time on-site project manager and any and all necessary foremen and assistants on the Site of the Work through Final Completion of the Work. Contractor shall hire separate employees to fulfill the responsibilities of the superintendent and project manager. The superintendent shall represent and have full authority to act for Contractor and all directions and communications given to the superintendent shall be binding as if given to Contractor.
- B. Contractor shall not employ a proposed superintendent or project manager to whom Owner or Engineer has made reasonable and timely objection. Contractor also shall not replace key personnel, including but not limited to, the project manager and site superintendents, except as provided herein, without written consent of Engineer, which shall not unreasonably be withheld or delayed.
- C. Owner reserves the right to require Contractor, or any Subcontractor, to remove and replace any superintendent, project manager, foreman, or other supervisory or management personnel, with or without cause. Cause for such removal and replacement shall include, but not be limited to: (1) failure or refusal to carry on the Work in accordance with the Contract Documents; (2) failure or refusal to carry on the Work in accordance with the instructions of Owner; (3) possession on the jobsite of a firearm, or knife with a blade more than three (3") inches in length, or other illegal weapon; (4) possession or use of alcoholic beverages on the Project Site, use or storage of fireworks at the Project Site, or possession or use of illegal substances, non-prescribed narcotics

and/or paraphernalia; (5) failure to follow safety policies or procedures; (6) conduct unbecoming a professional; (7) threats, bullying, verbal abuse, use of racial slurs or other inappropriate language; (8) actions that may hazard others; or (9) sexual harassment of others, on or off the Site. Contractor shall not be entitled to any additional time or compensation resulting from the removal and replacement of such personnel.

- D. Contractor shall employ only competent, efficient workers and shall not use on the Work any unfit person or one not skilled in the Work assigned to them. Contractor shall always enforce strict discipline and good order among its employees. Whenever Engineer shall notify Contractor, in writing, that any employee on the Project is, in the opinion of Engineer, careless, incompetent, disorderly, or otherwise unsatisfactory, such employee shall be discharged from Work on this Project or any other project for Owner and shall not be re-assigned to the Project or any other project of Owner except with the written consent of Engineer.
- E. Contractor shall establish and maintain an office on the Site of the Work, or at some convenient location adjacent thereto, during the prosecution of the Work. At all times during working hours, the office shall be staffed with a representative of Contractor authorized to receive and execute any and all orders, when given by Engineer; and such orders, when issued and received by said representative, shall be deemed to have been given to and received by Contractor.
- F. Contractor shall maintain at the Site for Owner and Engineer one copy of the Drawings, Specifications, Addenda, Change Orders, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals, Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to Engineer, Owner, and RPR and shall be delivered to Engineer and/or RPR as designated by Owner for submittal to Owner upon completion of the Work as a record of the Work as constructed.

21. INSPECTION OF WORK AND MATERIALS

- A. Owner, Engineer, RPR, and their respective employees shall at all reasonable times have the right to enter the Site, or any location where Contractor is storing materials for the Project, to inspect the Work and materials, and to ascertain whether Contractor is prosecuting the Work in accordance with the Contract Documents. Contractor shall furnish all reasonable facilities and grant ample time for such inspection. All materials shall be subject to mill and shop inspection as provided by the Specifications.
- B. Contractor shall promptly remove from the Site all materials rejected by Engineer as failing to meet Contract requirements, whether incorporated in the Work or not, and shall promptly replace and re-execute its own Work in accordance with the Contract without expense to the Owner. Contractor also shall bear the expense of making good all Work of other contractors destroyed or damaged by such removal or replacement.
- C. If Contractor does not remove such rejected Work and materials promptly, after receipt of written notice, Owner may remove them and store the material at the expense of Contractor.
- D. If a portion of the Work is covered contrary to Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by

Engineer, be uncovered for Engineer's examination and be replaced at Contractor's expense without change in the Contract Time.

- E. If a portion of the Work has been covered that Engineer has not specifically requested to examine prior to its being covered, Engineer may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at Contractor's expense unless the condition was caused by Owner or a separate contractor in which event Owner shall be responsible for payment of such costs.
- F. Contractor shall promptly correct Work rejected by Engineer or failing to conform to the requirements of the Contract Documents or damaged before Substantial Completion from any cause, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or damaged Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for Engineer's services and expenses made necessary thereby, shall be at Contractor's expense.
- G. Contractor shall give Owner seventy-two (72) hours (three (3) working days) written notice prior to the commencement of each major item of construction so that Owner has ample time to schedule inspection.

22. SUBMITTALS

- A. Contractor shall submit to Engineer full information as to the materials, equipment, and processes that Contractor proposes to furnish. This information shall be complete so that Engineer may determine if the proposed materials, equipment, and processes will meet Contract requirements. Engineer shall review and return the submittals with or without exceptions, and in no event shall Engineer's review be treated or deemed an approval, or as acceptance of a substitute or of an equal without fully complying with the processes required in the Contract Documents.
- B. Where called for in the Specifications, Contractor shall submit the Submittals to Engineer for review not less than two (2) hard copies and an electronic PDF file of Details, Specifications, Cuts and Shop Drawings of such equipment and structural work as may be required. By submitting the Submittals, Contractor represents to Owner and Engineer that 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. Each Submittal must bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that Submittal, and that Contractor approves the Submittal.
- C. Contractor is responsible for a complete and thorough review of the Contract Documents. Engineer will check and review the Submittals with reasonable promptness and within any time limits set forth in the Schedule of Submittals and will return them as hereinafter described, indicating by notation, or by written instructions, or other directions, any corrections, which in the judgment of Engineer, may be necessary to

meet the requirements of the Contract Documents. Contractor shall then review such notations, instructions, or directions, and if Contractor concurs therein, shall make, or have made such corrections, and shall, when so noted on the Submittals or requested by Engineer, resubmit corrected Submittals to Engineer as soon as possible, for final check and review. Should Contractor question or disagree with such notations, instructions, or directions, Contractor shall direct Engineer's attention to same for further clarification before resubmitting them. Corrections or changes indicated on submittals shall not be construed as an order for a change in the Work or to perform extra work and shall not constitute a change or alteration to the Contract Documents.

- D. The return of information covering materials, equipment, and processes by Engineer shall in no way release Contractor from its responsibility for the proper design, installation, and performance of any material, equipment, or arrangement, or from its liability to replace same should it prove defective or unsuitable.
- E. Prior to commencing any Work, Contractor shall provide a Schedule of Submittals indicating the dates upon which Contractor anticipates providing each submittal and the dates upon which Contractor anticipates obtaining a return of the submittal without exceptions. This Schedule of Submittals shall identify by Section, Subsection, and Article each item required by the Contract Documents to be submitted for review, record, or information. For products to be used in the Project the Schedule of Submittals shall include and identify the planned dates for material ordering; shop drawing, product data, and sample preparations; dates submittals are planned for; adequate time for Engineer's review; time required for fabrication and delivery of item; and the date on which the material is required on Site to comply with the installation activity shown on the Construction Schedule. This Schedule of Submittals shall allow sufficient time for review and consideration of the submittals and for correction of any exceptions identified by Engineer. The Schedule of Submittals shall be updated monthly to reflect the progress of submittals and returns without exception, adjustments for delays, and submittals where Engineer has indicated an exception and required changes to the submittal.
- F. The submission and returned without exceptions of the Schedule of Submittals and updates shall be a condition precedent to payment on any Application for Payment submitted under the terms of the Contract Documents. In addition, Engineer may refuse to recommend payment and Owner may refuse to make payment for any Work performed by the Contractor either (a) prior to obtaining a shop drawing submittal from Engineer, with a status of "Returned Without Exceptions or Reviewed with Exceptions Noted and Resubmission Not Required" with authorization to proceed as indicated or (b) if Contractor fails to obtain or provide any required reviews approvals, clearances, or permits required for the Work.
- G. No Work shall be undertaken, nor invoiced for, until Engineer has returned the Submittals either Returned Without Exceptions or Reviewed with Exceptions Noted and Resubmission Not Required with authorization to proceed. Submittals shall be revised as necessary until returned by Engineer without exceptions, or exceptions as noted with authorization to proceed.
- H. Engineer's review shall not relieve Contractor of responsibility for errors in the Submittals or other submissions, as Engineer's review is for the limited purpose of checking for conformance with Owner's objectives and goals. Review of such submittals will not be conducted for the purpose of determining their accuracy and completeness of 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 Contractor.

23. REQUEST FOR INFORMATION

- A. A Request for Information (RFI) is a written communication from Contractor to Engineer and/or RPR as designated by Owner requesting clarification of design Drawings, Specifications, or other Contract Documents, or requesting information needed to perform the Work and not included in the Contract Documents. Contractor also shall submit an RFI if Contractor discovers a conflict or inconsistency in the design documents that cannot be resolved by a thorough review of the Contract Documents or application of the priority of documents provisions set out herein.
- B. Each RFI shall include a realistic date by which Contractor needs a response to the RFI in order to avoid delay to the Project. Contractor shall allow ample time for review and response to the RFI given the nature and complexity of the issue. RFIs shall be submitted a minimum of five (5) working days before a response is necessary, but for complex issues or issues requiring extensive review or research, additional time may be required. RFIs shall be submitted immediately upon determination by Contractor that clarification or information is needed. Contractor shall not submit multiple RFI's at the same time to overwhelm Engineer or impact Engineer's ability to perform its duties regarding the Work on the Project.
- C. The Contractor is responsible for the complete and thorough review of the Contract Documents. Contractor shall not submit RFIs requesting information that is contained in the Drawings, Specifications, or other Contract Documents, or seeking information that already was supplied in response to prior RFIs, or for information which is available by applying industry standards, practices, common sense, or good workmanship. Contractor shall not submit multiple RFI's that can be answered by a single response and applied at multiple locations; or multiple RFIs requesting the same information in different ways. RFIs which are determined to request information that is available in the Contract Documents, or Engineer is asked to interpret and decide matters concerning the requirements of the Drawings and Specifications which Engineer determines to be clear and unambiguous or otherwise violate these provisions will be rejected and returned to Contractor by Engineer. RFIs also may be rejected by Engineer after responding to the RFI if Engineer subsequently discovers the RFI was submitted in violation of these provisions.
- D. If Contractor submits RFIs that are rejected by Engineer pursuant to this provision, Owner may, in Owner's sole discretion, back charge Contractor for the costs of review and analysis of the RFI by Owner and Engineer. The failure of Owner to implement such back charges shall not constitute an acknowledgement of the validity of the RFI, nor a waiver of the right to implement a back charge for the costs of review and analysis of the RFI.
- E. A response to an RFI is a document providing clarification, supplemental information, documentation, or explanation of inquired aspects of the Contract Documents, which involves neither adjustments in Contract Times nor Contract Sum, nor material changes to the general character of the Work as a whole. An RFI response conveys information in writing. Owner or Engineer may issue an RFI response.

- F. A response to an RFI also is not acknowledgement of a change, extra work, or justification for an extension of time. An RFI response is not a Work Directive or Change Order. Contractor acknowledges that it anticipated that clarifications of the design documents would be necessary, and Contractor has taken the need for such clarifications into account in its Contract Sum and Construction Schedule. If Contractor believes the response to an RFI results in a change in the scope of work for the Project, or if the response will impact the cost or time for completion of the Work, Contractor shall submit a Notice of Claim and shall proceed in accordance with the provisions for Change Orders and, if necessary, Disputed Work.

