

STANDARD GENERAL CONDITIONS

STANDARD FORM OF THE UNIVERSITY OF MICHIGAN

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ARTICLE 1: DEFINITIONS

Wherever used in any of the Contract Documents, the following meanings shall be given to the terms herein defined:

- a. Addenda: That portion of the Contract Documents consisting of modifications, amendments, deletions or substitutions to the Drawings and Specifications and issued prior to the execution of the Agreement.
- b. Agreement: That portion of the Contract Documents consisting of the written Agreement between the Contractor and the Owner for Construction, identifying the scope of the Work, Contract Time, Contract Sum, the method of progress payments and final payment, and the Contract Documents by which the Work is to be completed.
- c. Architect/Engineer: The party named in the Agreement who will perform professional design and/or engineering services; or the department or agency of the Owner named in the Agreement which will render similar services.
- d. Change Order: A written order to the Contractor signed by the Owner and the Architect/Engineer, issued after the execution of the Agreement, authorizing an extra or a change in the Work or an adjustment in the Contract Sum or the Contract Time.
- e. Contract: The Contract Documents form the Contract for construction between the Owner and the Contractor. The Contract may be modified only by a written Modification.
- f. Contract Documents: These consist of the Agreement, the Standard General Conditions, Supplementary General Conditions, Instructions to Bidders, Drawings, Specifications, Addenda issued prior to the execution of the Contract, other documents listed in the Agreement, and Modifications issued after the execution of the Contract. The documents noted above form the Contract.
- g. Contract Sum: The amount to be paid by the Owner to the Contractor for performance of the Work pursuant to the Contract Documents. Such amount may be modified from time to time pursuant to the terms and provisions of the Contract Documents.
- h. Contract Time: The number of calendar days allowed or the date stated in the Agreement for the completion of the Work to occur. All time limits stated in the Contract Documents are the essence of the Contract.
- i. Contractor: The party named in the Agreement who will execute the Work and who shall be responsible for the proper completion of the Project.

- j. Contractor's Representative: The individual designated in writing by the Contractor to receive all communications under the Contract Documents and with the authority to bind the Contractor with respect to decisions made and actions taken pursuant to the Contract Documents. Unless noted otherwise by the Contractor the Contractor's Representative shall be that individual designated as the Contractor's Superintendent in Article 14 paragraph a hereof.
- k. Delay: When used in these Standard General Conditions, "delay" shall include those delays not contemplated by the parties.
- l. Drawings: The graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
- m. Instructions to Bidders: That portion of the Contract Documents consisting of the procedures to be followed in preparing and submitting a bid.
- n. Modification: (1) a written amendment to the Contract signed by both parties, (2) a Change Order executed in accordance with the requirements of the Contract Documents or (3) a written order directing minor changes in the Work, in accordance with Article 15 paragraph j hereof.
- o. Notice to Proceed: Any written notice given by the Owner to the Contractor fixing the date on which the Contract Time will commence and on which the Contractor shall start to perform its obligations under the Contract Documents.
- p. Owner: The Regents of The University of Michigan, a Constitutional Corporation having its principal offices in Ann Arbor, Michigan, represented in these documents by the Owner's Representative.
- q. Owner's Representative: The individual designated in writing by the Owner to receive all communications under the Contract Documents and with the authority to bind the Owner with respect to decisions made and actions taken pursuant to the Contract Documents.
- r. Throughout the Contract Documents, the terms "Owner", "Contractor", "Architect/Engineer", "Subcontractor", and "Sub-subcontractor", are treated as if each were of the singular number.
- s. Project: The building or facility, improvement, alteration, addition or repair, the construction for which is contemplated under the Contract.
- t. The word "similar" shall be considered as meaning that items in each case are to be separately designed, furnished and/or installed to suit conditions in a manner like or similar in

all material respects to the example referred to and is not to be construed as meaning identical.

- u. Specifications: That portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.
- v. Standard General Conditions: That portion of the Contract Documents consisting of these Standard General Conditions.
- w. Subcontractor: A party having a direct contract with the Contractor to perform a portion of the Work at the site or furnish materials fabricated to a special design according to the Contract Documents.
- x. Sub-subcontractor: A party having a direct contract with a Subcontractor to perform a portion of the Work at the site or furnish materials fabricated to a special design according to the Contract Documents.
- y. Substantial Completion: The point in time when the progress of the entire Work, or of designated portion(s) thereof, is sufficiently complete and functional, in accordance with the requirements of the Contract Documents, to allow the Owner to occupy or otherwise use the Work for the purposes for which it was intended.
- z. Supplementary General Conditions: That portion of the Contract Documents consisting of modifications, amendments, additions, deletions or substitutions to the Standard General Conditions.
- aa. Supplier: A party having a direct contract with the Contractor or a Subcontractor or a Sub-subcontractor or a lower tier subcontractor to furnish materials to the Project which are not fabricated to a special design according to the Contract Documents.
- bb. The term "Work" refers to the construction required by the Contract Documents whether completed or partially completed, performed by the Contractor, Subcontractor, Sub-subcontractor or other lower tiered subcontractors. Work refers to the furnishing of labor, furnishing and incorporating materials and equipment into the construction, and providing any services required by the Contract Documents to fulfill the Contractor's obligation to complete the Project.
- cc. Written notice shall be deemed to have been duly served if delivered in person to the individual or a representative of the organization for whom it is intended or if delivered at or sent by registered or certified mail or overnight delivery service to the last business address known to the person giving notice.

- a. All the Contract Documents, including the Drawings and Specifications, shall be signed in triplicate by the Owner and the Contractor, at the time of the signing of the Agreement, if either so request.
- b. The Contract Documents are complementary, and what is called for by any one shall be binding as if called for by all. The intention of the Contract Documents is to include all labor, materials, equipment and transportation necessary for the proper execution of the Work and completion of the Project. Performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.
- c. Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
- d. The organization of the Specifications into divisions, sections, and/or articles, and the arrangement of the Drawings shall not dictate to the Contractor in any way how the Work is to be divided among Subcontractors, or establish the extent of Work to be performed by any trade.
- e. It is to be noted that, on certain Contract Documents, only a portion of the detail may be fully shown and the remainder indicated in outline, in which case the general detail shall be understood as applying also to other like portions of the Work. For example, if case carving, ornament, facing, veneer or similar treatment is indicated by starting of the detail, such detail must be continued throughout the course of parts in which it occurs, and to all similar parts in the Project wherever such general detail shall apply unless otherwise specifically provided in the Contract Documents.
- f. The submission of a proposal and/or the execution of the Contract by the Contractor is a representation that the Contractor has inspected the site of the Project and the proposed Work and has arrived at a clear understanding of the conditions under which the Work is to be done. The Contractor further represents that the conditions of the site and locale of the Work have been thoroughly compared with the Contract Documents, and that local conditions affecting labor, materials, services, building codes, laws, ordinances and other aspects of the site or the Project which affect the execution of the Work have been incorporated into the Contractor's proposal. No Contract Sum adjustments or Contract Time extensions will be made for Contractor claims arising from conditions which were or could have been observable, ascertainable or reasonable foreseeable from a site visit or inquiry into local conditions affecting the execution of the Work.

- g. Before undertaking each part of the Work, the Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. The Contractor shall promptly report in writing to the Architect/Engineer, and the Owner, any conflict, error, omission or discrepancy which the Contractor may discover and shall obtain a written interpretation or clarification from the Architect/Engineer before proceeding with any Work affected thereby.
- h. If the Contractor performs any construction activity having actual knowledge that a conflict, error, omission or other discrepancy exists, or should reasonably have known thereof, without having given notice to the Architect/Engineer and the Owner, or having proceeded without Architect/Engineer and Owner authorization, the Contractor shall be liable for such proper performance. However, the Contractor shall not be liable for the failure to report any conflict, error, omission or discrepancy in the Contract Documents, unless the Contractor had or should have had actual knowledge thereof or should reasonably have known thereof.

ARTICLE 3: ROUTINE OF BUSINESS

- a. After award of the Contract, all business relating to the Work shall be transacted with or through the Architect/Engineer and/or the Owner as provided in Article 3 paragraph b hereof.
- b. An outline procedure for the routine of business which is to be followed will be established by the Owner, and distributed to the parties to the Contract as well as the Architect/Engineer. Among other items outlined in the routine of business will be the identification of the Owner's and Contractor's Representatives and those persons authorized to represent the Architect/Engineer. The limits of each persons authority will also be identified in the outline procedure for the routine of business.
- c. The Architect/Engineer shall furnish with reasonable promptness, additional clarifications/instructions, if required, by means of Drawings or otherwise, necessary for the proper execution of the Work. All such Drawings and instructions shall be consistent with the Contract Documents and reasonably inferable from them.
- d. The Contractor shall perform the Work in accordance with the Contract Documents, additional clarifications/instructions and submittals reviewed in accordance with Articles 5 and 6 hereof.
- e. No approvals, orders, instructions, or similar directions concerning any phase of the Contract shall be valid unless given in writing by an authorized representative of the Architect/Engineer, or the Owner's Representative, as the case may be.

ARTICLE 4: DRAWINGS AND SPECIFICATIONS FOR CONTRACTOR USE

- a. Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, up to thirty (30) sets of Drawings and Specifications for use by all trades. The Contractor shall distribute such Drawings and Specifications to the Subcontractors.
- b. Any additional copies of Drawings and/or Specifications requested by the Contractor may be obtained at the cost of duplication and shall be paid for by the Contractor.
- c. All Drawings will be furnished in the form of blueprints on paper. If the Contractor requires additional copies of Drawings, the Contractor will apply to the Architect/Engineer and pay for the same rather than prepare or reproduce any tracings or details of the Work from the existing blueprints. The foregoing will avoid the possibility of error through tracing or inaccurate reproductions, and will assure that all parties work from the same Drawings.
- d. The Contractor may obtain copy of Drawings on sepia or other reproducible material at the cost of production, if acceptable to the Architect/Engineer and the Owner.

ARTICLE 5: CONTRACTOR'S SHOP DRAWINGS

- a. The Contractor shall furnish to either the Architect/Engineer, or the Owner, depending upon the routine of business established in Article 3 hereof, all Contractor's, Subcontractors', Sub-subcontractors', and Suppliers' drawings, which shall be deemed to include shop drawings, catalog cuts, brochures, illustrations, material lists or submittals, equipment lists or submittals, performance data, diagrams, schedules and other data specially prepared for the Work, collectively defined here as Shop Drawings, which may be required by the Contract Documents, requested by the Architect/Engineer, or the Owner, or otherwise necessary for the proper execution of the Work.
- b. Shop Drawings, catalog cuts, brochures, performance data, and other submittals describing manufactured equipment must be "project specific", clearly marked on every submission copy to fully define the intended model number, configuration and other applicable product information.
- c. The Contractor shall submit all such Shop Drawings to the Architect/Engineer, in the manner hereinafter described, in sufficient time to prevent delays in delivery of materials or in the progress or completion of the Work, and in the order to assure the prompt and proper delivery of materials and/or equipment to the site at the time required to assure the proper and timely execution of the Work. Shop Drawings for critical material deliveries shall indicate a reasonable date which the Contractor requests them to be reviewed and returned by the Architect/Engineer.

- d. All Shop Drawings shall first be sent directly to the Contractor, who shall keep a record of the Shop Drawings and dates of receipt. The Contractor shall check thoroughly all such Shop Drawings, including those prepared by the Contractor, as regards to measurements, sizes of members, materials and all other details, to assure that they conform to the intent of the Contract Documents, and shall promptly return to the Subcontractors and/or Suppliers, for correction, such of the Shop Drawings as are found inaccurate or otherwise in error. After the Contractor has checked and approved such Shop Drawings, the Contractor shall place thereon the date of such approval and the legible signature of the individual who reviewed such Shop Drawings and shall then submit them to the Architect/Engineer for review. The quantity required and the manner of submission will be as required by the outline procedure for the routine of business. The Architect/Engineer reserves the right to refuse to check or review any Shop Drawings which are not submitted in compliance with these requirements.
- e. By approving and submitting Shop Drawings the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so.
- f. The Architect/Engineer will check and review the Contractor's, Subcontractors', and Suppliers' Shop Drawings within a reasonable time after receipt thereof and will return them as hereinafter described, indicating by notation, or by written instructions, or other directions, any corrections, which in the judgment of the Architect/Engineer, may be necessary to meet the requirements of the Contract Documents. The Contractor shall then review such notations, instructions, or directions, and if the Contractor concurs therein, shall make or have made such corrections, and shall, when so noted on the Shop Drawings or requested by the Architect/Engineer, resubmit corrected Shop Drawings to the Architect/Engineer as soon as possible, for final check and review. Such final check and review by the Architect/Engineer of Shop Drawings so corrected and resubmitted will be limited to the corrections only, and the Contractor, by such resubmission shall be held to have represented that such Shop Drawings contain no other alterations, additions, or deletions, unless the Contractor, in writing, directs the Architect's/Engineer's specific attention to same. Should the Contractor question, or dissent from such notations, instructions, or directions, the Contractor shall direct the Architect's/Engineer's attention to same for further clarification before resubmitting same. Corrections or changes indicated on Shop Drawings shall not be construed as an order to perform extra work.
- g. Each Shop Drawing, which details, by original line drawings, Work to be fabricated for the job, shall be submitted in the form of a transparency, suitable for reproductions plus a blueprint made therefrom. A clear space, 8 inch x 8 inch,

shall be allowed on the Shop Drawings in the lower right hand corner for the placement of review and date stamps. After review, the Architect/Engineer will obtain prints from the transparency as required for use and will return the reviewed and noted, or corrected, transparency to the Contractor and a copy to the Owner. Transparencies returned for resubmission or disapproved require the original Shop Drawing to be corrected and a new transparency reproduction with blue-line print made therefrom submitted. Such procedure shall be followed until review is final. The Contractor shall obtain and provide such number of prints from the final transparency, which carry the Architect's/Engineer's stamp of approval, as may be required for distribution. This shall include the forwarding of one print each to the Architect/Engineer and the Owner for record, and necessary quantity of prints for the Owner's use.

- h. All printed matter referred to in Article 5 paragraph a hereof, not addressed in Article 5 paragraph f hereof, shall be submitted in quantities not less than that established in the outline procedure for the routine of business.
- i. The review of the Contractor's, Subcontractors', and Suppliers Shop Drawings by the Architect/Engineer is for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The review of such Shop Drawings is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor under the requirements of the Contract Documents. The Architect/Engineer does not thereby assume responsibility for errors, omissions or deviations from the Contract Documents contained in such Shop Drawings. Such errors, omissions or deviations from the Contract Documents must be corrected by the Contractor, irrespective of the receipt and review of the Shop Drawings by the Architect/Engineer, and even though the work is done in accordance with such Shop Drawings, unless such error, omission or deviation from the Contract Documents is specifically called to the Architect's/Engineer's attention, by the Contractor, in a separate written letter of communication, at the time of submittal and the Architect/Engineer has given written approval of such error, omission or deviation. The review and subsequent approval of Shop Drawings by the Architect/Engineer shall not constitute approval of the Contractor's safety precautions, or construction means, methods, techniques, sequences, or procedures. The Architect's/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- j. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect/Engineer shall be entitled to rely

upon the accuracy and completeness of such calculations and certifications.

- k. The Contractor shall maintain one (1) set of all Shop Drawings referred to in Article 5 hereof, at the Project site, accessible to the Architect/Engineer, or the Owner, or Subcontractors.
- l. The Contractor shall, upon completion of the Work, furnish to the Owner a complete set of record Shop Drawings, neatly bound together and in good condition, of all the Contractor's, Subcontractors', Sub-subcontractors' and Suppliers' Shop Drawings as finally reviewed by the Architect/Engineer with all modifications indicated by the Architect/Engineer subsequent thereto, showing the Work as actually completed. This requirement is a condition precedent to the Contractor receiving final payment.

ARTICLE 6: CONTRACTOR'S SAMPLES

- a. The Contractor shall furnish, to the Architect/Engineer for review when requested, or when required by the Contract Documents, samples of all materials and finishes to be used in the execution of the Work. Such samples shall be of sufficient size to be representative and shall be submitted in such numbers as required before the Work is commenced and in ample time to permit examination thereof. In all cases samples shall be submitted at least three (3) weeks prior to when approval is needed to maintain the progress of the Project schedule. All materials furnished and finishes applied to the Work shall be fully equal to the submitted samples.
- b. Unless otherwise directed, samples shall be submitted in triplicate, boxed or wrapped properly, each labeled with the name, type or brand of the materials, its place of origin, names of producer, and Contractor, and name of the Project for which the material is intended. All samples shall be forwarded to the Architect/Engineer with all shipping charges prepaid.
- c. The approval of samples is generally directed towards establishing quality, color and finish criteria, and does not modify the requirements of the Contract Documents as to dimensions or design.

ARTICLE 7: OWNER'S OPTIONS

Reference in the Contract Documents to any article, device, product, material, fixture, form, process, or type construction by name, make, type or style shall be interpreted as establishing a standard of quality and shall not be construed as limiting competition. However, substitutions will only be considered through the "Owner's Options" provisions as follows:

- (a) where only one such name, make, type or style is specified in any instance, whether or not followed by the phrase "or other approved", "or equal" or other words to that effect, the Contractor's proposal shall be based on the name, make, type, or style so specified; and
- (b) where the Contract Documents mention more than one name of Subcontractor, Supplier or process, or more than one name, make, type or style of article, material or equipment item, the Contractor's proposal shall be based on one of the named makes, types or styles; and
- (c) the Contractor's proposal shall clearly state, under the heading "Owner's Options," as provided therein, the names, makes, types or styles which the Contractor may propose other than those designated in the Contract Documents together with the proposed cost adjustments, if any.

ARTICLE 8: RECORD DRAWINGS; O & M MANUALS AND INSTRUCTIONS

- a. The Contractor shall keep one copy of all Contract Documents, in good order, at the Project site, available for review to all parties having rightful interest in the Project.
- b. The Contractor shall keep note of all the deviations and discrepancies in the underground, concealed conditions and other items of construction and Work on field Drawings. At the completion of the Project the Contractor's notes on the record field Drawings shall be neatly transcribed onto a clean set of Drawings furnished by the Architect/Engineer. The Contractor shall submit the final record Drawings to the Architect/Engineer for review.
- c. Upon substantial completion of the project, the Contractor shall submit to the Owner the Contractor's mechanical and electrical coordination record drawings prepared during construction by the Contractor. Examples of such drawings include sheet metal ductwork drawings, piping drawings, fire protection piping drawings, electrical raceway drawings, and the like. Submission shall be on reproducible photo diazo mylar, velum or sepia medium. When the Contractor produces drawings by computer aided drafting, the Contractor shall also submit their coordination drawings on electronic data files compatible with MicroStation CADD computer software. All such

documents shall contain the Owner's Project Number for identification purposes.

- d. The Contractor shall bind and turn over to the Owner four (4) sets of manufacturers' warranties and operating and/or maintenance manuals, instructions or schedules for all equipment and special materials requiring such. Such binders will clearly categorize and index each piece of equipment and material included, and shall be clearly marked noting "project specific" equipment, model numbers, and other applicable information. Such manuals will be collected and organized by the Contractor and submitted to the Owner at one time, prior to the issuance of the certificate of Substantial Completion.
- e. The submission of accurate record Drawings, Contractor Coordination Drawings and manufacturers' warranties and maintenance and operating manuals by the Contractor are conditions precedent to the Contractor receiving final payment.

ARTICLE 9: OWNERSHIP OF CONTRACT DOCUMENTS AND MODELS

All of the Contract Documents and all models are the property of the Owner. They are not to be used on other work and are to be returned to the Owner at the completion or cessation of the Work or termination of the Contract. The Contractor may retain one record set of Contract Documents. All other sets of Contract Documents shall be accounted for by the Contractor and returned to the Owner.

ARTICLE 10: TEMPORARY UTILITIES; MATERIALS; QUALITY CONTROL; EMPLOYEES; ALLOCATION OF WORK

- a. Unless otherwise stipulated, the Contractor shall provide and pay for all materials, labor, water, tools, equipment, light, power, transportation and other facilities necessary for the proper execution and completion of the Work. Including any temporary heat necessary, any temporary utilities, scaffolding, bracing, barricades, structures and the like, necessary to perform the Work.
- b. The Contractor warrants, unless otherwise expressly specified in the Contract Documents, that all materials and equipment incorporated into the Work shall be new and that both workmanship and materials shall be of good quality and, if practicable, materials shall bear certification of quality. To the extent practicable, materials and equipment will be delivered to the Project site in original containers or wrappings. Used materials or equipment will not be permitted to be incorporated into the Work without the written approval of the Architect/Engineer and the Owner or unless specifically allowed and called for in the Contract Documents. The Architect/Engineer, or the Owner reserves the right to have any such improperly used materials or equipment removed from the Project site or completed Work whenever detected. Neither this right nor a decision made in good faith to exercise or not exercise this right shall give rise to a duty or

responsibility of the Architect/Engineer, or the Owner to the Contractor, any Subcontractor, any Sub-subcontractor, any Supplier, any other person or organization performing any of the Work, or to any surety, to conduct inspections solely for the purpose of detecting such used materials or equipment. The Architect's/Engineer's, or Owner's failure to detect such used materials or equipment shall not relieve the Contractor of its obligations under this Article 10 paragraph b.

c. The term "Quality Control" refers to, but is not necessarily limited to quality control program development, inspections, testing and associated requirements and activities of the Contractor to ensure that the intended quality of the Contract Documents is attained.