24. ERRORS, CORRECTIONS AND CHANGES IN DRAWINGS AND SPECIFICATIONS

- A. Prior to beginning the Work, or any portion thereof, Contractor shall examine and check all Drawings and Specifications furnished by Owner for dimensions, quantities, types of materials, and coordination with other parts of the Work on this or related contracts. Contractor shall verify the accuracy and completeness of all design Drawings and Specifications and shall promptly notify Owner of any errors or omissions in the same. Contractor assumes full responsibility for any errors or omissions that it knew or should have known to exist that it fails to promptly bring to Owner's attention. By starting Work, or any portion thereof, Contractor shall be deemed to have waived any objections to the Contract Documents.
- B. No structure, sewer pipe, water main, or fixtures thereto shall be placed or constructed under conditions that may be expected to result in Defective Work. If the soil is not sufficiently stable to properly support a structure, or if Contractor questions the materials prescribed, Contractor shall stop Work and immediately notify Engineer. Engineer shall review these conditions, and if deemed necessary, make changes in design, or suggest changes in construction procedures before Work continues. Contractor shall not be permitted to take advantage of any such error, omission or discrepancy, as Engineer will furnish full, revised instructions, and Contractor shall be expected to carry out such instructions as if originally specified. In no case shall Contractor proceed with the Work in uncertainty, and any Work performed by Contractor after the discovery of any error, omission, or discrepancy, until authorized, will be at Contractor's risk and responsibility and sole expense. Contractor is responsible for completing the Work to the satisfaction of Engineer, notwithstanding any minor omissions in the Contract Documents. Owner shall not be liable for Contractor's failure to review and compare Contract Documents prior to bidding or the start of the Work.
- C. If Contractor fails to perform its obligations under this Article 24 [Errors, Corrections and Changes in Drawings and Specifications], or reasonably should have recognized any errors, inconsistencies, omissions or nonconformity and failed to promptly notify Owner, Contractor shall pay such costs and damages to Owner, subject to Article 52 [Waiver of Consequential Damages], as would have been avoided if Contractor had performed such obligations.

25. CHANGES IN THE WORK

- A. Owner shall have the right to require, by written order, changes in, additions to, or deductions from the Work required by the Contract Documents provided such change, addition, or deduction does not change the general character of the Work as a whole.

Adjustments to the Contract Sum, if any, because of any change, addition, or deduction in the Work shall be authorized only by a fully executed Change Order. Any claim for an extension of the Contract Time shall be addressed at the same time. No claim for change, addition, or deduction, or adjustment of the Contract Sum or Contract Times shall be made or allowed unless submitted by Contractor in connection with a request for a written Work Directive from Owner specifically authorizing such change, addition, or deduction. Drawings, submittal exceptions or comments, responses to Requests for Information, oral instructions, field memoranda, or any other form of communication without a written Work Directive shall not be considered such authority. Disputed Work shall be addressed as set out herein.

- B. Where the written Work Directive reduces the quantity of Work to be performed, Contractor waives any claim for damages or lost profits anticipated on the Work deleted. Such directive also shall not constitute a partial termination. Contractor shall issue a credit for deleted Work in accordance with the Contract Documents. If Contractor fails to recognize an appropriate credit for deleted Work, as determined by Engineer, Owner shall issue a Change Order adjusting the Contract Sum in the amount estimated by Engineer, and Contractor may pursue any objection to such Change Order following the procedures for Disputed Work set out herein. If made, Contractor's claim is subject to audit.
- C. Upon the written recommendation of Engineer, Owner shall authorize a Work Directive requiring changes in, additions to, or deductions from the Work, or otherwise directing Contractor to proceed with specified work. When Owner and Contractor agree that additional compensation or time is required due to such work, Owner and Contractor shall negotiate a Change Order in accordance with the below provisions prior to proceeding with the work. If Contractor and Owner disagree as to whether any given activity constitutes changed or extra Work, or whether an adjustment of the Contract Sum or Contract Times is warranted ("Disputed Work"), Owner may issue a Work Directive instructing Contractor to proceed with the Disputed Work. The Work Directive shall not constitute evidence or an admission of any entitlement or intent to issue a Change Order and Contractor may submit a claim for additional time or compensation in accordance with the procedures provided herein. Until a written Change Order is negotiated and executed by Contractor and Owner, Contractor shall strictly comply with the Disputed Work provisions of the Contract Documents.
- D. If Contractor does not give notice to Owner or Engineer within three (3) Days of its claim for an adjustment to the Contract Sum or Contract Time and proceeds with the work without a written Change Order, or a Work Directive specifically directing Contractor to proceed with the Disputed Work, Contractor shall be barred from asserting such a claim in the future and Contractor hereby waives any compensation for any such task or work performed by Contractor regardless of whether or not Contractor supplied any additional services or materials to the Work.
- E. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change, and unchanged work and any and all adjustments to the Contract Sum and the Contract Time. By signing any Change Order, Contractor conclusively is agreeing the Change Order includes all costs, markup, and expenses, direct and indirect, associated with or attributable to the Change Order including any costs resulting from or caused by delays, impacts, acceleration,

disruption or loss of efficiency encountered by Contractor in the performance of the Work through the date of the Change Order and any additional time required (known or unknown) relating to or arising from the Work set forth on the Change Order, and Contractor forever waives and releases Owner from any costs, requests, demands, and the like which Contractor failed to include in the Change Order. Contractor shall include the Work covered by such Change Orders in its Applications for Payment as if such Work were originally part of the Contract Documents. In addition, Contractor for itself, its Subcontractors and any other persons or entities acting by, through or under them (collectively, "Releasers"), releases Owner, without any reservations, from any and all actual or potential claims or demands for delays, disruptions, additional work, additional compensation or an extension of the Contract Time, which Releasers may have, or in the future might have, against Owner, by reason of, based on, or in any manner connected with the subject of the Change Order or the performance of the Work identified in the Change Order. Contractor shall include the Work covered by such Change Orders in its Applications for Payment as if such Work were originally part of the Contract Documents.

- F. Contractor understands and agrees to Owner's directive to change, add, or deduct Work shall in no way invalidate the Contract and any change in the Work shall not operate to release any surety on any bond furnished by Contractor. Contractor accepts the responsibility to keep its surety informed of all Modifications to the Contract. The obligations of Contractor's surety shall not be reduced, waived, or adversely affected by the issuance of such Change Orders, additions, or deductions even if Contractor fails to inform surety of same and Owner shall not be required to obtain consent of the surety to such modifications.
- G. The contractor, without extra charge, shall make slight alterations as may be necessary to make adjustable parts fit to fixed parts, leaving all complete and in proper shape when done.
- H. Contractor, without extra charge, shall make other minor alterations, including grade and/or elevations, if Engineer determines such alterations are needed to complete the Work, such minor alterations may be requested by Engineer in the form of a response to an RFI, a comment on a Contractor Shop Drawing or other Submittal, a written Field Order, or verbal or other correspondence. Contractor may submit a Notice of Claim in accordance with the Contract Documents if it believes the proposed alteration by the Engineer changes the overall scope of the Work, increases the overall cost of completing the Work on the Project, or involves an extension of time.
- I. Quotations from Contractor for extra Work described in a Work Directive shall be valid for a period of not less than ninety (90) days from the time of issuance.
- J. All changes, additions or omissions in the Work ordered in writing by Owner shall be deemed to be a part of the Work hereunder and shall be performed and furnished in strict accordance with all the terms and provisions of the Contract Documents.

26. BASIS FOR DETERMINING COSTS OF CHANGES IN THE WORK

- A. Adjustments shall be determined by one or more of the following methods, Owner reserving the right to select the method or methods at the time the written order is issued:

- a. **An acceptable lump sum proposal:** To facilitate checking and acceptance, Contractor's proposal shall include all categories of labor, material, and equipment, shown on quantity take-offs, and shall be itemized with quantities and prices given for the various items. The contractor also shall provide a Time Impact Analysis as described in the Disputed Work Article herein to identify any delays or schedule impact related to the Change order.
 - b. **Unit price:** If the Work addressed by a Unit Price item is modified, the Unit Price shall apply to the Work and a Change Order shall be issued only for any additional costs demonstrated by the Contractor to result from the changes to the Unit Price Work. Unit Prices are binding for quantities to fifty percent (50%) above or below the estimated quantities in the Contract. At and above one hundred, fifty percent (150%) of the Unit Price Quantities in the Contract, Owner may request a suitable adjustment in the Unit Price. At or below fifty percent (50%) of the quantities estimated, the Owner may, at its sole discretion, increase the Unit Price by the net increase in Contractor's unit cost, but not more than thirty-five percent (35%) of the Contract Unit Price. To obtain an increase in Unit Price, Contractor must submit a Notice of Claim, and proceed as required in the Contract Documents.
 - c. **On a cost-plus-limited-basis:** Not to exceed a specified maximum limit of cost specified in the Change Order.
- B. **"COST"** as herein used shall be the actual and necessary costs incurred by Contractor by reasons of the change in the Work for labor, equipment and materials used to perform the extra work with sales tax.
- a. **Labor costs** shall be the amount shown on Contractor's certified payrolls with payroll taxes added when Contractor provides evidence that such taxes have been incurred. In no case shall the rates charged for labor exceed the rates paid by Contractor for the same class of labor employed by it to perform Work under the regular items of the Contract.
 - b. **Material costs** shall be the net price paid for materials delivered to the Site of the Work. If any material required to perform the extra work is later removed by the written order of Owner after it has been delivered to the Site or partially used or consumed by Contractor and consequently will not retain its full value for other uses, Contractor shall be allowed the actual cost of the deleted material less its fair market value as determined by Owner.
 - c. **Equipment rental** shall be the actual additional costs incurred by Contractor for necessary equipment to perform the extra work. Costs shall not be allowed in excess of usual rentals charged in the area for similar equipment of like size and condition, including the costs of necessary supplies and repairs for operating the equipment.
 - d. If the necessary equipment is already on Site, whether rented or Contractor-owned, Owner shall pay only additional equipment operating costs and the labor costs of the operator. Operating costs shall be the Estimated Operating Cost (hourly) as identified in the Rental Rate Blue Book created and maintained by Equipment Watch at <https://equipmentwatch.com/blue-book-cost-recovery/>.

Labor costs of the operator are not included in the rate and shall be approved separately from the equipment rates. No additional costs shall be allowed for the use of equipment already on the Site in connection with other Work.

- e. If equipment is not on the Site to perform the extra work, the cost of transporting such equipment to and from the Site shall be allowed, whether rented or owned by a Contractor. For Contractor-owned equipment not on the Site, the hourly rental rate will be equal to the FHWA Rate for Michigan as identified in the Rental Rate Blue Book created and maintained by Equipment Watch at <https://equipmentwatch.com/blue-book-cost-recovery/>. Labor costs of the operator are not included in the rate and shall be approved separately from equipment rates. For equipment that is not on Site and that is not Contractor-owner and that must be rented by the Contractor, the Contractor may submit invoices for reimbursement showing the actual cost paid by the Contractor to perform the extra work.
- f. For equipment not listed in the Rental Rate Blue Book created and maintained by Equipment Watch, the rental rate will be determined by using the rate listed for a similar piece of equipment or by proportioning a rate listed so that the capacity, size, horsepower, and age are properly considered.
- g. In the event that equipment actually employed on the Project Site for performance of extra work is placed on standby (engine and battery are not activated) for reasons beyond the control of Contractor, the rental rate for Contractor-owned equipment will be the Standby Rate for that equipment as identified in the Rental Rate Blue Book created and maintained by Equipment Watch at <https://equipmentwatch.com/blue-book-cost-recovery/>. No payment will be allowed for operating costs. This paragraph applies only to equipment necessary for the performance of extra work and Disputed or Change Order Work and any equipment placed on standby related to the change.
- h. The aggregate equipment rental charge for any single piece of equipment owned by Contractor used shall not exceed 50% of the purchase price of any comparable item. Once this limit is met, Owner's shall only be responsible to pay Contractor standard operating costs for such equipment, i.e., oil, gas, and similar expenses.
- i. **Insurance premiums** shall be limited to those based on labor payroll and to the types of insurance required by the Contract. The amount allowed shall be limited to the net costs incurred as determined from the labor payroll relating to the Work. Contractor shall, upon request of Owner, submit verification of the applicable insurance rates and premium computations.
- j. **"PLUS"** as herein used is defined as a percentage to be added to the items of "Cost" to cover superintendence, project management, use of ordinary and small tools, and all forms of overhead and administrative expense and profit, and the cost of bond and insurance premiums. The percentage mark-up shall not exceed fifteen percent (15%) on Work performed entirely by Contractor and fifteen percent (15%) for Work performed entirely by a Subcontractor. If the latter applies, Contractor shall be entitled to a five percent (5%) mark-up with an aggregate total of no more than twenty percent (20%) on Work performed by a

Subcontractor.