(c-1) Residual Contractor Responsibility: All inspection, testing and similar quality control provisions to be performed by independent agencies and which are not indicated to be the Owner's responsibility, shall be the Contractor's responsibility. The costs for these required services by independent testing laboratories are recognized to be included in the Contractor's proposal. Unless noted otherwise or specifically approved by the Architect/Engineer and the Owner, all tests and inspections of Contractor's, Subcontractors' and Sub-subcontractors' Work, materials or equipment shall be performed by independent agencies in accordance with the requirements contained in paragraph (c-4) of this Article 10.

(c-2) Contractor's General Responsibility: No failure of testing agencies, whether engaged by the Owner or the Contractor, to perform adequate inspections or tests or to properly analyze report results, shall relieve the Contractor of responsibility for the fulfillment of the requirements of the Contract Documents. Any testing by the Owner is not intended to limit the Contractor's regular quality control program. The Owner reserves the right to conduct tests beyond those indicated to be conducted by the Owner in the Contract Documents. Neither this right to conduct tests beyond those indicated to be conducted by the Owner in the Contract Documents nor a decision made in good faith to exercise or not exercise this right shall give rise to a duty or responsibility of the Architect/Engineer, or the Owner to the Contractor, any Subcontractor, any Sub-subcontractor, any Supplier, any other person or organization performing any of the Work, or to any surety. The Owner's election not to exercise this right shall not relieve the Contractor of its obligations to execute the construction in accordance with the requirements of the Contract Documents.

(c-3) General Workmanship Standards: The Contractor shall comply with recognized workmanship quality standards within the industry as applicable to each unit of Work.

All references to standards whether for materials, processes, assemblies, workmanship, performance, or similar purpose shall mean, unless otherwise noted, the most recent available published version of such standard as of the date of the execution of the Contract. When reference is made to standards, such is understood to be made a part of the Contract Documents, and to have the same effect as if fully reproduced therein. It is a requirement that each category of tradesperson or installer performing the Work be prequalified, to the extent of being familiar with applicable and recognized quality standards for that category of Work, and being capable of workmanship complying with those standards.

- (c-4) Qualifications of Quality Control Agencies: Except where another qualification standard is indicated, and except where it is specifically indicated that the use of prime product manufacturers' test facilities is acceptable, the Contractor shall engage independent testing laboratories complying with the "Recommended Requirements for Independent Laboratory Qualifications", as published by the American Council of Independent Laboratories, and specializing in type(s) of inspections and tests required.
- (c-5) Where inspection and test reports and certificates are required by governing authorities, the Contractor shall provide additional copies as required, and where required, shall send copies directly from the inspection or testing agency to the governing authority. In addition, the Contractor shall provide copies of all such reports and certificates to the Architect/Engineer and the Owner.
- (c-6) The Contractor shall handle, store and protect materials and products, including fabricated components, by methods and means which will prevent damage, deterioration and losses including theft, and resulting delays, thereby ensuring the highest quality results as performance of the Work progresses. The Contractor shall control delivery schedules so as to minimize unnecessary long-term storage at the Project site prior to installation.
- (c-7) Coordination with Owner's Agencies: The Contractor shall afford proper and safe access to the Work wherever it is in progress or preparation, and reasonable time in the construction sequence, for the Owner's, the Architect's/Engineer's, any testing agency's or other governmental or regulatory agency's inspections, tests or observations to be performed. The Contractor shall cooperate with the Owner and the Owner's agencies and provide incidental labor and services needed for the removal and delivery of test samples, and for inspections and taking measurements.

The Contractor shall provide patching and restoration services where test samples have been removed, complying with individual technical sections of the Contract Documents. Except for specialized laboratory sampling equipment, and except as otherwise indicated, the Contractor shall supply and operate tools and construction equipment at the Contractor's expense as needed to obtain test samples from the Work, including cutting devices for sawing, drilling, flame-cutting, coring and similar operations, and shall assist agencies in labeling and packaging of test samples removed from the Work. All patching of the Work necessitated by testing called for in the Contract Documents shall be performed by the Contractor at the Contractor's expense, except as required by Article 21 paragraph g hereof.

- (c-8) Testing agencies, regardless of whether they are engaged by the Owner or the Contractor, are not authorized to change or modify or negate requirements of the Contract Documents. Each agency shall coordinate its assigned work with the construction schedule as maintained by the Contractor and shall perform its work promptly so as not to delay the Work. The Contractor shall give reasonable notice to the Owner or the Owner's testing agencies as to when testing or inspections are required. Observances, by agencies, having bearing on the Work shall be reported to the Contractor and Architect/Engineer in the most expeditious way possible, and shall be recorded in writing to the Contractor, Architect/Engineer and the Owner. Agency personnel shall not interfere with or assume the duties of the Contractor.
- (c-9) Reports: The testing or inspection agency shall prepare reports of inspections and laboratory tests, including analysis and interpretations of test results where applicable. The agency shall properly identify each report and, where required, provide the agency's certification of test results. The agency shall describe test methods used, and compliance with recognized test standards, if any. The agency shall complete and submit these reports at the earliest possible date in each case to the Contractor, Architect/Engineer and the Owner.
- (c-10) Pre-Installation Conferences: Well in advance of the installation of every major unit of Work which requires coordination with other Work, the Contractor shall meet at the Project site with the installers and representatives of the Suppliers who are involved in or affected by the unit of Work, or in its coordination or integration with other Work which has preceded or will follow. At each meeting, the Contractor shall review progress of other Work and preparations for the particular Work under consideration, including

requirements of the Contract Documents, options, related Modifications, purchases, deliveries, Shop Drawings, product data, quality control samples, possible conflicts, compatibility problems, time schedules, weather limitations, temporary facilities, space and access limitations, structural limitations, governing regulations, safety, inspection and testing requirements, performance results, recording requirements, protection, and similar considerations. The Contractor shall record significant discussions of each conference and agreements and disagreements along with the final plan of action to be taken. The Contractor shall distribute records of each meeting promptly to everyone concerned, including the Architect/Engineer and the Owner.

- (c-11) The Contractor shall not proceed with a specific component of the Work if the associated pre-installation conference cannot be concluded successfully. If required the Contractor shall implement actions to resolve impediments to the performance of the Work, and shall reconvene the pre-installation conference at the earliest date feasible.
- (c-12) Installers Inspection of Conditions: The Contractor shall require the installer of each major unit of Work to inspect that portion of the Project to receive the Work, and conditions under which the Work will be performed, and to report any unsatisfactory conditions, in writing, to the Contractor, the Architect/Engineer and the Owner. The Contractor shall provide copies of each such report to the Architect/Engineer and the Owner. The installer shall not proceed with the Work until all unsatisfactory conditions have been corrected in a manner acceptable to the installer.
- (c-13) Manufacturers' Instructions: Where installations include manufactured products, the Contractor shall comply with the manufacturer's applicable instructions and recommendations for installation. To whatever extent the manufacturer's instructions are more explicit than applicable requirements found in the Contract Documents, the manufacturer's instructions and recommendations shall govern.
- (c-14) The Contractor shall inspect each item of material or equipment immediately prior to installation and reject damaged and defective items.
- (c-15) The Contractor shall provide attachment and connection devices and methods for securing Work properly as it is installed, true to alignment and elevation, and within recognized industry tolerances, if not otherwise indicated. The Contractor shall: allow for expansions and building movements; provide uniform joint widths

in exposed Work, organized for best possible visual effect, acceptable to the Architect/Engineer.

- (c-16) The Contractor shall recheck measurements and dimensions of the Work as an integral step of starting each installation.
 - (c-17) The Contractor shall install Work during conditions of temperature, humidity, exposure, forecast weather, and status of Project completion which will ensure best possible results for each unit of Work, in coordination with the entire Work. The Contractor shall isolate each unit of Work from non-compatible Work, as required to prevent deterioration.
 - (c-18) The Contractor shall coordinate the enclosure and closing-in of the Work which requires inspections and tests, so as to avoid the necessity of uncovering Work for that purpose.
 - (c-19) Mounting Heights: Except as otherwise indicated, the Contractor shall mount individual units of Work at industry recognized standard mounting heights for applications indicated. The Contractor shall refer questionable mounting height choices to the Architect/Engineer and the Owner for final decision. The Contractor shall comply with the Owner's and the State of Michigan's requirements for physically handicapped mounting heights.
 - (c-20) The Contractor shall adjust, clean, lubricate, restore marred finishes and protect installed Work to ensure that it will remain without damage or deterioration during the remainder of the construction period. Unless otherwise specified by the Contract Documents, all Work is to be thoroughly cleaned prior to its being turned over to the Owner. This includes dusting, window cleaning, floor cleaning and all other operations associated with the proper cleaning of the Work. Waxing or buffing floors shall be performed when required by the Contract Documents.
- d. The Contractor shall at all times enforce strict discipline and good conduct among all employees engaged, directly or indirectly by the Contractor, to perform portions of the Work, and shall not allow on the Work any unfit person or anyone not skilled in the Work assigned. The Contractor, in all cases, shall be responsible for the actions, inactions and omissions of all employees engaged, directly or indirectly, to perform portions of the Work.
 - e. The Contractor shall classify and allocate the furnishings of materials and the performance of labor to the various trades involved in accordance with local custom, rules, jurisdictional awards, regulations, decisions, and the like, insofar as the same may be applicable to the Work, regardless

of the classification by sections or trades as they appear in the Contract Documents. The Contractor, in all cases, shall be responsible for the actions, inactions and omissions of Subcontractors, Sub-subcontractors, Suppliers, their agents and employees, and any other person or entity employed or performing portions of the Work under a contract with the Contractor or a party to a contract between the Contractor, Subcontractors, Sub-subcontractors or Suppliers.

- f. Reference is made to Article 21 hereof for additional information concerning testing and inspections.

ARTICLE 11: ROYALTIES AND PATENTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof.

ARTICLE 12: SURVEYS, PERMITS AND REGULATIONS

- a. The Owner, where applicable, shall furnish surveys describing certain physical characteristics of the Project site. The Contractor shall be responsible for and shall pay for all surveys required to establish building alignment and elevations. The Architect/Engineer, or the Owner shall either provide or direct the Contractor to reference points for the Contractor to rely upon in order to establish required alignment and elevations. The Contractor shall be responsible for protecting and preserving these reference points.
- b. Permits and licenses necessary for the execution of the Work shall be secured and paid for by the Contractor. Unless otherwise specified, the Owner shall secure and pay for any required general building permit and any applications, governmental or jurisdictional approvals and easements for permanent structures or permanent changes in existing facilities.
- c. The law of the State of Michigan, to the extent applicable, shall govern all construction under this Contract.
- d. When the Contract Documents require the Work or any part of the Work to be done on public or private property, other than the Owner's property, the Contractor shall secure a permit, license or temporary easement and give adequate notice to the municipality and/or any other agency having jurisdiction over it. The Work shall be carried out in accordance with the laws, ordinances, rules and regulations, and to the satisfaction of each municipality, agency or department having jurisdiction. If the Contractor observes that the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect/Engineer, in writing, and any necessary Contract changes shall be made as provided in the Contract Documents for changes in the Work. If the Contractor

performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice to the Architect/Engineer, the Contractor shall bear all costs arising therefrom.

- e. The Contractor shall comply with the State of Michigan Soil Erosion and Sedimentation Control Act (1972 PA347 as amended) and other State public acts which apply to the Owner's Project.
- f. Where the Contract Documents require the Work or any parts of the Work to be above the standards required by law, such Work shall be completed in accordance with the requirements of the Contract Documents.
- g. All Contractors performing plumbing or electrical work on property owned or operated by The Regents of the University of Michigan are required to contact the Construction Inspection Office in the Construction Management Office of the University prior to starting work, to arrange for University Inspection coordination and consultation with the Contractor. The Owner provides, at no charge to the Contractor, plumbing and electrical inspections by the Owner's personnel, for all Work performed on the Owner's property or on the Owner's facilities. Such inspections are on a periodic basis when called for by the Contractor and are for the purpose of determining if the Work is in compliance with applicable codes. In all cases, the Contractor shall call for such inspections prior to the Work being concealed and in no case after final acceptance of the Work. If required for proper inspection to occur, the Contractor shall uncover the Work, at the Contractor's expense.

ARTICLE 13: PROTECTION OF WORK AND PROPERTY; SAFETY

- a. The Contractor shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss arising in connection with the execution of the Contract. The Contractor shall make good any such damage, injury or loss at no cost to the Owner, except such as may be directly caused by agents or employees of the Owner. The Contractor shall adequately protect the Work and adjacent property as required by law, by the Contract Documents, or as otherwise required, to cause no damage to the Work and adjacent property during the execution of the Contract. This requirement shall also apply to structures above and below ground as conditions of the site require.
- b. The Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take all necessary precautions for the safety of employees and visitors on the site of the Project and shall comply with applicable provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the

premises where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public. The Contractor shall post danger signs warning against the hazards created by such features of construction such as protruding nails, hoists, holes, elevator hatchways, scaffolding, window openings, stairways, falling material and other such features. The Contractor shall designate a member of its organization whose responsibility will include the administration of the Contractor's safety program, and the prevention of accidents. The name and position of this person shall be reported to the Architect/Engineer and the Owner at the start of the Work and shall not be changed unless notice is given to the Architect/Engineer and the Owner.

- c. Asbestos: Whenever during the course of doing the Work the Contractor, Subcontractors or Sub-subcontractors encounter asbestos, the Contractor shall immediately notify the Architect/Engineer and the Owner. Whether directed under the original Contract Documents or directed by means of a Contract change, the Contractor shall subcontract with an asbestos abatement contractor, licensed by the State of Michigan to perform such work, and such asbestos abatement contractor shall handle, remove and dispose of the asbestos or any materials containing asbestos strictly in accordance with applicable rules and guidelines specified by the University of Michigan Department of Occupational Safety and Environmental Health, MIOSHA, OSHA, E.P.A., Clean Air Act and other applicable laws. The Contractor shall take all necessary special precautions and actions to protect workers, Subcontractors, Sub-subcontractors, Owner's representatives, the general public, the building and the structure from exposure to asbestos.
- d. In an emergency affecting the safety of life or of the Work or of adjoining property, the Contractor, without special instruction or authorization from the Architect/Engineer, or the Owner, shall act, at the Contractor's discretion, to prevent such threatened loss or injury. In an emergency, when directed by any authority, the Contractor shall act, without appeal. Any compensation, claimed by the Contractor on the account of emergency work, shall be determined in accordance with the provisions contained in Article 15 hereof.
- e. The Contractor shall substantially brace and hold in place the various parts of the structure and adjoining structures that cannot be maintained in their final positions with stability until other connecting or abutting parts or members are constructed and permanently secured. The Contractor shall protect the Project against all damage from the elements, overloading of the structure, and undermining or displacement due to conditions of the site or due to any other methods of construction.

- f. The Work shall be executed in a manner which will cause as little inconvenience as possible to the Owner in the Owner's use of the property and existing facilities and structures. Where applicable the Contractor shall provide and maintain adequate, dust tight, protective coverings, enclosures and barricades about the Work and shall keep the same in repair throughout the entire Work. Enclosures of appropriate fire rated construction shall be installed, by the Contractor, where necessary to divide the Work area from the Owner's occupied areas, all as a part of the Contract requirements.
- g. All temporary work, of every nature, shall be dismantled and removed from the Owner's premises.
- h. The use of disposal of flammable liquids or other combustible materials shall be handled in accordance with established rules and regulations.
- i. No explosives will be permitted on the Owner's premises, unless written permission is given by the Owner, not less than seventy two (72) hours in advance of the time of delivery of such explosives. All risks, regardless of the Owner's approval, associated with the storage, handling and use of explosives are solely borne by the Contractor, as are any costs associated with damages, injuries or losses arising out of the use of such explosives.

ARTICLE 14: SUPERINTENDENCE; SUPERVISION; DAILY REPORTS;
COOPERATION

- a. The Contractor shall keep on the Project, at all times during the progress of the Work, a competent full time Superintendent and any necessary assistants, all satisfactory to the Architect/Engineer, and the Owner. The Superintendent shall be located at the Project site unless otherwise approved by the Owner. The Superintendent shall represent the Contractor and all directions, directives, notices and other communications given by or to the Superintendent shall be as binding as if given by or to the Contractor. The Superintendent shall remain on-site daily until full completion of the entire Work, including "punch list" Work.
- b. If the Contractor's Superintendent and/or any other Contractor's employee(s) prove(s) unsatisfactory to the Architect/Engineer or the Owner, upon request from the Owner such Superintendent or employee(s) shall be promptly replaced by the Contractor. Refer also to Article 41 hereof, entitled "Subcontracts".
- c. The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over the construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract.

- d. The Contractor and each Subcontractor and Sub-subcontractor shall cooperate with each other and with any separate contractors or persons employed by the Owner. Each of these parties shall correlate their Work and activities with the Work of others, and in the case of disagreements as to the proper procedure, sequence of Work, use of space, responsibility for damage, or other matters related to the Work, the parties involved shall abide by the Architect's/Engineer's decision as to the procedure to be followed.
- e. The Contractor shall keep and forward a report of daily progress to the Architect/Engineer, and the Owner. The report shall include, but not be limited to, the number of workers by trade and/or Subcontractor or Sub-subcontractor on the Project, indicating where on the Project each was working and what Work activity was performed. The report will also address and record the delivery of major materials and equipment to the site, accidents of any nature and the severity of each occurring on the Project, the daily temperature and weather, visitors to the site, and inspectors, testing agencies or other authorities on the Project site. The Contractor's daily progress report will also note any variances between the requirements of the Contract Documents and the actual construction of the Work.

ARTICLE 15: EXTRA WORK AND CHANGES IN THE WORK

- a. The Owner, without invalidating the Contract and without notice to any surety, may at any time order extra Work or make changes by altering, adding to or deducting from the Work, the Contract Sum being adjusted accordingly. All such Work shall be authorized by a written Change Order or other written Modification from the Owner. Upon receipt of such an order the Contractor shall promptly proceed with the Work involved. All such Work shall be executed under the conditions of the original Contract.
- b. When so directed, the Contractor shall promptly submit an itemized estimate and a proposal or unit prices and a proposal for performing or deleting such extra or changed Work. Any extensions or reductions of the Contract Time associated with extra or changed Work shall be identified at the time the Contractor submits such proposal, as required by Articles 17 and 18 hereof, which address adjustments to the Contract Time.
- c. Adjustments in the Contract Sum shall be determined by one or more of the following methods:

Method No. 1 - By mutual acceptance of a lump sum proposal, including overhead and profit, itemized and supported by sufficient substantiating data to permit evaluation.

Method No. 2 - By unit prices stated in the Contract or subsequently agreed upon, subject to the provisions contained in Article 15 paragraph h hereof.

Method No. 3 - On the basis of the actual cost of the Work as provided for in Article 15 paragraphs e and f hereof, plus a Contractor's fee for overhead and profit as determined by Article 15 paragraph g hereof. The Contractor shall keep and present in such a form as the Architect/Engineer or the Owner may direct, an itemized accounting, together with supporting data and vouchers, of all costs associated with the extra or changed Work.

- d. In the event that the Owner and Contractor are unable to agree to the extent of the Contract Sum adjustment, the Contractor, upon written direction from the Architect/Engineer and the Owner shall proceed with the Work as ordered in Article 15 paragraph a hereof; in such case the Contract Sum adjustments shall be made in accordance with Method No. 3 above. The Contractor, upon the receipt of such a directive, shall promptly proceed to carry out the extra or changed Work.

- e. The term Cost of the Work means the sum of all costs necessarily incurred and paid by the Contractor in the proper performance of the Work. All such costs shall be in amounts no higher than those prevailing in the locality of the Project. The following costs shall constitute the recoverable Cost of the Work to which the Contractor is entitled when performing extra or changed Work, or making any other claim for a Contract Sum adjustment. These costs will also form the basis for the Contractor's recoverable costs which are associated with extensions of the Contract Time caused by extra or changed Work, or other cause solely within the control of the Architect/Engineer, or the Owner, and which are further substantiated by the Contractor in accordance with the requirements of Article 18 hereof.
 - (e-1) Payroll costs for employees of the Contractor directly employed in the physical performance of the Work. Payroll costs for employees not directly employed in the physical performance of the Work, such as Superintendents and foremen, are recoverable to the extent that additional supervision or staffing is specifically required to be added for the proper execution of the Work. Percentage add-ons, or other costs, for employees not directly employed in the physical performance of the Work shall not be allowed unless the Contractor establishes that such employees are or were required for the proper execution of the Work and further that such employees were actually added to the Contractor's Project staff, or their time on the Project was extended as a result of the extra or changed Work. Payroll costs shall include salaries or wages paid plus the cost of itemized fringe benefits, including social security contributions, unemployment and workers' compensation insurance, and vehicle parking costs. The payroll costs associated with premiums paid for performing the Work after regular hours, on weekends or holidays shall be allowed only to

the extent that these are previously authorized and approved by the Owner.

- (e-2) Costs of all materials and equipment furnished and incorporated into the Work by the Contractor, including costs of transportation, and storage where applicable. All trade discounts, rebates and refunds and all returns from sales of surplus materials and equipment shall accrue to the Owner.
 - (e-3) Payments made by the Contractor to Subcontractors for Work performed. Subcontractors recoverable costs shall be determined in the same manner as the Contractor's. If required by the Owner, the Contractor shall obtain competitive bids from Subcontractors acceptable to the Contractor and the Owner and will subcontract with those accepted by the Owner.
 - (e-4) Sales, consumer, use or similar taxes related to the Work, and for which the Contractor is liable, or are otherwise imposed by laws and regulations.
 - (e-5) Construction equipment costs of Contractor's equipment or rental costs from others; hourly, daily, weekly or monthly rates will be applied where appropriate.
 - (e-6) Other supplemental costs which are substantiated by the Contractor as specifically being required for the proper execution of the extra or changed Work, unless specifically prohibited by Article 15 paragraph f hereof.
- f. The Contractor's recoverable Cost of the Work shall not include any of the following costs when performing extra or changed Work, or in making any other claim for a Contract Sum adjustment, including any claims associated with extensions of the Contract Time.
- (f-1) Payroll costs and other compensation of the Contractor's officers, executives, principals, general managers, project managers, construction managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing or contracting agents, expeditors, clerks, or any other employees or agents who are not specifically employed full-time on the Project. Those employees or agents not employed full-time on the Project are to be considered as administrative costs which are covered by the Contractor's fee. Exceptions to this requirement will only be made on a case-by-case basis, each of which shall require prior Owner authorization and approval.
 - (f-2) Expenses of the Contractor's principal and branch offices other than the Contractor's office located on the Project site.