- k. **SPECIFIED MAXIMUM LIMIT OF "COST"** is the amount stated in the written order of Owner authorizing the change in the Work. The maximum amount that Contractor shall be paid is the "cost" of the work "plus" the percentage or the specified maximum, whichever is the lesser amount.
- l. **"Ordinary Tools"** are the tools owned by Contractor defined as having a cost new, or a net depreciated value of less than two thousand dollars (\$2,000.00) each, the costs for which are agreed to be included in the "PLUS" as set forth above. The cost of replacement bits, parts, and the like that wear out as a result of use on the Project having a new cost, or a net depreciated value of less than two thousand dollars (\$2,000.00) each, also shall be included in the "PLUS" as set forth above.
- C. Contractor shall provide a rider from the bonding company indicating that the penal sum of the bond has been increased by the amount of the change order.
- D. Contractor shall keep complete, accurate, daily records of the net actual cost of changes in the Work or claimed changes in the Work (known as "Daily Work Tickets"). These Daily Work Tickets shall include: the identification of the Work performed; the names and classifications of each worker employed in the Work; the equipment used in performing the Work; and the number of hours each piece of equipment was used for that portion of the Work; the identity, the number of workers, classification of workers, equipment, and hours employed by any Subcontractor who performs any portion of the Work; and the materials utilized on that day and actually installed or used up in performance of the Work. The Daily Work Ticket shall distinguish between Work performed as part of changed Work or claimed changed/extra Work, and other contract Work performed on that day. Contractor shall present such information at the end of each working day for verification by the Observer, in such form and at such times as Owner may direct. The Observer's execution of such Daily Work Tickets only shall serve to record the quantities reflected in the Daily Work Ticket and shall not bind Owner or Engineer in any manner, shall not relieve Contractor of any obligations under the Contract Documents, and shall not constitute an acknowledgement of entitlement for any Disputed Work. If the Observer disagrees with the quantities reflected on the Daily Work Ticket, or with the division of labor, equipment, or materials between the changed Work and Disputed Work, the Observer may note such disagreement on the Daily Work Ticket. Daily Work Tickets submitted after the end of the day on which the Work was performed shall not be valid and may, in the Observer's discretion, be returned to Contractor unexecuted. Contractor shall have no right to compensation for Work performed without signed Daily Work Tickets. Any terms written on either side of a Daily Work Ticket, or any substitute documentation are not binding on Owner or Engineer, and Contractor acknowledges that all such terms will be deemed meaningless. The designation of the Daily Work Tickets as "Extra Work Tickets" shall not acknowledge that the Work is extra or not part of the Contract requirements.
- E. **Costs Excluded:** The term "Cost" of the Work shall not include any of the following Items:
 - a. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety

managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in Article 26.B.a. [Basis For Determining Costs of Changes in the Work] above; all of which are to be considered administrative costs covered by the Contractor's mark-up

- b. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site
- c. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments
- d. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of Defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property
- e. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Article 26.B [Basis For Determining Costs of Changes in the Work] above
- f. Any Contractor costs incurred by, or associated with the development, preparation, and prosecution of a claim
- g. Any cost or expense not specifically included in the Cost of Work as set out in the Contract Documents.

27. SCHEDULE CHANGES (FORCE MAJEURE EVENTS AND OWNER DELAY)

- A. A Change Order signed by Owner is the only method to change the Contract Times. Any claim for an extension or reduction of the Contract Times shall be made in accordance with the Contract Documents.
- B. The Contract Times may be extended for a Force Majeure Event and/or Owner Delay in accordance with the terms and conditions of the Contract Documents.
- C. In the event of a delay resulting from a Force Majeure Event, Contractor shall only be entitled to an extension of the Contract Times with no additional compensation or modification of the Contract Sum.
- D. Strictly in the event of an Owner Delay, the following provisions apply:
 - a. Owner may expressly order Contractor, in writing, to suspend, delay, or interrupt all or any part of the Work on the Project for such period as it may determine to be appropriate for the convenience of the Owner.
 - b. Upon receipt of written notice from Owner to suspend, delay, or interrupt the

Work, and within the time stated in such notice, Contractor shall suspend shipment and delivery of material and stop any part or all of the Work and operations hereunder for the periods of time designated by Owner in the notice. Contractor shall immediately confer with Owner relative to Probable duration of the suspension or stoppage; Delays and extensions of time resulting therefrom; The reduction or elimination of Contractor's field costs; and Prospective costs and expenses which may result directly from the suspension or stoppage; including, but not limited to, the costs to Contractor of complying with Owner's directions relative to the preservation of the Work in progress and the protection of existing facilities, materials, and equipment on or in transit to the Project Site.

- c. Owner may, by further written notice, require Contractor to promptly resume all or any part of the Work and operations required by the resumption notice.
- d. Claims of Contractor for costs and damages resulting from Owner's suspension, delay, or interruption of the Work shall be determined in accordance with the following:
 - i. If the performance of all or any part of the Work on the Project is otherwise delayed or interrupted by an Owner Delay; and
 - ii. If such act causes delays in the Critical Path Activity, then the Construction Schedule and the Contract Times shall be adjusted by Change Order but only to the extent necessary to compensate for such delay; then
 - iii. Owner shall make an adjustment to the Contract Sum only for the following items:
 - 1) The cost of equipment necessary for the performance of Contract Work required to remain on the Project Site that could not be used for any Work whatsoever and could not be relocated to perform other Work on other sites, calculated as set out in Article 26.B.c. [Basis For Determining Costs of Changes in the Work] herein;
 - 2) Field general conditions actually incurred by Contractor for the cost to maintain the Project Site and the required facilities for Contractor, Engineer, and Owner, for the duration of the delay, or the increase in the time on the Critical Path, whichever is less.
 - 3) Actual salaried supervision costs for supervision required on Site for an extended period where the supervisor could not be released from the Project and where no Contract Work could be performed.
 - 4) No payment shall be due to Contractor for home office overhead (including but not limited to Eichleay); equipment not necessary on Site during the delay period or which is used in performing other work during the delay period; consequential damages, including anticipated profits, loss, or interference with bonding capacity; mark-up of any sort; insurance; interest; or any other costs not specifically delineated herein.

- 5) Contractor agrees to accept the specified costs as full compensation for any Owner Delay whether agreed or disputed.
 - 6) All costs shall be subject to audit by Owner.
- e. Contractor shall have no further claim whatsoever against Owner for damage or loss of any kind resulting from suspension of operations or delays or interruptions caused by an Owner Delay.
- f. Immediately upon (and not more than three (3) Days following the commencement of) the occurrence of an Owner Delay, the Contractor shall provide the Owner with a Notice of Claim in the form and substance set forth in the Disputed Work provisions herein for which it may claim an extension of time because of an Owner Delay, including those causes of which Owner has knowledge. The Notice of Claim shall specifically state that an extension is or may be claimed; identify such cause and source of the delay and describe, as fully as practicable, at that time, the nature and expected duration of the delay and its effect on the completion of that part of the Work identified in the notice; explain why Contractor believes that the delay constitutes an Owner Delay and why the alleged delay should be compensable; identify the causal connection between the alleged delay and the resultant damage; affirm of the absence of any concurrent delay effecting completion of the Project for which Contractor is responsible; and any other relevant details.
- g. Contractor shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently but only for the actual period of delay to the Work on the Critical Path of the Construction Schedule irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating concurrently results from any act, fault, or omission of Contractor or of its subcontractors, and would of itself, irrespective of the concurrent causes including delays attributable to Owner, have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault, or omission. Moreover, Contractor shall not be entitled to an equitable adjustment of the Contract Sum and Owner shall not be entitled to recover liquidated damages for the duration of the concurrent delay attributable to its own acts or omissions. Notwithstanding anything to the contrary, each party shall retain their respective rights and remedies under the Contract for any delays to the Contract Time or Construction Schedule which are nonconcurrent.
- h. Since the possible necessity for an extension of time may materially alter the scheduling plans, and other actions of Owner and since, with sufficient notice, Owner may, if it should so elect, attempt to mitigate the effect of a delay for which an extension of time might be claimed, the giving of written notice as required above, and all supporting details, shall be of the essence of Contractor's obligations hereunder and failure of Contractor to give written notice as required above shall be a conclusive waiver of an extension of time for the cause of delay in question. It shall in all cases be presumed that no extension, or further extension, of time is due unless Contractor shall affirmatively demonstrate the extent thereof to the reasonable satisfaction of Owner. Contractor shall maintain adequate records as provided in Article 27.D [Schedule Changes (Owner Delay)]

supporting any claim for an extension of time, and in the absence of such records, this presumption shall be deemed conclusive.

- i. If Contractor intends to claim that it has suffered a loss of productivity, Contractor must produce accurate records to demonstrate the cause of the disruption and how much time was lost as a result. By way of example, but not limitation, Contractor must contemporaneously track such impacts on its operations during the course of construction and demonstrate a direct cause-and-effect link, using project documents, to establish causation and damages, particularly if it intends to rely on published loss of productivity studies. In the case of a continuing delay, only one Claim is necessary.
 - j. In the case of a continuing cause of Owner Delay, only one Notice is necessary. If Owner acknowledges the asserted Owner Delay, the parties will process the claim using the Change Order process. If Owner determines that no Owner Delay has occurred, the claim will be addressed under the Disputed Work provisions. Unless and until Owner recognizes an Owner Delay, Contractor should proceed with the requirements for Disputed Work until Owner makes its decision.
 - k. No adjustments shall be made for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of Contractor; to the extent the delay and associated costs could have been mitigated by Contractor; or for which an equitable adjustment is provided or excluded under any other provision of this Agreement.
 - l. Owner's exercise of any of its rights under this Agreement, including, without limitation, Owner's stoppage of all or a part of the Work whether directly or through the RE or RPR in the event that Contractor is engaged in an unsafe practice and/or is failing to comply with applicable safety rules and regulations while prosecuting the Work which may result in personal injury, property damage, a violation of Laws and Regulations or the performance of non-conforming Work or Owner's requirement of correction or re-execution of any Defective Work shall not, under any circumstances, be construed as interference with Contractor's performance of the Work or constitute an Owner Delay.
- E. In addition to the foregoing, within seven (7) days of any event which would warrant an extension of the Contract Time, whether resulting from an Owner Delay or Force Majeure Event, Contractor shall submit a report styled, "Special Project Delay Report", which shall be submitted in a letter format and updated and submitted not less frequently than monthly, with each update lettered sequentially. In the case of a continuing cause of delay, Contractor shall submit weekly written reports identifying in detail the Work activities that Contractor claims are being delayed by such continuing cause of delay.
- a. Contractor shall maintain a log of Special Project Delay Reports identifying the original issuance date, the date of the latest update and a summary of the status of the delay and impact on the Construction Schedule. The log will be reviewed weekly at which times Owner and Contractor shall discuss impacts, opportunities for recovery, and cost implications. Such discussions shall be memorialized by Contractor in meeting minutes. The timely submission of a Special Project Delay

Report shall be a prerequisite to any changes to any completion date in the Construction Schedule. The Construction Schedule update required by the Contract Documents or any other form of communication or notice shall not satisfy this obligation.

- F. A Special Project Delay Report shall be required when:
- a. A delay to a task or activity will cause a delay to the completion of any Milestone and Contractor intends to request a change to the Construction Schedule or the scheduled date of Substantial Completion or Final Completion; or
 - b. Contractor reasonably anticipates the need to request, at any time in the future, a change in the commencement or completion date of any specific Milestone Date, Substantial Completion or Final Completion Date; or
 - c. Contractor at any time reasonably anticipates that it may not be able to complete the Work on or before the scheduled date of a Milestone, Substantial Completion or Final Completion Date.
- G. Each Special Project Delay Report shall set forth a detailed explanation for the delay, shall set forth in Contractor's program for recovery and for mitigating any adverse effects of the projected delay. The Special Project Delay Report also shall include the modification requested by Contractor, if any, of the Construction Schedule together with a detailed schedule analysis supporting such modification as provided in Article 30.C. [Disputed Work]. A Claim for an extension of the Contract Time in excess of fifteen (15) days shall be considered only if Contractor provides the Time Impact Analysis required therein. Each Special Project Delay Report also shall indicate whether Contractor considers the delay to constitute an Excusable Event of Delay. If Contractor fails to make a timely report, it shall not be entitled to any relief or any modifications to the Construction Schedule or the Contract Time.
- H. Owner shall review each Special Project Delay Report in a timely manner to determine whether it fulfills the requirements of the Contract and shall determine, in its sole discretion, whether the delay specified (or any part thereof) is an Excusable Event of Delay.
- I. If the event(s) of delay is determined to constitute an Excusable Event of Delay, the Construction Schedule or milestone dates, as applicable, shall be modified by Change Order. The period of any extension of time shall be only that which is necessary to make up the time actually lost for a work item identifiable on the Critical Path of the Construction Schedule at the time in which the delay occurs. Owner may defer all or part of its decision on an extension of time and any extension may be rescinded or shortened if it is subsequently found that the delay can or could have been overcome or reduced by the exercise of reasonable precautions, efforts, and measures. Owner's decision on any request for an extension of time shall take into consideration schedule float with respect to impacted activities and tasks on the most recent updated Construction Schedule. Contractor shall mitigate the effects of any delay.
- J. If the Project is delayed due to an Excusable Event of Delay, Owner may, in lieu of amending the Construction Schedule or extending the Substantial Completion or other Milestone dates, as applicable, direct Contractor to accelerate the Work, in writing, in

order to meet the Contract Times in the Contract Documents. Owner will pay Contractor for accelerating the Work only if necessitated by an Owner Delay or by a Force Majeure Event and acceleration is required by Owner; provided Contractor has strictly, not substantially, complied with all claims and/or Disputed Work notices, and other submittal requirements identified in the Contract Documents. Within five (5) days of a written request from Owner, Contractor shall provide Owner with an acceleration plan and an itemization of all costs for implementing that plan as well as an itemization of all costs that Contractor will claim if completion of the Project is extended because of an Owner Delay. Nothing contained herein shall waive Owner's right to demand that Contractor submit a Recovery Plan or implement Additional Measures due to delays attributable to negligence or breach by Contractor, its Subcontractors or anyone for whose acts they are responsible as provided in Article 40 [Progress of Work].

- K. Each Subcontractor shall be bound by the foregoing provisions.

28. PATENTS

- A. Contractor shall pay all royalties and license fees and shall hold and save Owner and any Indemnified Party harmless from all liability of any nature or kind, including cost and expenses, for, or account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the Contract, including its use by Owner, unless otherwise specifically stipulated in the Contract Documents. In this respect Contractor shall defend all suits or claims for infringement of any patent or license right.
- B. In the event that any claim, suit, or action at law or in equity of any kind, whatsoever, is brought against Owner or any Indemnified Party, involving any such patent or license rights, Owner shall have the right to, and may retain from, any money due or that may become due to Contractor, an amount deemed necessary by Owner to protect Owner and the Indemnified Parties against loss. Owner will retain such sum until the claim or suit has been resolved and satisfactory evidence of the resolution has been furnished to Owner.

29. SUBSTITUTES AND OR-EQUALS

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words such as no like, equivalent, or "or-equal" item or no substitution is permitted, alternative or substitute items of material or equipment of other suppliers may be submitted to Engineer for review under the circumstances described below.
- a. Or-Equal Items: If, in Engineer's sole discretion, an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items.

- b. For the purposes of this Article, a proposed item of material or equipment will be considered functionally equal to an item so named if in the exercise of reasonable judgment Engineer determines that:
 - i. it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - ii. it will reliably perform, at least equally well, the function and achieve the results imposed by the design concept of the completed Project as a functioning whole;
 - iii. it has a proven record of performance and availability of responsive service that equals or exceeds the specified item; and
 - iv. Contractor certifies that, if approved and incorporated into the Work the Contract Sum and Contract Times will not increase; it will conform substantially to the detailed requirements of the item named in the Contract Documents; it will require no changes in substrates, work on which it depends, nor services; and it will not have operating, maintenance or life cycle costs greater than the specified item.
- c. Substitute Items: If, in Engineer's sole discretion, an item of material or equipment proposed by Contractor does not qualify as an "or equal" item under these provisions, it will be considered a proposed substitute item.
 - i. Contractor shall submit sufficient information as provided below to allow Engineer to determine that the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute, therefore. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
 - ii. The requirements for review by Engineer will be as set forth herein, as supplemented in the Specifications and as Engineer may decide is appropriate under the circumstances.
 - iii. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use.
 - iv. The application shall certify that the proposed substitute item will perform adequately the functions and achieve the results called for by the general design; has a proven record of performance and availability of responsive service that equals or exceeds the specified item; be similar in substance to that specified; be suited to the same use as that specified; and it will not have operating, maintenance or life cycle cost greater than the specified item.
 - v. Will state: the extent, if any, to which the use of the proposed substitute item will impact Contractor's ability to meet the Substantial Completion date; whether or not use of the proposed substitute item in the Work will

require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other Work on the Project) to adapt the design to the proposed substitute item; that Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by Engineer; and whether or not incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

- vi. Will identify: all variations of the proposed substitute item from that specified; available engineering, sales, maintenance, repair, and replacement services;
 - vii. Shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change; and
 - viii. Will acknowledge that Contractor is not entitled to any compensation for any delay caused by the proposed substitution or related thereto.
- C. **Substitute Construction Methods or Procedures:** If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute mean, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided above.
- D. **Engineer's Evaluation:** Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to this provision. If multiple substitutes are submitted by the Contractor, Contractor shall provide an order of priority in which Engineer is requested to review various proposed substitutes. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed, or utilized until Engineer's review is complete, which will be evidenced by either a Change Order for a substitute or a Shop Drawing for an "or equal" indicating that the item was found to qualify as an "Or Equal" subject to these provisions and marked "Returned Without Exceptions." Engineer will advise Contractor in writing of any negative determination or conditions on the use of an Or Equal or Substitution. Contractor waives and releases Engineer and Owner from any claim for delay or costs incurred by Engineer's evaluation of substitute items submitted by Contractor.
- E. **Special Guarantee:** Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- F. **Engineer's Cost Reimbursement:** Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to this Article. Whether or not Engineer approves a substitute item so proposed or submitted by Contractor, Contractor shall reimburse Owner for the charges of Engineer for evaluating each such proposed substitute. Contractor also shall reimburse Owner for the charges of Engineer for making

changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.

- G. Contractor's Expense: Contractor shall provide all data in support of any proposed substitute or "or equal" at Contractor's expense.
- H. Conditions on Approval: If deemed appropriate, Engineer may approve the substitute only with conditions required of Contractor. Such conditions may include guarantees, no cost modifications to the Work to accommodate the substitution, credits to Owner for reduced costs, or other accommodations or requirements.
- I. Approval of an "or-equal" of substitute shall not constitute adoption of the "or-equal" or substitute as part of Engineer's design. Contractor shall remain responsible for all errors or the failure of the "or-equal" or substitute to perform as anticipated.

30. DISPUTED WORK

- A. Intent of Dispute Resolution Procedures and Waiver of Claims
 - a. The intention of this Article is to bring any potential claims to the attention of Engineer and Owner as early as possible in order to allow mitigation efforts and expedited resolution of claims or potential claims. Contractor waives its right to any additional compensation and/or extension of time for any claim that is not submitted in accordance with this Article. This Article applies to all claims for extra Work, changed Work, delay, acceleration, constructive changes or constructive acceleration, disruption to the orderly performance of the Work, loss of productivity and every other claim for additional compensation by Contractor in relation to the Contract Documents, or to the Work on the Project. The requirements of this Article may not be waived by the express or implied statements, representations, or actions of Engineer or Owner. The failure to enforce these provisions on one or multiple occasions shall not constitute a waiver of these provisions. Upon request of Contractor, Owner may, by specific written authorization, extend the time for Contractor to provide any of the requisite documentation or acts set out herein. Such authorization shall not be implied by actions, inactions, or creative interpretation of written documents. Nor shall such authorization be valid unless issued and executed by Owner. Owner shall have no obligation to extend the time requested by Contractor, but requests for such extension shall not be unreasonably denied if timely filed and properly supported. Under no circumstances shall Owner have any obligation to approve a request for an extension of time made by Contractor after the time to provide notice, documentation or take a specific action has expired (regardless of reasonableness). No extensions will be permitted which prevent Owner from having sufficient time to respond or react to a claim or which render impractical the Disputed Work or Dispute Resolution provisions of the Contract Documents.
 - b. Nothing in this provision shall relieve Contractor of any other obligations under the Contract.
- B. Dispute Resolution Steps
 - a. Step 1: Notice of Claim

- i. Contractor shall not be entitled to payment of any additional compensation or an extension of time unless the Contractor has strictly complied with the requirements for written Notice of Claim specified herein or elsewhere in the Contract Documents such as Article 27 [Schedule Changes (Force Majeure Events and Owner Delay)] addressing delays due to Force Majeure Events and Owner Delays. Compliance with this Article shall not be required if the claim falls within the scope of the Differing Site Conditions provisions of these General Conditions unless and until Owner decides as to whether a differing condition described in that Article exists on the Project. Contractor must submit a Notice of Claim when proceeding with Work ordered by a Work Directive where the Contractor intends to seek an adjustment of the Contract Sum, or an extension of Contract Times for the Work specified in the Work Directive.
 - ii. If Contractor seeks compensation for Work or materials which it claims is not included in the original scope of the Work or Contract Sum, and not subject to a Work Directive, the Contractor shall submit a written Notice of Claim to the Engineer, with a copy to Owner, within three (3) calendar days of discovering the basis for the Claim and in any event before the Contractor begins the Work on which the Contractor bases the claim. For Emergency Work, the Contractor shall provide the Notice of Claim as soon as practical, but in no event more than three (3) calendar days after beginning the Work.
 - iii. Contractor's written Notice of Claim shall be submitted on the appropriate form furnished by Owner and shall be certified with a reference to the Federal False Claims Act. The Notice shall detail the reasons Contractor is seeking additional time and/or money and provide an itemization of estimated costs. The Notice shall also state whether the affected Work impacts the Critical Path for completion of the Project. If such notice is not given, the Contractor shall be deemed to have waived its claim for extra compensation for that claim. A Notice of Claim submitted after the costs have been incurred shall not satisfy the requirements of this Article and the claim shall be deemed waived.
- b. Step 2: Maintenance of Executed Cost Records
 - i. Contractor shall track all costs incurred and submit Daily Work Tickets for signature as specified in Article 27.D [Schedule Changes (Force Majeure Events and Owner Delay)] of these General Conditions. Contractor shall furnish all Daily Work Tickets with its Notice of Claim. If the Contractor is unable to provide properly completed Daily Work Tickets on the form supplied by Owner for each and every day that Contractor seeks to be paid, Contractor may submit other documentation for the missing Daily Work Tickets together with an explanation as to why Contractor did not obtain Daily Work tickets for this work. Substitute documentation may be submitted only for occasional missing days, which Engineer shall have no obligation to accept. Engineer's occasional acceptance of such documentation shall not create a waiver of Contractor's obligation to

provide Daily Work Tickets. If Engineer accepts the substitute documentation, the claim shall be addressed as set out herein. If Engineer rejects the substitute documentation, and Contractor fails to furnish acceptable alternative documentation within fifteen (15) days of the performance of the work, then Contractor will be deemed to have waived its right to compensation for any work not reported on a Daily Work Ticket signed by the Observer.

c. Step 3: Substantiation of Claim

- i. Within fifteen (15) calendar days of completing the affected Work, the Contractor shall submit substantiation of the Contractor's actual costs together with a Time Impact Analysis of the actual impact of the Work on the Schedule. The Time Impact Analysis shall identify the actual impact of the Work on the Critical Path of the Construction Schedule and shall not be based on fragments inserted into the baseline schedule to create theoretical schedule impacts. The Time Impact Analysis also shall identify and include all revisions to schedule logic, added or deleted activities, changes in Activity identification, overlapping of Work items and/or re-sequencing that can be applied to eliminate or reduce the impact on the Schedule. Each claim shall be addressed in a separate Notice of Claim and substantiation of actual costs. Multiple claims shall not be combined into a single notice and costs and time incurred must be set out separately for each claim.
- ii. Failure to provide any portion of the required notification or substantiation of the Claims as required herein shall constitute a waiver of the Contractor's Claim and all costs and time impact related thereto.

d. Step 4: Inspection of Documents

- i. Upon request by Owner, Contractor shall make available for inspection and copying any and all documents or records in Contractor's possession which pertain to the Claim. Owner is not required to provide the reasoning or analysis that is the basis for any request for documents.

e. Step 5: Claim Negotiations

- i. Engineer shall notify Contractor of Owner's general position on Contractor's Claim as soon as reasonably practical. Within three (3) business days of receipt of such notice, Contractor shall identify a representative to meet with representatives of Owner and Engineer. Such a meeting shall be scheduled within thirty (30) days following issuance of the notice. The meeting date may be deferred for good cause by either party. At the meeting, Contractor shall present and support every aspect of the Claim. Such representative shall have full authority to negotiate and resolve the Claim, including the authority to withdraw the claim in its entirety. Multiple claims, for which the Contractor has provided separate notices and support as set out above, may be addressed in a single meeting. Owner shall furnish a list of questions, concerns, or issues with the Claim not less than five (5) days prior to the meeting. Contractor shall

designate such representative or representatives as necessary to address each claim that will be considered in the meeting.