- (f-3) Any part of the Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 - (f-4) Cost of premiums for the extension of any bonds or insurance coverage required to be secured by the Contractor by the Contract Documents.
 - (f-5) Costs associated with Work arising from the one year correction of the Work period, warranties, or guarantees which are required by the Contract Documents.
 - (f-6) Additional vehicle parking costs which exceed the parking reimbursement allowable within the payroll cost. (See paragraph f-1 above.)
 - (f-7) Any other supplemental costs which are not substantiated by the Contractor as specifically being required for the proper execution of the extra or changed Work.
- g. When using Methods 1 and 3 of paragraph c. above, the Contractor's fee for overhead and profit shall be determined as follows:
- (g-1) The Contractor will be allowed a maximum fee of fifteen (15) percent for the Costs of the Work performed with the Contractor's own forces. The Contractor will be allowed a maximum fee of seven and one half (7-1/2) percent for the Costs of the Work performed by Subcontractors or for other services rendered by persons or entities not employed by the Contractor. Subcontractors will determine their fee in the same manner as the Contractor.
 - (g-2) The Contractor will not be allowed a fee for overhead and profit on the premium time wages paid for overtime, shift time or other similar types of Work conditions which premium time wages may be paid. The fees identified in Article 15 paragraph (g-1) above shall apply to the base wages only.
 - (g-3) Where an extra or change in the Work results in a deduction in the Contract Sum only, the net decrease in the Contract Sum will be the amount of the deduction only. Where an extra or a change in the Work involves both deductions and additions to the Contract Sum, Contractor fees will be applied to the net increase, if any, of such extra or changed Work.
- h. Actual quantities and classifications of unit price Work shall be submitted by the Contractor to the Architect/Engineer and the Owner. All such quantities and classifications shall be subject to review and approval by the Architect/Engineer and

the owner. The Architect/Engineer, or the Owner, may make independent measures of Work completed to verify the Contractor's reported quantities or classifications. The estimated quantities of items of unit price Work, identified in the Contract Documents, are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract Sum. Where the quantity of any item of unit price Work differs by twenty (20) percent or more and is materially and significantly different from the estimated quantity included in the Contract and there is no corresponding adjustment with respect to any other item of Work, the Contractor or the Owner may make a claim for an adjustment in the unit price, and corresponding Contract Sum, in accordance with Article 43 paragraph b hereof, if the parties are unable to agree to such adjustments. Each unit price will be deemed to include an amount, in addition to the Cost of the Work, adequate to cover the Contractor's overhead and profit.

- i. If notice of any extra Work or change in the Work affecting the general scope of the Work or the provisions of the Contract Documents is required by the provisions of any bond, to be given to any surety issuing such bonds, the giving of any such notice shall be the Contractor's sole responsibility.
- j. In giving instructions, the Architect/Engineer, or the Owner, shall have the authority to order minor changes in the Work not involving adjustments to the Contract Sum or the Contract Time and not inconsistent with the intent of the Contract Documents. Such instructions shall be given in writing. The Contractor shall carry out such written order promptly.
- k. The Contract Sum may only be adjusted by a written Change Order or written Modification; no claim for adjustments to the Contract Sum will be valid unless so ordered.

ARTICLE 16: CONCEALED CONDITIONS AND EXISTING UTILITIES

- a. If the Contractor encounters physical conditions at the site which differ materially from those indicated by the Contract Documents or which differ materially from those ordinarily encountered and generally recognized as inherent to the Work of the character required by the Contract Documents, the Contractor shall, within seven (7) calendar days of the first observance of differing conditions, and before such conditions are further disturbed, notify the Architect/Engineer, and the Owner of such differing conditions. The Contractor shall not proceed with such differing work after first observance of differing physical conditions, except in an emergency. In no case will the Contractor's claim be allowed if the notice provision, and work stoppage requirements of this paragraph are not adhered to. In no case will the Contractor's claim be allowed after final payment of this Contract.
- b. In all cases where underground utilities are shown to exist on the Contract Documents, the Contractor shall have such locations verified by the appropriate authority, prior to commencing any Work in the vicinity of such underground utilities. Any costs associated with these verifications shall be borne by the Contractor. Any damage or loss resulting from the Contractor's failure to comply with this requirement shall be borne solely by the Contractor. Specific reference to the Contractor's obligation contained in Article 2 paragraph f, g and h hereof is made here.
- c. In those instances where utilities are not shown to be present on the site by the Contract Documents, the Contractor is nonetheless required to contact those authorities which have jurisdiction over utilities which may be encountered in the Contractor's performance of any of the Work. The Contractor is required to verify that these utilities will not be encountered. Any costs associated with these verifications shall be borne by the Contractor. If it is discovered that utilities will be encountered the Contract Documents will be revised as required.
- d. If the Architect/Engineer and the Owner, upon an investigation of the alleged differing conditions, determines that they materially differ from the requirements of the Contract Documents, or if the actual location of any utility materially differs from that indicated by the Contract Documents, or if it is discovered that utilities will be encountered which were not shown by the Contract Documents and in each case if the conditions encountered materially increases or decreases the Contractor's costs or time associated with the performance of the Contract, a Contract Sum and/or Contract Time adjustment will be made to the Contract in accordance with Articles 15, 17 and 18 hereof.
- e. In all cases involving utilities, it shall be the Contractor's responsibility to coordinate the Work with the owners of such

utilities, for the protection of such utilities and for the safety associated with working with or in the vicinity of such utilities, unless specifically stated otherwise in the Contract Documents. Any reference to the Owner being responsible for the coordination of, the paying for, or the relocation of a utility or associated equipment, which it does not own or control, requires only reasonable efforts by the Owner to coordinate such activity. In no case will the Owner be responsible for delay costs associated with: the Contractor's failure to coordinate these activities; or for the untimely response of the authorities having control over these utilities, unless the owner of the utility is the Owner with the contractual responsibility to relocate such, in which case the Owner will be afforded a reasonable time to relocate such utilities. The Contractor is not precluded from receiving a Contract Time extension, if delayed, if the owners' of utilities respond in an untimely manner.

ARTICLE 17: DELAYS AND EXTENSION OF TIME

- a. If the Contractor is delayed at any time in the progress of the Work by any act or neglect of the Owner, or the Architect/Engineer, or of any employee of either acting within their limits of authority, or by any separate contractor employed by the Owner, or by changes ordered in the Work, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties or any causes beyond the Contractor's control, then the Contract Time shall be adjusted by Change Order for such reasonable time as the Architect/Engineer and Owner may determine. The Contract Time may be changed by Change Order or written Modification only.
- b. The Contractor shall take all reasonable efforts to minimize the effect of any delay to the Work.
- c. Any claim for an adjustment to the Contract Time by the Contractor must be made in writing to the Architect/Engineer and the Owner promptly, and in no case later than twenty one (21) calendar days after the occurrence of the event giving rise to the claim. Notice of the extent of the claim and supporting data shall be submitted within thirty (30) calendar days of the event giving rise to the claim. In the case of a continuing delay, only one claim is necessary. In the case of a recurrence of a delay of similar nature after a Change Order has been issued, consideration for time extensions will be given only if additional time extensions are requested in accordance with the requirements of this Article 17 paragraph c. No claim for an adjustment to the Contract Time will be considered as valid if not submitted in accordance with the requirements of this Article 17 paragraph c.
- d. Only those delays which are solely within the control of the Architect/Engineer, or the Owner shall give rise to a claim, by the Contractor, for an adjustment in the Contract Sum.

ARTICLE 18: CONSTRUCTION SCHEDULES

- a. The Contractor shall submit within twenty (20) calendar days after the Notice to Proceed, a schedule fixing the dates for: the submission of Shop Drawings, samples and other required submittals; the beginning of manufacturing of associated components; the delivery of such components to the site; and the installation of such components into the Work.
- b. The Contractor shall also submit within thirty (30) calendar days after the receipt of the Notice to Proceed, a monthly payment cash flow schedule of anticipated progress payments for the project duration, based upon the Contractor's planned progress of the Work.
- c. In all cases, these schedules required in paragraphs a and b above shall be submitted prior to the first submission of an application for payment by the Contractor.
- d. The Contractor is to utilize Critical Path Method (CPM) scheduling techniques in the preparation of the schedules required in paragraphs a and b above.
- e. The Contractor is responsible for the completeness of the schedule. The Contractor shall confirm in writing, with each submission of the schedule, that the Contractor has reviewed the schedule with Subcontractors and Suppliers and has coordinated and allowed for the lead times associated with the delivery of materials or equipment required for the proper progress of the Work, taking into consideration the requirements of Article 5 and 6 thereof.
- f. The schedule shall allow for and depict the following:
 - (f-1) local weather conditions;
 - (f-2) local jurisdictional or other work restrictions;
 - (f-3) specific restrictions, constraints and Contract completion dates stipulated in the Contract Documents;
 - (f-4) intermediate completion dates stipulated in the Contract Documents;
 - (f-5) time for needed approvals by the Owner, Architect/Engineer, or other agency or authority;
 - (f-6) Owner, Architect/Engineer, or other agency or authority inspections and/or tests where required by the Contract Documents;
 - (f-7) the work of separate contractors or the Owner as required and provided for by Article 39 hereof;
 - (f-8) necessary resources to accomplish the Work within the Contract Time;

- (f-9) other information that may be provided by the Architect/Engineer or the Owner; and
- (f-10) a legend for each report or chart which clearly identifies how to interpret each.
- g. The sequence of activities in the schedule will reflect the Contractor's intended approach to the execution of and completion of the Work. The schedule shall be broken into work areas to provide for a clear identification of the planned progress of the Work. Unless impracticable to do so, the duration of each activity will not be greater than twenty (20) working days. All durations shown will be in working days.
- h. The Owner's or the Architect's/Engineer's review of schedules shall not constitute or imply the acceptance of or relieve the Contractor of the responsibility for the means, methods, sequences, techniques or procedures used in the performance of the Work.
- i. The schedules as described in this Article 18 shall represent the Contractor's plan for organizing, directing, managing, controlling, staffing and executing the Work required by the Contract Documents. The Owner will rely on such schedules to coordinate and otherwise plan the work of the Owner, Architect/Engineer, or other separate contractors, and to evaluate progress for payment purposes or other purposes as described in the Contract Documents.
- j. The Contractor's requests for time extensions or damages due to delay will only be considered where it is established by the Contractor, using accepted scheduling techniques, that the Project's contractual intermediate or Contract completion dates have been impacted by the alleged issue causing the delay. This does not preclude the Contractor's right to finish the Project early; it does explicitly establish the condition precedent upon which the Contractor shall be entitled to time extensions or delay damages. Where time extensions are substantiated as required by this Article 18 paragraph j, the contractual completion dates shall be amended by a Change Order. The amended completion dates shall be used to evaluate future requests for time extensions. The final schedule depicting all granted time extensions shall be used by the Owner in assessing Owner damages for delay.
- k. All slack time in the schedule shall be shared by the Owner and Contractor or otherwise used for the benefit of the Project.
- l. The Contractor shall be required to update the schedule on a monthly basis. The updated schedule shall reflect the status of the Project's progress at the date of update and the Contractor's planned progress of remaining portions of the Work.