- ii. If the claim or claims are not resolved at the initial negotiation meeting, Contractor shall appoint a second representative at a higher level of authority within Contractor's organization. Owner likewise will appoint a representative of higher authority to meet with Contractor's Representative. The higher-level representatives will meet with Engineer to further negotiate and discuss the unresolved claims within thirty (30) days of the conclusion of the initial meeting unless this date is extended by Owner. The participants of the original meeting may attend this second meeting if requested by Contractor and agreed by Owner.
 - iii. If no resolution is reached following the initial negotiation, upon request of Owner, the Escrow Bid Documents may be jointly reviewed by Owner, Engineer, and Contractor in order to assist in the analysis and/or resolution of disputed claims. Owner need not justify the request to review the Escrow Bid Documents. When requested by Owner prior to the second level of negotiations, the Escrow Bid Documents shall be examined during or prior to such meeting and, if necessary, the time for negotiations may be extended by written authorization from Owner in order to allow sufficient time to review the Documents.
 - iv. The failure to participate in the negotiating meeting shall constitute a waiver of all claims to be addressed in the meeting. Owner may record the meeting, if desired, and either party may bring an additional participant to take notes and prepare minutes of the meeting. The meeting shall be considered a confidential settlement discussion pursuant to Michigan Rule of Evidence 408 and nothing said or done at the meeting shall be admissible in any proceeding whatsoever as evidence of liability or any asserted defense to a claim, whether or not otherwise admissible under the Michigan Rules of Evidence, other than as necessary to establish whether Contractor failed to appoint and provide a representative in accordance with the requirements of this Article. Upon the request of Owner, Contractor shall execute a letter acknowledging this understanding.
- f. Step 6: Owner's Final Decision
- i. If the Claim or any part of the Claim is not resolved at the claim meeting, Engineer will notify Contractor in writing of Owner's final decision on the Claim. Within thirty (30) Days of receipt of this decision, Contractor shall either accept the final decision, or provide written objection to the decision. The failure to timely object to Owner's decision shall constitute acceptance of that decision and a waiver of all objections and any right to further compensation or time for the issues raised in the Claim.
 - ii. In the event that Owner, in its sole discretion, determines that the Claim brought by Contractor is prohibited, made in bad faith, substantially lacks merit and/or Contractor has waived the right to assert such Claim in the Contract Documents, Owner may deduct from the unpaid Contract Sum

or invoice Contractor all fees, charges and expenses of Engineer, its consultants, Owner's attorneys and other professionals, as well as Owner's staff time arising and/or resulting from the assertion of the prohibited Claim. In addition, the assertion of such Claim(s) shall be considered by Owner in connection with the evaluation of Contractor's overall performance of the Work when awarding future contracts. No such costs incurred by Owner in evaluating and processing the prohibited Claim shall be considered consequential damages under the terms of the Contract, and, if Owner incurs additional third-party engineering, consulting, or administrative costs as a result of any delay in completion of the Project by Contractor, such costs shall be recoverable by Owner in addition to any liquidated damages that Owner is entitled to recover.

- g. Step 7: Contract Dispute Resolution
 - i. All claims not resolved through the process set out herein shall be addressed after Final Completion through the Dispute Resolution procedure set out in the Agreement.

31. DIFFERING SITE CONDITIONS

- A. If a Contractor discovers one or both of the following physical conditions of the surface or subsurface at the Site, before disturbing the physical condition, Contractor shall promptly notify Engineer of the physical condition in writing of:
 - a. A subsurface or a latent physical condition at the Site which materially differs from that indicated in the Contract Documents; or
 - b. An unknown physical condition at the Site of an unusual nature materially differing from those ordinarily encountered and generally recognized as inherent in the Work of the character provided for in the Contract Documents.
- B. Upon Contractor providing Engineer with a written notice under this Article, Engineer shall promptly investigate the physical condition on behalf of Owner and report the results of such investigation to Owner. If Engineer determines that the alleged condition is a Differing Site Condition under the Contract, Engineer will consult with Contractor to review the available options to resolve the Differing Site Condition and provide written direction accordingly.
- C. Owner shall issue through Engineer, a written determination as to whether it agrees that the physical conditions do materially differ, and if so, Owner will issue an appropriate Change Order in accordance with the Change Order provisions set out herein.
- D. Contractor may not make a claim for additional costs or time because of a physical condition as described herein unless Contractor has complied with the notice requirements of this Article. The failure to provide the required notice constitutes a waiver of Contractor's claim. Owner may extend the time required for notice under this Article by providing, through Engineer, written instructions to Contractor to proceed with the Work while a determination is being made as to whether the physical conditions do materially differ.

- E. If Contractor disputes Owner's determination, Contractor shall provide a Notice of Claim and pursue its remedies as provided in Article 30 [Disputed Work] herein. The failure to provide a Notice of Claim in conformance with the provisions of Article 30 [Disputed Work] prior to proceeding with any further Work on the claimed differing condition shall constitute acceptance of Owner's determination and a waiver of all claims for additional time or money arising from the alleged Differing Site Condition.
- F. This Article is not applicable to any conditions or claims other than the conditions specified in this Article A.a. or Article A.b. of this provision.

32. CLEAN UP AND RESTORATION

Contractor shall, as directed by Owner, remove at its own expense from Owner's property, easements, and rights-of-way and from all public and private property all temporary structures, rubbish and waste materials resulting from its operation. Unless otherwise stated in the Drawings or Specifications, Contractor shall restore the job Site to substantially the same condition as existed prior to beginning of Work.

33. USE OF COMPLETED PORTIONS OF THE WORK

Owner may, at any time during progress of the Work, after written notice to Contractor, take over and place in service any completed portions of the Work which are ready for service, although the entire Work of the Contract is not fully completed, and notwithstanding the time for completion of the entire Work or such portions may not have expired. The use of any portion of the Work by Owner under the provisions of this Article shall not constitute acknowledgment of Final Completion of the entire Work or any portion thereof or of the Project.

34. FAIR EMPLOYMENT PRACTICES ACT

Contractor agrees that neither it nor its Subcontractors will discriminate against any employee or applicant for employment, to be employed in the performance of this Contract, with respect to its hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of its race, color, religion, national origin or ancestry, nor shall age or sex be a condition of employment except where based upon a bona fide occupational qualification. Breach of these covenants may be regarded as a material breach of this Contract.

35. LABOR HARMONY

It is Contractor's sole and exclusive responsibility to provide and maintain harmony between and among the tradespersons employed by it, each of its Subcontractors, and any other tradespersons working on the Project. Owner may, but is not required to, implement necessary procedures to restore labor harmony or to enable Work to proceed timely in the event of a labor discord. Contractor shall be responsible to Owner for all costs, expenses, fees, attorney fees or other expenses resulting from Contractor's failure to maintain Labor Harmony.

36. AUTHORITY

No agent of Owner nor Engineer shall have power to revoke, alter, enlarge, or relax the stipulations or requirements of the Contract Documents, except insofar as such authority may be specifically conferred by the Contract Documents themselves, without the formal written authorization to do so, conferred by the Contract of which the Specifications are a part, or by

ordinance, resolution, or other usual official action by Owner.

37. SANITARY REGULATIONS

Necessary sanitary conveniences for the use of laborers on the Site, properly secluded from public observation, shall be constructed, and maintained in sanitary condition by Contractor, and their use shall be strictly enforced. Contractor shall be responsible for initiating and maintaining all the required sanitary facilities as indicated in the provisions of MIOSHA Standards, Part I, "Construction Safety Standards".

38. SUNDAY, HOLIDAY AND NIGHT WORK

Allowable working hours will be controlled by local ordinances, and no Work will be permitted at other hours or on Sundays or holidays, except to save property or life or as specifically authorized or directed by Owner. In all cases Contractor must comply with local ordinances.

39. SCHEDULING

The schedule requirements are specified in the General Specifications.

40. PROGRESS OF WORK

- A. The Work shall be prosecuted regularly and without interruption, unless Owner shall otherwise specifically direct, with such force and at such points as to ensure its full completion within the Contract Times.
- B. If Owner determines that Contractor has fallen behind in the progress of the Work or is in danger of falling behind at its then-current rate of progress, or is responsible for any Construction Schedule delays, Owner may direct Contractor, on written notice, to take all steps Owner deems necessary to improve the rate of progress of the Work, including requiring Contractor to increase its labor force, number of shifts and/or overtime operations, days of Work, or to provide additional equipment or materials ("Additional Measures"). Within three (3) Days of such written notice from Owner, Contractor shall submit for Owner's review, a Recovery Plan and schedule to demonstrate how Contractor will implement the required steps to attain the required rate of progress. Contractor will implement the Recovery Plan immediately upon return of the plan without exceptions. If Owner determines that Contractor's Recovery Plan will not attain the required rate of progress, Contractor will take the steps Owner directs in that regard and perform the Work accordingly, all without additional cost to Owner. If Contractor fails to submit or follow the Recovery Plan as required or perform the Work in accordance with Owner's directives, Owner may, following three (3) Days notice to Contractor, perform the Work as Owner deems necessary to attain the required rate of progress. Owner may deduct from any payment due to Contractor or collect directly from Contractor on demand all costs, expenses, and damages incurred or suffered by Owner in connection with Contractor's delay in the progress of the Work or to the Construction Schedule.

41. TIME OF COMPLETION

The time allowed for completion of the Work contemplated in this Contract shall be the date set forth as the Contract Time(s). Any returns to Contractor of "No Exceptions" of any Construction Schedule, Schedule Update, or Schedule Revision, if any, shall not relieve Contractor of the

responsibility to complete the Work within the Contract Time(s).

42. TIME IS ESSENCE OF CONTRACT

It is expressly understood and agreed by the parties that the time specified for the completion of the Work is the essence of this Contract, and Contractor shall not be entitled to claim complete and final performance of the Contract unless the Work is satisfactorily completed in every respect, within the time herein specified.

43. ESTIMATED QUANTITIES

The quantities of the various classes of Work to be performed and materials to be furnished under this Contract, which have been estimated as stated elsewhere herein, are approximate and only for the purpose of comparing, on a uniform basis, the Bids offered for the Work under this Contract; and neither Owner nor its agents are to be held responsible should any of the estimated quantities be found incorrect during the construction of the Work; and Contractor shall make no claim for anticipated profit, nor for loss of profit, or for additional compensation of any type, or for reimbursement of any cost or expenses of any type, because of a difference between the quantities of the various classes of Work actually performed or materials actually delivered, and the estimated quantities as herein stated, except as described in Article 26.A.b. [Basis for Determining Costs of Changes in the Work].

44. FORFEITURE OF CONTRACT

- A. If Contractor abandons the Work under this Contract, or if Owner determines that Contractor is not prosecuting the Work at a reasonable rate of progress, or fails to comply with all or any of the terms and requirements herein set forth, then Owner shall have the right to take possession of the Work, including Contractor's plant, supply, and materials, at any time after having notified Contractor in writing to discontinue the Work for said cause or causes. Such action shall not affect the right of Owner to recover damages resulting from Contractor's forfeiture. Upon receiving such notice, Contractor shall immediately grant Owner safe and peaceable possession of the Work, including the plants, and shall then cease to have control over any portion thereof or the labor employed thereon.
- B. Owner may then proceed to complete the Work herein specified by Contract or otherwise; and the entire cost of same shall be charged to Contractor and deducted from any sum or sums due or to become due under the Contract; the excess cost, if any, to be paid by Contractor or its sureties, to said Owner.