- m. The updated schedule will identify the actual start and finish dates of all activities completed and the actual start date and remaining duration of all activities in progress.
- n. At the completion of the Work and as a condition precedent to final payment to the Contractor, the Contractor shall submit two (2) copies of the final updated schedule to the Owner.
- o. If it is apparent that the Contractor will not meet the contractual completion dates, as amended by change orders, the Contractor will take the following actions:
 - (o-1) Increase construction manpower in such quantities and crafts as will substantially eliminate the cause of such delay,
 - (o-2) Increase the number of working hours per shift, shifts per working day, working days per week, or the amount of construction equipment, or any combination of these, until the cause of such delay is substantially eliminated,
 - (o-3) Reschedule activities to achieve maximum practical concurrence of scheduled activities.

The Contractor agrees that such actions will be taken promptly and without additional costs to the Owner.

ARTICLE 19: CLAIMS FOR ADDITIONAL COSTS

If the Contractor makes a claim for an increase in the Contract Sum arising out of an action or inaction on the part of the Architect/Engineer, or the Owner, or other reasonable grounds, the Contractor shall give written notice, stating the nature and the amount of the claim within twenty one (21) calendar days after the event giving rise to such claim and prior to proceeding with the Work involved, except in an emergency endangering life or property. Such written notice shall be made to the Architect/Engineer, and the Owner. No such claim shall be valid unless so made. Refer to Article 43 paragraphs b and c hereof for further requirements concerning claims for additional costs.

ARTICLE 20: WAIVER PROVISION

Waiver of any provision, term, or covenant of the Contract between the Owner and the Contractor, must be made in writing, issued by authorized representatives of the Architect/Engineer, and the Owner. No such waiver shall constitute a precedent, nor bind the Owner to a waiver of any succeeding breach of the same or any other of the provisions, terms or covenants to the Contract, unless such waiver specifically addresses such succeeding conditions.

ARTICLE 21: TESTING AND INSPECTION OF THE WORK

- a. All Work shall be subject to tests and inspections at all reasonable times and at all places prior to acceptance. Any

such inspection or test shall be for the sole benefit of the Owner and shall not relieve the Contractor of the responsibility of providing quality control measures to assure that the Work strictly complies with the requirements of the Contract Documents. Inspections or tests conducted by the Architect/Engineer, or the Owner shall not relieve the Contractor of the obligation to perform the Work in accordance with the Contract Documents. Inspections and tests shall not be construed as constituting or implying acceptance of Work which does not comply with the requirements of the Contract Documents, unless such deviation from the Contract Documents is explicitly brought to the Architect's/Engineer's and the Owner's attention in writing, and subsequently and explicitly accepted by the Architect/Engineer, and the Owner, in writing.

- b. Neither the right of the Architect/Engineer, or the Owner to inspect or test the Work, or reject Work which does not comply with the requirements of the Contract Documents, nor a decision made in good faith to exercise or not exercise this right shall give rise to any duty or responsibility of the Architect/Engineer, or the Owner to the Contractor, any Subcontractor, and Sub-subcontractor, any Supplier, any other person or organization performing any of the Work, or to any surety. No inspection or test, or other action or inaction, on the part of the Architect/Engineer, or the Owner, shall constitute or imply the acceptance of or the responsibility for the Contractor's means, methods, techniques, sequences or procedures in the performance of the Work, or safety precautions and programs.
- c. If the Contract Documents, the Architect/Engineer, the Owner, laws, ordinances, or any public authority require any Work to be specifically tested, inspected, or approved, the Contractor shall give timely notice of its readiness for such. If any test, inspection, or approval is by authority other than the Architect/Engineer, or the Owner, the Contractor shall give notice to the Architect/Engineer and the Owner of the date fixed for such. If any Work requiring inspection, test or approval prior to its being covered up, is covered up without approval or consent of the Architect/Engineer or the Owner, it must, if required by the Architect/Engineer, or the Owner, be uncovered for examination at the Contractor's expense.
- d. Unless otherwise noted, the Contractor shall make arrangements for tests, inspections and approvals, and bear all related costs of such. If the Architect/Engineer, or the Owner determines that additional portions of the Work require additional testing or inspections, the Owner shall pay for tests, inspections or approvals not specifically required by the Contract Documents, except as provided in Article 21 paragraph g hereof.
- e. If tests or inspections reveal that portions of the Work fail to meet the requirements of the Contract Documents, any additional tests or inspections required to assure the Architect/Engineer, and the Owner that the defective Work has

been remedied or is in an acceptable condition will be conducted at the expense of the Contractor. This shall include the additional costs of the Architect/Engineer, and the Owner which are associated with such additional tests or inspections.

- f. The Architect/Engineer, or the Owner shall have the right to reject or condemn all materials furnished and/or Work performed which, in their judgment, does not meet the requirements of the Contract Documents. The Contractor shall, without charge, promptly replace any material, equipment or workmanship not in accord with the requirements of the Contract Documents. The Owner may accept such defective Work, at the Owner's sole discretion, and in this case the Contract Sum shall be adjusted to reflect the loss of value to the Owner.
- g. Re-examination of questioned Work may be ordered by the Architect/Engineer, or the Owner, and if so ordered, the Work must be uncovered by the Contractor. If such Work is found to be in accordance with the Contract Documents, the Owner shall pay the costs of re-examination and replacement. If such Work is found to be not in accordance with the Contract Documents, the Contractor shall pay for the costs of re-examination and replacement, unless the Contractor shall show that the defect in the Work was caused by another contractor not within the control of the Contractor.
- h. No extension to the Contract Time will be allowed in connection with the Contractor's correction of Work which was not performed in accordance with the requirements of the Contract Documents.
- i. Reference is made to Article 10 hereof for additional information concerning testing and inspections.

ARTICLE 22: CORRECTION OF WORK

- a. The Contractor shall promptly remove from the premises all materials or Work rejected by the Architect/Engineer, or the Owner as failing to conform to the requirements of the Contract Documents, whether incorporated into the Work or not. The Contractor shall promptly replace and re-execute the Work in accordance with the requirements of the Contract Documents without expense to the Owner, and shall bear the expense of correcting all work of other separate contractors destroyed or damaged by such removal or replacement.
- b. If the Contractor fails to correct Work which has been rejected or which otherwise does not conform to the requirements of the Contract Documents or fails to remove such Work from the premises, the Owner may carry out the Work in accordance with the requirements of Article 22 paragraph d and/or Article 23 hereof.

- c. If the Architect/Engineer, or the Owner deems it inexpedient for the Contractor to correct Work injured or not done in accordance with the requirements of the Contract Documents, an equitable deduction from the Contract Sum shall be made which reflects the loss of value to the Owner of such defective Work.
- d. If the Contractor does not remove any such rejected Work, materials and/or equipment within a reasonable time, fixed by written notice, the Owner may remove it and may store or dispose of the materials and equipment at the expense of the Contractor. If the Contractor does not pay the expense of such removal and storage within ten (10) calendar days thereafter, the Owner may, upon ten (10) calendar days written notice, sell such materials and equipment at auction or at sale and shall account for the net proceeds thereof, after deducting all costs and expenses that should have been borne by the Contractor, including all costs associated with sale, including attorney's fees, and all costs associated with removing and replacing such Work. If the proceeds, after deductions, do not cover all the costs which are the responsibility of the Contractor, a deductive Contract Change Order will be executed; if the remaining Contract balance is not sufficient to cover the remaining costs, the Contractor shall pay the difference to the Owner within ten (10) calendar days of the receipt of the Owner's invoice. The Owner's right to store and sell such materials and sell such materials and equipment shall not give rise to a duty to do so. If so chosen, the Owner may simply dispose of such materials and equipment, as seen fit; the costs of which shall be borne by the Contractor.

ARTICLE 23: OWNER'S RIGHT TO DO WORK

If the Contractor should neglect to carry out the Work in accordance with the requirements of the Contract Documents or fail to perform any provision of the Contract, the Owner, after seven (7) calendar days written notice to the Contractor may, without prejudice to any other remedy the Owner may have, make good such deficiencies, provided the Contractor fails to substantially make good such deficiencies within the seven (7) calendar day period. In this case a Change Order shall be issued deducting from the Contract Sum, and from future payments, the cost of correcting such deficiencies, including the costs of the Architect/Engineer, or the Owner. If the remaining Contract balance is not sufficient to cover the costs, the Contractor shall pay the difference to the Owner within ten (10) calendar days from the receipt of the Owner's invoice.

ARTICLE 24: ONE YEAR CORRECTION OF THE WORK PERIOD

- a. Neither the final certification of the Contractor's application for payment, nor final payment by the Owner to the Contractor, nor the issuance of the certificate of Substantial Completion, nor any provision in the Contract Documents shall relieve the Contractor of the responsibility of completing the

Work in accordance with the requirements of the Contract Documents. The Contractor shall remedy any Work which is found not to be in accordance with the requirements of the Contract Documents, and pay for any damage to other Work resulting therefrom, which shall appear within a one year period from the date of Substantial Completion, unless the terms of specific warranties required by the Contract Documents stipulate a longer time period. The Contractor shall remedy such non-conforming Work promptly upon notice from the Owner. For Work not completed until after Substantial Completion, the applicable time period will begin at the time the Work is completed.

- b. The establishment of a one year time period, or longer periods as may be stipulated by specific warranties, relates only to the specific obligation of the Contractor to remedy the Work, and has no relationship to the time within which the Contractor's obligation to comply with the requirements of the Contract Documents may be sought to be enforced by the Owner, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's contractual obligations.
- c. As a condition precedent to final payment, the Contractor shall guarantee that the conditions set forth in Article 24 paragraph a hereof will be adhered to by executing the Owner's Standard Form, "Correction of the Work Period", and shall also obtain and execute such an agreement from each Subcontractor. Such agreements shall be submitted in triplicate to the Owner.