45. NO WAIVER OF CONTRACT

- A. Neither the acceptance of the whole or any part of the Work by Owner or its Engineer, or any of its agents, nor any order, measurements, or certificate by Engineer, nor any order by Owner for the payment of money, nor any payment for the whole or any part of the Work by Owner, nor any extension of time, nor any possession taken by Owner or its agents, shall operate as a waiver for any portion of the Contract or any power therein reserved to Owner, or any right to damages therein provided; nor shall any waiver of any breach of the Contract be held to be a waiver of any other or subsequent breach.
- B. No failure or course of conduct of Owner to enforce the terms and conditions of the

Contract Documents shall be treated as a waiver of any contract provision, it being agreed and understood the actions and/or inactions of Owner shall not relieve Contractor of each of its obligations under the Contract Documents. No waiver may be orally conveyed. No waiver of any provision of the Contract Documents may be expressed or implied in any document other than a Change Order.

46. PAYMENT NOT A WAIVER

Any payment to Contractor or the issuance of any Certificate of Substantial Completion or Acknowledgement of Substantial Completion or Certificate of Final Completion or Acknowledgement of Final Completion shall not constitute acceptance by Owner of the quality of the Work that is the subject of such payment, nor shall it be deemed a waiver with respect to any claims that Owner may have with respect to such Work. Moreover, the payment of any amount to Contractor shall not preclude Owner from demanding and receiving from Contractor or its sureties, separately or collectively, such sums as may have been improperly paid Contractor by reason of any return or certificate which has been untrue or incorrectly compiled. The making of Final Payment shall not constitute a waiver of any claims by Owner including, without limitation, any claims arising from or relating to: (1) liens, claims, security interests or encumbrances arising out of the Contract Documents and which are unsettled; (2) the failure of the Work to comply with the requirements of the Contract Documents; (3) the terms of any express or implied warranties, or special warranties required by the Contract Documents; and (4) an audit of Contractor's or any Subcontractor's or Vendor's books and records. Acceptance of Final Payment by Contractor, a Subcontractor or Vendor shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled in Contractor's Declaration to Owner.

47. WARRANTY-GUARANTEE

- A. Contractor hereby makes the following guarantees with respect to the Work undertaken by Contractor pursuant to this Contract:
 - a. Contractor's obligation to correct defects, deficiencies or non-conforming Work performed under the Contract, either by Contractor or its Subcontractors, or the material suppliers, under the guarantees provided herein shall apply to all defects or non-conformities in the Work that appear within the later of two (2) years following Substantial Completion of the Work, such longer period for any component of the Work as specified in the Contract Documents, or any statutory time period and shall provide a Maintenance and Guarantee Bond in connection with such obligation; provided, however, that if such defects or non-conforming work are latent in nature; i.e., not reasonably ascertainable prior to or within two (2) years following Substantial Completion of the Work, then Contractor's obligation to correct defects, deficiencies or non-conforming Work shall apply to each such latent defect or non-conforming Work that appears for a period of time equal to the statute of limitation period applicable to such latent defect or non-conforming work, or for the period for which Contractor is contractually obligated to correct said latent defect or non-conforming Work, whichever is longer.
 - b. The obligations of Contractor herein shall extend to the correction of the defect or non-conforming Work, the removal and replacement of other portions of Work that are necessary to be removed to gain access to Work to be corrected, and the repair or replacement of any damage caused by said defect or non-

conforming Work. Any corrective work required hereunder shall be accomplished by repairing or replacing the defect or non-conformity. All defective or non-conforming materials which Owner requires to be replaced shall be removed promptly from the Site by Contractor, at its sole cost and expense. If Contractor fails promptly to commence correcting any non-conformity or defect as directed by Owner, Owner may correct such defect or non-conformity and charge the cost thereof to Contractor in the event of a default by Contractor.

- c. Any warranty or guarantee, including, but not limited to, any warranty provided by an equipment or material supplier, shall not act as a limitation on any claim or cause of action otherwise available to Owner against Contractor, and shall not shorten any applicable statute of limitation, nor impact any other right or claim Owner has against Contractor.

48. MOBILIZATION

- A. **Description:** This item shall consist of preparatory work and operations, including, but not limited to, those necessary for the movement of personnel, equipment, supplies, and incidentals to the Project Site; for the establishment of Contractor's offices, buildings, and other facilities necessary to undertake the Work on the Project; and for other Work and operations which must be performed, or for expenses incurred, prior to beginning Work on the various contract items on the Project Site. Mobilization also shall include pre-construction costs, exclusive of bidding costs, which are necessary direct costs to the Project and are of a general nature rather than directly and are not attributable to other pay items under the Contract. Mobilization shall also include all bonds (i.e. Performance, Labor and Material, and Maintenance and Guarantee) and insurance costs.
- B. **Measurement and Payment:** Mobilization will be paid for at the Contract Sum on a lump sum basis based on the following schedule:

Percentage of Original Contract Amount Earned	Percentage of Bid Price for Mobilization Allowed
5%	50%
10%	75%
25%	100%

- a. Owner may, at his sole discretion, agree to partial payment for mobilization based on actual demonstrated and documented cost.
- b. The total sum of all payments for mobilization shall not exceed the original Contract amount bid for mobilization, regardless of the fact that Contractor may have, for any reason, shut down its Work on the Project, moved equipment away from the Project and then back again, or for additional quantities or items of Work added to the Contract.
- c. Nothing herein shall be construed to limit or preclude partial payments otherwise provided by the Contract.

- d. When a pay item for mobilization is not included in the Bid, payment for any such Work required is considered to have been included in payments made for other items of Work.

49. HAZARDOUS SUBSTANCES

- A. Owner shall be responsible for any Hazardous Substance, as defined in Michigan Natural Resources and Environmental Protection Act (NREPA), Act 451 of 1994, as amended, uncovered or revealed at the Site which (1) was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work, (2) as to which Owner did not otherwise give Contractor any notice of the possible presence of such substance, (3) was not discovered by Contractor if it did a reasonable and competent inspection and investigation of the Site, and (4) which presents a substantial danger, unless certain safety precautions are adopted, to persons exposed thereto in connection with the Work at the Site. Under no other circumstances shall Owner have any responsibility or liability whatsoever for any such hazardous substance, including without limitation any hazardous substance brought to the Site by Contractor, any Subcontractors, suppliers, or anyone else for whom Contractor is responsible.
- B. If Contractor discovers any undisclosed and previously unsuspected hazardous substance that falls within the definition set forth in the preceding Article 49.A [Hazardous Substances], Contractor shall immediately: stop all Work in connection with such hazardous substance and in any area affected thereby except in an Emergency and immediately notify Owner and Engineer and thereafter confirm such notice in writing such that Owner is able to comply with any Emergency abatement measures that may be required by law. Owner shall promptly consult with Engineer concerning the necessity, if any, for Owner to retain a qualified expert to evaluate the alleged hazardous condition or take corrective or abatement action, if any. Contractor shall not be required to resume Work in connection with such hazardous condition or in any such affected area until after Owner has obtained any required authorization related thereto if any and delivered to Contractor special written notice: specifying that such condition and any affected area is or has been rendered safe for the resumption of Work, or specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to whether Contractor is entitled to any adjustment, or to the amount or extent of an adjustment, if any, in Contract Sum or Contract Times as a result of such Work stoppage or such special conditions under which Work is agreed by Contractor to be resumed, Owner will issue a Work Directive and Contractor may make a claim therefore as provided in Article 31 [Differing Site Conditions] herein.
- C. If Contractor improperly stops and/or delays the Work by unreasonably alleging the presence of hazardous substances or conditions, or by unreasonably refusing to adopt certain safety precautions that would allow Work to continue safely, Contractor shall not be entitled to any adjustment of the Contract Times or to any additional compensation of any type, and shall be liable for any loss, cost or damages incurred by Owner, as well as liquidated damages to the extent provided in the Contract Documents.
- D. If after receipt of such special written notice Contractor does not agree to resume such Work based on a reasonable belief that it would be unsafe to do so, supported by appropriate evidence and expert opinion, then Owner may order any portion of the Work

that would involve contact with any hazardous substances to be deleted from the Work. If Owner and Contractor cannot agree as to whether Contractor is entitled to any adjustment, or to the amount or extent of an adjustment, if any, in the Contract Sum or Contract Times as a result of deleting such portion of the Work, then either party may make a claim therefore as provided in the Contract Documents. Owner may have such deleted portion of the Work performed by Owner's own employees or by any contractor of Owner's choice.

- E. Contractor shall indemnify and reimburse the Owner for all liabilities incurred by, penalties assessed against, costs incurred by, and damages suffered by Owner, including, without limitation, any fines and penalties imposed or assessed by a governmental agency, arising or resulting from (1) the remediation of a material or substance required by the Contract Documents that Contractor brings to the site and negligently handles, or (2) the remediation of a material or substance Contractor brings to the site if such material or substance is not required by the Contract Documents, or (3) where Contractor fails to perform its obligations under this Article 49.B, except to the extent that the cost and expense are due to the fault or negligence of Owner. The obligations of Contractor under this Article 49.E. shall survive the termination of the Agreement and shall be fulfilled at no cost or expense to Owner.

50. INSURANCE AND INDEMNIFICATION

- A. Contractor shall secure the insurance set forth herein. The insurance required of the Contractor is as follows:
- a. Prior to commencement of the Work, Contractor shall purchase and maintain during the term of the Project such insurance as will protect Contractor, Owner and Engineer from claims arising out of the Work described in this Contract and performed by Contractor, Subcontractor(s) or Sub-Subcontractor(s) consisting of:
- i. Workers' Compensation insurance including Employer's Liability to cover employee injuries or disease compensable under the Workers' Compensation Statutes of the State of Michigan; disability benefit laws, if any; or Federal compensation acts such as U.S. Longshoremen or Harbor Workers', Maritime Employment, or Railroad Compensation Act(s), if applicable. Self-insurance plans approved by the regulatory authorities in the State of Michigan are acceptable.
- ii. Commercial General Liability policy to cover bodily injury to persons other than employees and for damage to tangible property, including loss of use thereof, including the following exposures:
- 1) All premises and operations;
 - 2) Explosions, collapses and underground damage;
 - 3) Contractual Liability for the obligations assumed in the General and Supplementary Conditions of this Contract;
 - 4) The usual Personal Injury Liability endorsement with no exclusions pertaining to employment; and

- 5) Products and Completed Operations coverage. This coverage shall extend through the Contract guarantee period.
 - 6) The Commercial General Liability Policy shall have "project aggregate" limits, and the certificate shall contain an appropriate notation clearly evidencing such "project aggregate" coverage to the full amount and extent of the minimums required under the General Conditions and/or Supplementary Conditions herein.
- iii. A Comprehensive Automobile Liability policy to cover bodily injury and property damage arising out of the ownership, maintenance, or use of any motor vehicle, including owned, non-owned and hired vehicles. In light of standard policy provisions concerning (1) loading and unloading and (2) definitions pertaining to motor vehicles licensed for road use versus unlicensed or self-propelled construction equipment, Owner strongly recommends that Contractor obtain the Commercial General Liability and the Comprehensive Auto Liability from the same insurance carrier, though not necessarily in one policy.
 - iv. Contractor will purchase for Owner an Owner's and Contractor's Protective (OCP) Liability policy to protect Owner, Engineer, their respective consultants, agents, employees, and such public corporations in whose jurisdiction the Work is located for their contingent liability for Work performed by Contractor, the Subcontractor(s), or the Sub-Subcontractor(s) under this contract.
 - v. Contractor shall purchase a Builder's Risk-Installation Floater in a form acceptable to the Owner for the life of the Contract on insurable portions of the Project for the benefit of Owner, Contractor and Subcontractors, as their interests may appear. Insurable portions of the Project include, but are not necessarily limited to, building of major structures such as pumping stations, sewage treatment plants, bridges, diversion chambers and meter chambers and other property whether in place, stored at the job Site, stored elsewhere, or in transit at the risk of the insured(s). The policy shall be procured in the amount of the initial Contract Sum, plus the value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis as of the time of any loss. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than Owner has an insurable interest in the Project, whichever is later. Contractor shall provide a copy of the Builder's Risk policy for review by Owner. If Owner believes additional coverage is necessary, Owner shall notify Contractor in writing within seven (7) days of receiving the policy. Coverage shall be affected on an "All Risk" form including, but not limited to, the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary

buildings and debris removal including demolition occasioned by enforcement of any applicable Laws and Regulations. Contractor may arrange for such deductibles as it deems to be within its ability to assume, but Contractor will be held solely responsible for the amount of such deductible and for any coinsurance penalties. Any insured loss shall be adjusted with Owner and Contractor and paid to Owner and Contractor as Trustee for the other insured(s).