ARTICLE 25: OWNER'S RIGHT TO TERMINATE THE CONTRACT

- a. The owner may terminate the Contract if:
 - (a-1) the Contractor discriminates against any employee or Subcontractor or Supplier because of sex, race, creed, color, religion, age, height, weight, marital status or national origin;
 - (a-2) the Contractor should file or have filed against it a petition in bankruptcy;
 - (a-3) the Contractor should make a general assignment for the benefit of the Contractor's creditors;
 - (a-4) a receiver should be appointed on the account of the Contractor's insolvency;
 - (a-5) the Contractor should refuse or should fail, except in cases for which extensions of time are provided, to supply enough skilled workers or proper materials or equipment to maintain the progress of the Work in accordance with the requirements of the Contract Documents;

- (a-6) the Contractor fails to perform the Work in accordance with the requirements of the Contract Documents;
 - (a-7) the Contractor should fail to make prompt payment to Subcontractors or Suppliers for material or labor;
 - (a-8) the Contractor disregards laws, ordinances, or the instructions of the Architect/Engineer; or
 - (a-9) the Contractor is guilty of a breach of any provision of the Contract Documents.
- b. If one of the above conditions exists, the Owner, upon the certification by the Architect/Engineer that sufficient cause exists to justify such action, may, without prejudice to any right or remedy and after giving the Contractor and the Contractor's surety, if any, seven (7) calendar days written notice of such conditions, terminate the employment of the Contractor and take possession of the premises and of all materials, tools, equipment and appliances thereon and finish the Work by whatever reasonable methods the Owner may deem expedient; provided, however, if the Contractor commences to correct such deficiencies and diligently pursues such corrections within such seven (7) calendar day period, the Owner shall not terminate the Contract as a result of such deficiency. If the employment of the Contractor is terminated the Contractor shall not be entitled to receive further payment until the Work is finished. If the unpaid balance of the Contract Sum shall exceed the expense of finishing the Work including compensation for additional managerial and administrative services and Owner's attorneys' fees, such excess shall be paid to the Contractor. If such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Owner within ten (10) calendar days from the receipt of the Owner's invoice. The expense incurred by the Owner as herein provided, and the damage incurred through the Contractor's default, shall be certified by the Architect/Engineer. The Contractor's obligation for such payment shall survive termination of the Contract.
- c. The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Upon written receipt of such termination from the Owner, the Contractor shall: cease all operation as directed in the notice; take actions necessary, or directed by the Owner, for the protection and preservation of the Work; and 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 or purchase orders. In the event of such termination for the Owner's convenience, the Contractor shall be entitled to recover payment from the Owner for all Work executed and any loss sustained upon equipment or materials and reasonable overhead and profit.

ARTICLE 26: SUSPENSION OF THE WORK

The Owner may, without cause, order the Contractor to suspend the Work in whole or in part for such periods of time as the Owner may determine. Upon written notice from the Owner, the Contractor shall suspend, delay or interrupt such Work as ordered. The Contractor shall continue other portions of the Work not suspended, if applicable. An adjustment will be made to the Contract Sum and the Contract Time, including reasonable overhead and profit, caused by such suspension. No adjustment will be made to the extent that performance is, was or would have been suspended by another cause that the Contractor has or had control over, or that an equitable adjustment is provided for or denied under another provision of the Contract Documents.

ARTICLE 27: CONTRACTOR'S RIGHT TO STOP WORK OR TERMINATE THE CONTRACT

If the Work should be stopped under an order of any court, or other public authority, for a period of three months, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under the Contractor or otherwise under the control of the Contractor, or if the Owner should fail to pay to the Contractor within sixty (60) calendar days any sums due that are properly certified by the Architect/Engineer and not being withheld by the Owner under any provision of Article 33 hereof, titled "Payments Withheld", then the Contractor may, upon seven (7) calendar days written notice to the Owner and the Architect/Engineer, stop Work or terminate the Contract and recover from the Owner payment for all Work executed and any loss sustained upon equipment or materials and reasonable overhead and profit.

ARTICLE 28: APPLICATIONS FOR PAYMENT

- a. The Contractor shall submit to the Architect/Engineer and the Owner an application for each payment for review. The Contractor shall submit receipts, vouchers or other supporting evidence, substantiating the requested payments for the Work performed, including payment requests from Subcontractors as required by Article 42 hereof.
- b. At least twenty (20) calendar days prior to the first application for payment, the Contractor shall submit to the Architect/Engineer and the Owner a schedule of values for all of the Work, allocating the Contract Sum to various portions of the Work. The amount of detail, method of breakdown and supporting data required to substantiate the accuracy of the schedule of values will be determined by the Architect/Engineer, and/or the Owner. If required, the schedule of values will indicate, where appropriate, the quantities of various portions of the Work included within a specific line item. Items such as bonds, permits, mobilization and other similar items, for which the Contractor requests specific early payment will be identified separately. The Contractor's remaining overhead and profit will be

proportionately included within each value of the Work identified.

- c. The schedule of values, after review by the Architect/Engineer, and the Owner, shall be used as the basis for making progress payments to the Contractor, unless such is found to be unacceptable to the Architect/Engineer or the Owner. In such case the Contractor shall be required to correct and resubmit for approval a revised schedule of values prior to subsequent applications. Progress payments for portions of the Work performed on a unit price basis will be based upon the number of units verified as complete by the Contractor and approved by the Architect/Engineer. Unless noted otherwise, it shall be the Contractor's responsibility to establish that the progress reported is accurate. The schedule of values will be revised, as necessary, to reflect adjustments to the Contract Sum made by Change Orders or written Modifications.
- d. If payments are requested for materials and equipment not incorporated in the Work but delivered and suitably stored on the site, the Contractor's application for payment will be accompanied by, and payment for such stored materials and equipment will be conditional upon; submission by the Contractor of bills of sale, invoices or other documentation that will establish the Owner's clear and unencumbered title to such, warranting that the Owner has received such free and clear of all liens, charges, security interests; and evidence that such materials and equipment are covered by appropriate property insurance and other arrangements to protect the Owner's interest, all to the satisfaction of the Owner.
- e. The Owner, at the Owner's sole discretion, may pay for materials and equipment not incorporated in the Work but delivered and suitably stored at another location other than the Project site. In this case, the Contractor's payment is conditioned by the same provisions as outlined in Article 28 paragraph d above and verification that the materials or equipment have been delivered and are suitably stored and protected.
- f. The Contractor shall not be relieved of the responsibility for loss or damages to such stored materials or equipment while stored or in transport to the Project site. Any such loss or damage shall be remedied at the Contractor's expense.
- g. The Contractor warrants and guarantees that title of all Work, materials and equipment covered by any application for payment, whether incorporated into the Work or not, will pass to the Owner no later than the time of payment, free and clear of all encumbrances, liens, charges and security interests.

ARTICLE 29: PAYMENT CERTIFICATION

- a. The Architect/Engineer, within ten (10) calendar days of receipt of the Contractor's application for payment, shall

either issue a certificate to the Owner approving such application, return the application to the Contractor indicating the amounts determined to be properly due, or reject the entire application as not properly due or as not submitted in accordance with the requirements of Article 28 hereof. In all cases, the Contractor and Owner shall receive a copy of the Architect's/Engineer's decision. In the event that the Contractor's application is returned without certification, the Contractor shall resubmit the application in accordance with Article 28 hereof. Payments to the Contractor from the Owner shall be due within twenty (20) calendar days after the Owner has received the approved certificate for payment from the Architect/Engineer, subject to the conditions of Article 33 hereof.

- b. Unless otherwise provided in the Contract Documents, payments on account will be made for 90% of the value of the Work properly certified. The final 10% of each payment will be made upon certification of final acceptance of the entire Work by the Architect/Engineer, subject to the conditions of Article 33 hereof.
- c. Before monthly payments are made, the Contractor shall furnish to the Architect/Engineer and the Owner waivers of liens, and sworn statements that all bills for previous monthly payments have been paid. Such waivers of liens and sworn statements shall include bills for labor, materials, equipment and services for which a lien could be filed.
- d. If in the opinion of the Architect/Engineer, and the Owner, the progress of the Work is satisfactory, then upon Substantial Completion of the entire Work, and the Contractor's furnishing of waivers of liens and sworn statements that all bills for the portion of payments being released have been paid, and the consent of surety, if any, to the release of retained payments, the payment on account will be made up to 95% of the Contract amount. The final payment of 5% will be made upon certification of final acceptance of the entire Work by the Architect/Engineer, subject to the conditions of Article 33 hereof.
- e. No certificate issued or payment made to the Contractor, nor partial or entire use or occupancy of the Work by the Owner, shall be construed as an acceptance of any Work not in accordance with the requirements of the Contract Documents, unless such deviation has been specifically called to the attention of the Architect/Engineer, and the Owner, in writing, and subsequent approval of such has been received from the Architect/Engineer, and the Owner, in writing. Inspections made by the Architect/Engineer, or the Owner for the purpose of verifying the Contractor's applications for payment will be for that purpose only.
- f. Should the Owner fail, without due cause, to pay the sum named in any certificate properly approved by the Architect/Engineer, within thirty (30) calendar days from the

date due as provided for in Article 29 paragraph a hereof, the Contractor shall receive, in addition to the sum named in the certificate, interest at the rate of eight (8.0) percent per annum, beginning from the date the payment was due.

- g. No interest on retained sums will be paid.

ARTICLE 30: SUBSTANTIAL COMPLETION

- a. When the Contractor considers the entire Work Substantially Complete, as defined in Article 1 hereof, the Contractor shall notify the Architect/Engineer and the Owner of such condition and request that a certificate of Substantial Completion be issued. Accompanying this notification, the Contractor shall submit a list of all Work not completed or Work that the Contractor believes to not be completed in accordance with the requirements of the Contract Documents. Prior to Substantial Completion and prior to a certificate of Substantial Completion being issued the Contractor shall complete all training of Owner personnel required by the Contract Documents and submit all manufacturers' warranties and operating and/or maintenance manuals as required by Article 8 paragraph c hereof. Such manufacturers' warranties shall clearly indicate the names, addresses and telephone numbers of personnel to contact for service and/or information.
- b. Within a reasonable time after being notified, the Architect/Engineer will review the list of Work not complete and make a preliminary inspection of the Work to determine if it is Substantially Complete. If in the opinion of the Architect/Engineer the Work is not Substantially Complete, the Contractor will be notified of such conditions and will be required to bring the Work to a state of Substantial Completion at no additional costs to the Owner.
- c. If in the opinion of the Architect/Engineer the Work is Substantially Complete, the Architect/Engineer and the Owner will inspect the Work and prepare a list of additional Work that is not in compliance with the requirements of the Contract Documents, if any. At the completion of this inspection a certificate of Substantial Completion will be issued by the Architect/Engineer which will be signed by the Owner. The Contractor shall be responsible for completing or correcting all items contained on the original list prepared by the Contractor as well as all items on the list prepared by the Architect/Engineer and the Owner, promptly upon the Contractor's receipt of such.
- d. Upon the issuance of the certificate of Substantial Completion of the entire Work, or a portion thereof, the Owner shall be responsible for security, maintenance, damages to the completed Work, utility costs, and operations of the plant or facility. The Contractor, however, shall be responsible for any damages caused by the Contractor's efforts to complete the Work, including any clean up costs. The Contractor's insurance will remain in force for two (2) years following the

date final payment is made by the Owner to the Contractor. The Contractor shall also remain responsible for any safety precautions associated with the Contractor's completion of any Work.