- vi. Umbrella or Excess Liability: Owner or its representative may, for certain projects, require limits higher than those stated in this Article 50.B which follows. Contractor is granted the option of arranging coverage under a single policy for the full limit required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy equal to the total limit(s) requested. Umbrella or Excess policy wording shall be at least as broad as the primary or underlying policy(ies) and shall apply both to Contractor's general liability and to its automobile liability insurance.
- vii. Railroad Protective Liability: Where such an exposure exists, Contractor will provide coverage in the name of each railroad company having jurisdiction over rights-of-way across which Work under the Contract is to be performed. The form of policy and the limits of liability shall be determined by the railroad company(ies) involved. See Contract Documents for limits and coverage requested.
- viii. Professional Liability: Contractor shall cause any professional providing design or engineering services to Contractor as required by the Contract Documents to maintain professional liability insurance.
- ix. Contractor shall purchase Contractor's Pollution Liability (CPL) Insurance and include the additional insureds as required by the Contract Documents.
- x. Impairment of Coverage: Owner may in its discretion, at any time and without payment of further compensation or fees to Contractor, require Contractor to obtain and provide satisfactory evidence of appropriate supplemental, additional or replacement insurance coverage (of any type required hereunder) in the event of any cancellation, lapse, impairment, restriction or reservation that would have the effect of either removing, reducing or rendering insecure any of the coverage required of Contractor hereunder.

B. Limits of Liability for Contractor: The required limits of liability for insurance coverage requested in this Article 50.A. shall be not less than the following:

a. Workers' Compensation

Coverage A - Compensation	Statutory
Coverage B - Employer's Liability	\$ 500,000 (Each Accident)
Employer's Liability	\$ 500,000 (Disease Policy Limit)
Employer's Liability -	\$ 500,000 (Disease - Each Employee)

b. Commercial General Liability

General Aggregate	\$ 2,000,000
Products-Comp/Ops Aggregate	\$ 2,000,000
Personal & Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000
Fire Damage (any one fire)	\$ 300,000
Medical Expense (any one person)	\$ 5,000

c. Comprehensive Automobile Liability

Combined single limit	\$ 1,000,000
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d. OCP

Each occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000

e. Builder's Risk Installation Floater: Cost to Replace at Time of Loss

f. Umbrella or Excess Liability \$ 5,000,000

g. Professional Liability Insurance \$ 1,000,000

h. Contractor's Pollution Liability Insurance (CPL)

General Aggregate	\$ 2,000,000
Each Occurrence	\$ 2,000,000

i. The required limits of liability for insurance coverage in the Contract Documents will be primary and non-contributory to any other insurance available to the additional insureds.

C. In the event Owner establishes an OCIP for the Project, Contractor will enroll, and cause all eligible subcontractors to enroll, and participate in the program.

a. The eligibility requirements for the OCIP as well as coverage and liability limits and responsibility for deductibles will be set forth with particularity in an OCIP Terms for Contract to be provided to Contractor.

b. If a claim is filed under the OCIP and litigation ensues, irrespective of whether Owner is named as a party, Owner and the OCIP Insurance Administrator shall be copied on all notices of claim made by any insured under this OCIP. For claims in which Owner is not a defending party, and there are no asserted conflicts of interest between Owner and any other insureds under the OCIP, Owner shall be entitled to participate in (but not control) the defense of any "claims" made against other insureds under the OCIP, including, but not limited to, the other insureds' provision of copies of all pleadings, discovery and expert witness reports to Owner and Owner's right to attend all settlement conferences and mediation/facilitation hearings with the other insureds.

D. Insurance-Other Requirements

- a. Notice of Cancellation or Intent not to Renew: Policies will be endorsed to provide that at least thirty (30) days written notice shall be given to Owner and to Engineer of cancellation or of intent not to renew.
- b. Evidence of Coverage: Prior to commencement of the Work, Contractor shall furnish to Owner, Certificates of Insurance in force on the standard Accord Form. Other forms of Certificates are acceptable only if (1) they include all the items prescribed in the Accord Form, including agreement to cancellation provisions outlined in this Article 50.C.a. above, and Article 50.C.b they have been approved by Owner and Engineer in writing. Owner reserves the right to request complete copies of policies if deemed necessary to ascertain details of coverage not provided by the certificates. Such policy copies shall be "Originally Signed Copies," and so designated. The Certificate(s) for the required Commercial General Liability coverage shall clearly evidence "project aggregate" policy limits, as specified in this Article 50.B.b. hereof.
- c. Additional Named Insured and Additional Insured: Insurance requirements shall include the Additional Named insured and Additional Insured as set forth in the Supplementary Conditions hereto plus any additional municipality that may be created and exists at the time of award of this Contract.
- d. Qualification of Insurers
 - i. To determine financial strength and reputation of insurance carriers, all companies providing the coverage required shall be licensed or approved by the Insurance Bureau of the State of Michigan and shall have a financial rating not lower than XI and a policyholder's service rating no lower than A- as listed in A.M. Best's Key Rating Guide, current edition. Companies with ratings lower than A-: XI will be acceptable only upon written consent of Owner.
 - ii. All sureties shall be from U.S. Treasury list. In the event of a surety delisting, delisting, bankruptcy, insolvency, or loss of right to do business in the state where the Project is located, Contractor agrees to replace such surety with one that complies with the Contract Requirements as no increase in cost to Owner. Insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.
- e. Acceptance of Bonds and Insurance; No Option to Replace: If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with this Article on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within ten (10) days after receipt of the certificates (or other evidence requested) as required by the Contract Documents. Owner and Contractor each shall provide to the other such additional information regarding the insurance provided as the other may reasonably request. If either party does not purchase or

maintain all the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, Owner will make the final and ultimate decision as to acceptability of the insurance and bonds provided. Contractor may elect to obtain equivalent bonds or insurance to protect its interests at Contractor's own expense. If Contractor secures quotations or additional insurance for this Project, Owner has the specific right to initiate and continue direct dialogue with Contractor's insurance agency, agent, carrier, wholesaler, or broker of such insurance. Owner shall decide whether a Change Order shall be issued to adjust the Contract Sum accordingly.

- f. Subcontractors, Sub-subcontractors, and suppliers will be required to have the same insurance as Contractor as specified in the General and Supplementary Conditions, except as specifically modified above or approved in writing by Owner.
- g. To the extent such coverage is commercially available, the entire amount of Contractor's liability insurance policy coverage limits, identified in the policy and on the Certificate of Insurance, must, under the policy, be available to pay damages for which Contractor becomes liable, or for which the insured assumes liability under the indemnity agreement herein contained, and such coverage amount shall not be subject to reduction or set off by virtue of investigation or defense costs incurred by Contractor's insurer, including, without limitation, the insurer's payment of attorney fees, expert witness and consultant fees, investigation expenses, or other costs incurred to defend a claim. In addition, in all cases, unreasonable or excessive fees and costs paid by the insurer to defend a claim shall not reduce the limit of liability coverage available to pay Owner's damages.
- h. The entire amount of Contractor's liability insurance policy coverage limits shall be payable by Contractor's insurer, with no deductible to be paid by, or self-insured retention to be attributed to, Contractor unless this requirement is waived by Owner. Contractor's insurance policy shall be primary to any policies carried by Owner. Contractor's Certificate of Insurance must set forth the nature and amount of any such deductible or self-insured retention.
- i. If Contractor's liability insurance coverage is subject to any exclusions, reduction of policy limits or limitations not common to the type of coverage being provided, such exclusions or limitations shall be noted on the Certificate of Insurance.
- j. In the event that any of the policies of insurance or insurance coverage identified on Contractor's Certificate of Insurance are canceled or modified, or in the event that Contractor incurs liability losses, either due to activities under this Contract, or due to other activities not under this Contract but covered by the same insurance, and such losses exhaust the aggregate limits of Contractor's liability insurance, then in that event Owner may in its discretion either suspend Contractor's operations or activities under this Contract or terminate this Contract, and withhold payment for work performed on the Contract.
- k. The maintenance in full current force and effect of such form and amount of

insurance as Owner shall have accepted, shall be a condition precedent to Contractor's exercise or enforcement of any rights under the Contract.

- l. If Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Article, Owner may, but shall not be obligated to, upon five (5) days written notice to Contractor, purchase such insurance on behalf of Contractor and shall be entitled to be reimbursed by Contractor upon demand. Upon purchase of such insurance, Owner shall issue, and Contractor shall execute a Change Order reducing the Contract Sum by the cost of the insurance. Contractor shall furnish all necessary information to incept and maintain such replacement insurance.
- m. When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, Contractor shall supply Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, Contractor also shall furnish Owner with a certified copy of the renewal or replacement policy unless Owner provides Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to Owner and written by carriers acceptable to Owner.
- n. Notwithstanding anything to the contrary in the Contract Documents, if Contractor has procured any insurance coverage and/or limits (either primary or on an excess basis) that exceed the minimum acceptable coverage and/or limits in this Article, the broadest coverage and highest limits actually afforded under the applicable policy(ies) of insurance shall be considered the coverage and limits that are required by the Agreement and such coverage and limits shall be provided in full to the additional insureds and indemnified parties under the Agreement at no additional cost to Owner.
- o. Owner does not in any way warrant that the minimum insurance limits required by the Contract Documents are sufficient to protect Contractor or its Subcontractors from liabilities that might arise out of the performance of the Work under this Agreement by Contractor, its Subcontractors or their respective agents, representatives, employees, and Contractor is free to purchase such additional insurance as it may determine to be necessary.
- p. Contractor's liability and indemnification obligations to Owner under the Agreement shall not be relieved or diminished by securing insurance coverage in accordance with Owner's requirements or by Owner's acceptance of certificates of insurance or policies. Any acceptance of insurance coverage by Owner shall not be construed as accepting in any way deficiencies in the insurance. Claims or damages which are attributable to Contractor or its Subcontractors that fall outside of any insurance coverage required by this Agreement shall remain Contractor's responsibility to pay.

E. Indemnification Clause:

- a. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner, Engineer and any additional indemnities identified in the Supplementary Conditions and their respective directors, officers, members, partners, affiliates, employees, agents and successors (an "Indemnified Party" or Indemnified Parties"), from and against any and all liabilities, claims, causes of action, lawsuits, liens, injuries, damages, losses and expenses (collectively "Demand(s)") to the extent caused by, arising out of, resulting from or occurring in connection with:
 - i. Contractor's breach of, or failure to comply with, the Agreement or any other contract that it enters regarding the Work, including any Default; or
 - ii. Personal injury or death to any person (including, but not limited to, Contractor, Contractor's employees, Subcontractors, Subcontractors' employees and material suppliers) or injury to or destruction of property (including claims for loss of use) caused by, arising out of, resulting from, or in any way connected with (1) the Work, (2) any activity associated with the Work or (3) the operations or acts of commission or omission of Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, material suppliers, or anyone for whom Contractor is legally liable in the performance of Work (including under this Agreement), whether arising before or after completion of the Work.
- b. To the extent caused by, arising out of, resulting from, or occurring in connection with the provisions of the above Article 50.E.a., Contractor's indemnity obligations under this Agreement shall include, but are not limited to:
 - i. Indemnity for all damages and judgment interest, all costs, and fees, including, but not limited to, all defense costs, expenses and actual attorneys' fees, and all settlement payments relating to, arising out of, resulting from or in any way connected with any Demand requiring indemnity by this Agreement;
 - ii. All expenses, including, but not limited to, costs, expenses, and actual attorneys' fees, incurred in securing and enforcing indemnity from Contractor if Contractor fails or refuses promptly to fulfill any of the indemnity obligations under this Agreement;
 - iii. All indemnification obligations imposed upon Owner or Engineer, or both, arising out of or in connection with the Work or the Agreement; and
 - iv. Indemnification for any penalties and/or fines arising or resulting from the failure of Contractor or any Subcontractor to comply with laws and/or regulations applicable to its/their Work.
- c. The fault or negligence of Owner, Engineer or other indemnities shall not be a defense to or bar Contractor's duty to indemnify Owner, Engineer, or other indemnified party except where the negligence of Owner, Engineer or indemnity is the sole cause of the injury giving rise to the Demand.

- d. The indemnification rights under this Agreement shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist.
- e. In the case of claims by any employee of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable, the indemnification obligations under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under workers' compensation acts. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Agreement.
- f. The indemnification obligations of Contractor under this Agreement shall not extend to the liability of Engineer and Engineer's officers, directors, partners, employees, agents, consultants, and Subcontractors arising solely out of:
 - i. the preparation of or the failure to prepare maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; or
 - ii. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.
- g. Indemnification, additional insured and hold harmless obligations of Contractor and its Subcontractors under the Contract Documents shall survive the completion or termination of this Contract.
- h. Contractor and Subcontractors will obtain endorsements from their insurance company(ies) waiving the insurer's subrogation rights against Owner, all engineers and all contractors and subcontractors identified as additional insureds in the Contract Documents, including any municipal entity now existing or newly created during the term of the Contract Documents.
- i. Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Agreement, whether in contract, tort, indemnity, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected by Owner in the Agreement. All Claims and causes of action filed against Owner, the County of Oakland, County Agents, or the Oakland County Water Resources Commissioner must be commenced within one year of the date of Substantial Completion (and documented as required by the Contract Documents) or the Contractor will be deemed to have irrevocably waived all such Claims and causes of action not commenced in accordance with this provision.
- j. Contractor shall pay all costs incurred by Owner to enforce this indemnification obligation, including, but not limited to, Owner's internal staff costs and attorney fees.
- k. Contractor shall have no rights against Owner for indemnification, contribution, subrogation, or reimbursement under any theory except as expressly provided

herein.

- F. Defense. Unless an insurance carrier assumes the defense of Owner or any Indemnified Party, Contractor shall defend the Indemnified Parties, and each of them, from and against any claims, actions, suits and/or demands (each an "Action") arising in whole or in part, out of the acts, errors and/or omissions, negligent or otherwise, of Contractor or its Subcontractors attributable to the performance of the Work. Contractor acknowledges that this duty to defend is separate and distinct from its obligation to indemnify the Indemnified Parties. If an Action is asserted against any Indemnified Party (whether or not any action, arbitration, or suit is filed), and if such Indemnified Party requests that Contractor defend the Indemnified Party in such Action and there is no actual, unwaivable conflict of interest preventing the attorneys defending Contractor from defending both Contractor and the Indemnified Party, then Contractor shall defend the Indemnified Party in such Action with legal counsel acceptable to, and approved in advance by, Owner; provided, however, the Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both Contractor and an Indemnified Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to Contractor, the Indemnified Party shall have the right to select separate counsel to participate in the defense of such action on its behalf and at the Indemnified Party's expense. If a conflict of interest prevents the attorneys defending Contractor from defending both Contractor and any Indemnified Party, then such Indemnified Party shall retain its own attorneys in the Action and Contractor shall pay all reasonable expenses of such defense to the extent that the Action at issue falls within Contractor's indemnity obligations in this Article.

51. EASEMENTS

- A. This Contract may require Work to be performed within easements provided by Owner. All such easements are on file with Owner and are available for inspection by Contractor. The Contract Documents show the location and limits of all such easements.
- B. Easements provided by Owner in the foregoing general forms also may include specific written conditions or restrictions. Contractor shall refer to individual easements for specific conditions or restrictions.
- C. Contractor shall conduct its operations in easements to comply with all requirements contained in easement agreements, including without limitation those directed specifically to "Contractor", to the "County", to "Owner", to the "Drainage District" or the "Grantee". Contractor acknowledges that all costs necessary to comply with such easement agreements is included in the Contract Sum. The cost, unless otherwise included in the measurement and payment section, shall be incidental to the contract.
- D. Additional agreements obtained by Contractor from any property owner that alter or extend the rights granted under any easement agreement provided by Owner, or any additional easement agreements obtained by Contractor from any property owner, shall be obtained by Contractor at its own expense. Such additional agreements or easement agreements shall not be binding upon Owner. Contractor shall defend and hold Owner and any Indemnified Party harmless from any action that may arise from activities related to such additional agreements or easement agreements.

52. WAIVER OF CONSEQUENTIAL DAMAGES

- A. Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes
- a. damages incurred by Owner for rental expenses, for losses of revenue, use, financing, business, and reputation, and for loss of management or employee productivity or of the services of such persons; and
 - b. damages incurred by 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.
- B. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination or default. Notwithstanding the foregoing, the parties expressly acknowledge and agree that this waiver of claims for consequential damages in this Article: (i) shall not prevent or preclude Owner from recovering liquidated damages from Contractor, its insurance carriers and/or its surety(ies) pursuant to this Agreement and the Contract Documents; (ii) does not apply to any damages, liabilities, costs, expenses or losses for which Contractor has an indemnification obligation under this Agreement; (iii) does not apply to consequential damages proximately caused by either party's fraud, Gross Negligence, criminal or intentional or willful misconduct; (iv) does not apply to damages from loss of use of the Project by Owner for reasons other than delay, for which liquidated damages will apply, (v) shall not be deemed to preclude any recovery by Owner for third-party claims, including, without limitation, claims for personal injury or property damage; (vi) does not apply to claims or damages relating to or arising from violations of Laws and Regulations; (vii) shall not preclude the recovery of any damages covered by insurance or bonding; and (viii) shall not preclude any claims or damages that arise from Defective Work. For avoidance of doubt, this last exclusion would allow Owner's recovery of lost revenue, if applicable, due to repairs necessitated by such Defective Work.
- C. Contractor also waives any claim for such consequential damages against Engineer where such claims arise out of or relate to the Project, or the Contract Documents.

53. ATTORNEY FEE PROVISION

- A. In the event of a default, termination, or any other dispute arising out of or related to this Agreement or the interpretation or enforcement of this Agreement, Contractor agrees to pay Owner's reasonable costs, attorney fees, arbitration fees, expenses and the costs charged by necessary expert consultants and/or expert witnesses if Owner prevails in such action.

54. OWNERSHIP OF INVENTIONS

- A. Contractor will promptly disclose to Owner each invention, discovery, and improvement which it, alone or together with others, may conceive or make at any time during this Agreement and the prosecution of the Work, and which is related to the Project, the Work or Owner's business or interests.

- B. In consideration of the payment of the Contract Sum, Contractor hereby assigns, and agrees to assign, all its rights, title and interest in such inventions, discoveries and improvements to Owner, its successors, assigns and nominees. Contractor acknowledges that it is not entitled to additional fees or compensation for any such inventions, discoveries, or improvements.
- C. Whenever required to do so by Owner, Contractor will execute any and all applications, assignments or other instruments which Owner deems necessary to apply for and obtain copyrights or letters patent of the United States or of any foreign country, or otherwise to protect Owner's interests in such inventions, discoveries or improvements. Any costs or fees involved in making such applications, assigning such patents, obtaining copyrights, or otherwise transferring any rights to such inventions, etc. shall be paid by Owner.
- D. Contractor's obligations under this Article will survive the termination of the Agreement and completion of the Project and are binding upon its assigns, executors, administrators and other legal representatives.

55. OWNER'S RIGHT TO CARRY OUT THE WORK

- A. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness as determined by Owner and Engineer in their sole discretion, Owner may, without prejudice to other remedies Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Engineer's additional services made necessary by such default, neglect, or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner.
- B. Owner's right to take such corrective actions is in addition to, and without prejudice to, any other remedy Owner may have and shall not prejudice Owner's right to terminate this Agreement pursuant to the terms and conditions of the Contract Documents. The failure of Owner to enforce the provisions of this Article in any given instance, or multiple instances shall not constitute a waiver of the right to enforce the provisions of this Article for that instance or instances, nor of any other instance where these provisions may be enforced.

56. OWNER MAY SUSPEND WORK

At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than ninety (90) consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Sum or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefore as provided in herein.

57. OWNER MAY TERMINATE FOR CAUSE

- A. The occurrence of any one or more of the following events will justify Owner's termination of the Contract for cause:
- a. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under the Contract Documents);
 - b. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 - c. Contractor's disregard of the authority of Owner and/or the Engineer;
 - d. Contractor becomes bankrupt, or files an arrangement proceeding, or commits any act of insolvency, or makes an assignment for the benefit of creditors;
 - e. Contractor fails to make prompt payment of any obligation to others (including but not limited to materialmen and laborers) arising from its performance of this Contract; and/or
 - f. Contractor's violation in any substantial way of any provisions of the Contract Documents.
 - g. A receiver, liquidator, trustee, or assignee is appointed because of Contractor's bankruptcy or insolvency;
 - h. A receiver is appointed for all or any substantial portion of Contractor's properties;
 - i. Contractor abandons the Work;
 - j. Contractor submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is untrue in any material respect;
 - k. Contractor fails to make prompt payment of any obligation to others (including but not limited to materialmen and laborers) arising from its performance of this Contract; and/or
 - l. A Lien is claimed against any part of the Work or the Project Site by a member of the Construction Team, other than by reason of Owner's failure to pay Contractor amounts to which it is entitled under the Agreement, and not promptly bonded or insured over by Contractor;
 - m. Any representation made by Contractor in the Agreement proves untrue, or Contractor otherwise violates any provision of the Agreement;
 - n. Contractor persistently fails to comply with the requirements of the Contract

o. Contractor's violation in any substantial way of any provisions of the Contract Documents.

a. exclude Contractor from the Site, and may, subject to any prior right of the surety, if any, take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion); Contractor shall promptly remove from the Site all materials, tools, equipment, facilities and supplies belonging to third parties under its control;

c. complete the Work as Owner may deem expedient.

D. Contractor's services will not be terminated if Contractor begins, within seven (7) days of receipt of notice of intent to terminate, to correct its failure to perform and proceeds diligently to cure such failure and completes the cure of such failure within no more than thirty (30) days of receipt of said notice.

E. When Owner's terminates Contractor's services, the termination will not affect any rights

or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.

58. OWNER MAY TERMINATE FOR CONVENIENCE

- A. Upon three (3) Days written notice to Contractor and Surety, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):
- B. Upon receipt of written notice from Owner of such termination for Owner's convenience, Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Article:
 - a. cease operations as directed by Owner in the notice and deliver to Owner the originals or legible copies of all Drawings, Specifications, reports and other data, records and materials in Contractor's custody and control pertaining that portion of the Work terminated by Contractor;
 - b. enter into no additional Subcontracts, except as necessary to complete continuing portions of the Contract take actions necessary, or that Owner may direct, for the protection and preservation of the Work;
 - c. terminate, on the most favorable terms possible, all Subcontracts to the extent they relate to the Work terminated 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;
 - d. complete the performance of Work not terminated;
 - e. take actions that may be necessary or that Owner may direct, for the protection and preservation of the terminated Work and of materials, plant and equipment in transit or stored; and
 - f. comply with any other obligations set forth in the Agreement.
- C. Upon such termination, Owner shall pay, and Contractor, as its sole remedy, may recover (without duplication of any items) for the following: completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - a. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 - b. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and

reasonable sums for overhead and profit on such expenses;

- c. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, suppliers, and others which shall not include lost profits on Work not completed; and
 - d. reasonable direct unavoidable costs incurred by reason of such termination such as demobilization charges, standard restocking charges imposed by vendors for accepting material back, non-refundable security deposits, materials purchased but not installed which cannot be returned to the vendor or used elsewhere, and termination charges for leased equipment.
- D. Contractor shall submit its Claim for reimbursement of such costs within thirty (30) Days after the effective date of the termination and upon review and approval of the Claim, in whole or in part by Owner, shall be paid the undisputed amount by Owner after such submission as provided by the Contract. Owner may request additional time to review the disputed portion of the Claim, if necessary, which shall not be unreasonably denied by Contractor; provided, however, Owner shall pay all undisputed portions within the time frames set forth herein. Disputed amounts shall be resolved in accordance with the provisions of Article 30 [Disputed Work].
- E. Contractor hereby waives all other claims whatsoever against Owner based on the termination, including, without limitation, loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.
- F. In any recovery by Contractor, Owner shall be credited for (1) payments previously made to Contractor for the terminated portion of the Work, (2) claims which Owner has against Contractor under the Agreement and (3) the value of the materials, supplies, equipment, or other items that are to be disposed of by Contractor.