ARTICLE 31: FINAL PAYMENT

- a. When the Contractor considers that the entire Work is in a state of final completion, the Contractor shall notify the Architect/Engineer and the Owner of such condition. Within a reasonable time after being notified, the Architect/Engineer and the Owner will inspect the Work. If in the opinion of the Architect/Engineer, the entire Work is not in a state of final completion, the Contractor shall be notified of such condition and be required to bring the Work to such state, at no additional cost to the Owner. If in the opinion of the Architect/Engineer the Work is in a state of final completion, the Contractor shall submit an application for final payment to the Architect/Engineer who will certify the application. When the Work is in a state of final completion and upon receipt of the certificate for final payment from the Architect/Engineer, the Owner will make payment in accordance with the requirements of Article 29 paragraph a hereof, subject to the conditions of Article 33 hereof.
- b. Before final payment will be made to the Contractor, the Contractor shall furnish waivers of all liens, including waivers from all Subcontractors, Sub-subcontractors and Suppliers, together with sworn statements that all bills for labor, materials, equipment and services for which a lien could be filed for the entire Work have been paid, submit all documents as required by the Contract Documents, and submit written consent of surety, if any, to final payment. The Contractor may, if any Subcontractor, Sub-subcontractor or Supplier refuses to furnish a waiver of lien or sworn statement, furnish a bond satisfactory to the Owner, to indemnify the Owner against any lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to the Owner all sums that the Owner may be compelled to pay in discharging such a lien, including all costs and reasonable attorney's fee. Neither the right to require that liens, waivers and sworn statements be furnished by the Contractor, Subcontractors, Sub-subcontractors and Suppliers nor a decision made in good faith to exercise or not exercise this right shall give rise to a duty or responsibility of the Architect/Engineer, or the Owner to the Contractor, any Subcontractor, any Sub-subcontractor, any Supplier, any other person or organization performing any of the Work, or to any surety, to do so.
- c. The making of final payment by the Owner shall constitute a waiver of all claims except those arising from unsettled liens, Work failing to comply with the requirements of the Contract Documents, or terms of warranties or guaranties required by the Contract Documents or otherwise provided. Acceptance of final payment by the Contractor shall constitute

a waiver of all claims except those previously made in writing and identified by the Contractor at the time of final application for payment.

ARTICLE 32: PARTIAL OCCUPANCY

The Owner, at its election, may from time to time make use of or occupy any of the units or parts of the Project as the Work in connection therewith is completed, provided that the Owner determines that such units or parts of the Project are ready for the Owner's intended use. Prior to any such partial occupancy, the Owner will give notice to the Contractor thereof and such occupancy shall be upon the following terms:

- (1) the one year correction of the Work period, as outlined in Article 24 hereof, shall not begin to run until the certificate of Substantial Completion for the entire Work is issued;
- (2) other warranties or guarantees required by the Contract Documents shall not begin to run until the certificate of Substantial Completion for the entire Work has been issued;
- (3) such occupancy shall not constitute an acceptance of Work not performed in accordance with the requirements of the Contract Documents or relieve the Contractor of the liability to perform any Work required by the Contract Documents but not completed at the time of occupancy. The Contractor will be afforded reasonable access to complete or correct the Work;
- (4) the Contractor shall be relieved of all maintenance costs on the units or parts partially occupied;
- (5) the Contractor shall not be responsible for the wear and tear or damage resulting from such occupancy; and
- (6) the Contractor shall not be required to furnish heat, light, water or other services used in the units or parts occupied without proper remuneration thereof.

ARTICLE 33: PAYMENTS WITHHELD

- a. The Architect/Engineer may refuse to certify, or the Owner may refuse to make payment for, a part or the whole of any Contractor's application for payment if, in the opinion of the Architect/Engineer, or the Owner, the Work has not progressed to the extent represented by such application or the quality of the Work is not in accordance with the requirements of the Contract Documents. The Architect/Engineer, or the Owner may also withhold or nullify the whole or a part of any application, or prior application, on account of subsequently discovered evidence, to such extent as may be necessary to protect the Owner from loss on account of:

- (a-1) defective Work not remedied; or
 - (a-2) claims filed or reasonable evidence indicating probable filing of claims; or
 - (a-3) failure of the Contractor to make payments properly to Subcontractors or Suppliers or for labor, materials or equipment; or
 - (a-4) reasonable evidence that the Contract cannot be completed for the balance then unpaid; or
 - (a-5) damage, by the Contractor, to the Owner or another separate contractor or to work performed by either; or
 - (a-6) reasonable evidence that the Contract cannot be completed within the prescribed time limits; or
 - (a-7) failure, by the Contractor, to comply with the requirements of the Contract Documents.
- b. When the above grounds are removed, payment shall be made for the amounts withheld because of them; no interest shall be paid on such withheld payments.

ARTICLE 34: CONTRACTOR'S LIABILITY INSURANCE

- a. The Contractor shall, during the continuance of the Work under the Contract, including any extra or changed Work, maintain insurance coverage as described below. Such insurance will protect the named insured from claims which may arise out of or result from the Contractor's operations under the Contract, including extra or changed Work in connection therewith, whether such operations be by the Contractor or by a Subcontractor or by a Sub-subcontractor or by anyone directly or indirectly employed by the Contractor or any Subcontractor or any Sub-subcontractor.
- (a-1) Workers' Compensation & Employer's Liability insurance and any insurance required by any employee benefit acts or other statutes applicable where the Work is to be performed. All such insurance limits shall be statutory. The Employer's Liability limits shall not be less than:
 - \$500,000 Each Accident
 - \$500,000 Disease - Policy Limit
 - \$500,000 Disease - Each Employee
 - (a-2) Commercial general liability and property damage insurance (including Contractor's protective), which may be satisfied by a combination of Primary General Liability insurance coverage together with a following form Umbrella/Excess Liability insurance coverage, in any amounts required by the Owner on an occurrence form

(not claims made) but not less than the following limits of liability:

General Aggregate Per Location	\$10,000,000
Products/Completed-Operations Aggregate	\$5,000,000
Personal & Advertising Injury	\$5,000,000
Each Occurrence	\$5,000,000

and affording insurance for the protection against all risks of damage or destruction of property or bodily injury, wherever located, resulting from any action, omission or operation under the Contract or in connection with the Work. Such insurance shall be primary and non-contributory.

The above Commercial general liability and Umbrella/Excess Liability insurance policies shall be endorsed adding the Owner and the Architect/Engineer as additional insured.

- (a-3) Comprehensive automobile liability insurance, covering all liability arising out of any vehicle operations, covering all owned or rented equipment used in connection with the Work, in amounts not less than:

Combined Single Limit	\$1,000,000
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including death resulting at any time therefrom.

- b. All insurance policies shall be issued by companies authorized to do business in the State of Michigan or where the Work otherwise is to be performed. The insurance companies issuing the policies shall have an A.M. Best's Company rating of A XII or better. Such policies shall contain appropriate endorsements extending the coverage thereof to include the liability assumed by the Contractor under the Contract. Before Work is started, the Contractor shall file with the Owner, certificates of the insurance coverage required to be maintained by the Contractor, evidencing such insurance endorsement.
- c. No change or cancellation in insurance shall be made without thirty (30) calendar days prior written notice to the Owner, nor shall the Contractor make any change or cancellation in insurance without the Owner's prior written approval thereof.
- d. Compliance by the Contractor with the foregoing requirements as to carrying insurance and furnishing certificates shall not relieve the Contractor of the Contractor's liabilities and

obligations under this Article 34 entitled "Contractor's Liability Insurance"; under Article 35 entitled "Contractor's Liability for Bodily Injury, Sickness, Disease and Property Damage; Indemnification"; under Article 36 entitled "Owner's Fire and Extended Coverage Insurance"; or any other portion of the Contract.

- e. In the event that any class of employees is engaged in hazardous Work under the Contract and such class is not included under the Workers' Compensation Acts, the Contractor shall maintain Special Hazards Insurance of a nature and in limits as approved by the Owner.
- f. No Work under the Contract shall be commenced until all insurance required by the Contract Documents has been obtained and approved by the Owner.
- g. The Contractor shall maintain all insurance coverage for a period not less than two (2) years following the date final payment under the contract is made by the Owner to the Contractor.
- h. All insurance policies shall be endorsed to cover the liabilities assumed under this Contract.

ARTICLE 35: CONTRACTOR'S LIABILITY FOR BODILY INJURY, SICKNESS, DISEASE AND PROPERTY DAMAGE; INDEMNIFICATION

Except as specifically provided with respect to property damage only, under Article 36 hereof entitled "Owner's Fire and Extended Coverage Insurance", the Contractor shall specifically and distinctly assume, and does so assume, all risk of damage or destruction of property or of bodily injury, occupational sickness or disease of persons (including death resulting at any time therefrom) used or employed on or in connection with the Work, and of all damages or destruction of property or of bodily injury, occupational sickness or disease of persons (including death resulting therefrom), wherever located, resulting from any action, omission or operation under the Contract or in connection with the Work. The Contractor shall secure, protect, defend, hold harmless and indemnify the Owner and the Architect/Engineer and any of their respective agents, servants and employees, against any liability whatsoever, including all claims, suits, actions, costs, counsel fees, attorney fees, expenses, damages, judgments or decrees, resulting from the bodily injury, occupational sickness or disease (including death resulting at any time therefrom) of any person or persons, or the damage or destruction of any property, including loss of use thereof, arising out of or in connection with the performance of any Work in connection with the Contract, including any extra or changed Work assigned to the Contractor in connection therewith, based upon any act or omission, negligent or otherwise, of (a) the Contractor or any of the Contractor's employees, agents or servants; (b) any Subcontractor, Sub-subcontractor, lower tier contractor or Supplier of the Contractor or any employees, agents or servants of such Subcontractor, Sub-subcontractor, lowered tier

contractor or Supplier; or (c) any person or persons excepting only the Owner or any employees, agents or servants of the Owner.

ARTICLE 36: OWNER'S FIRE AND EXTENDED COVERAGE INSURANCE

- a. The Owner shall effect and maintain insurance against loss or damage arising from fire or other perils normally insured against by standard "All Risk" property insurance policies to cover not less than the value of Work performed and materials delivered to the site of the Project which are to be included in and remain a part of the permanent construction whether or not installed, only while on the premises described or within a hundred (100) feet thereof, except as otherwise provided in paragraph d of this Article 36.
- b. Losses, if any, under such insurance shall be payable to the Owner.
- c. The Contractor shall be responsible for any and all loss of materials, equipment and tools connected with the construction due to unexplainable disappearance, theft or misappropriation of any kind or nature and any other loss that may be excluded in the Owner's standard "All Risk" property insurance policy.
- d. The foregoing provisions shall not operate to relieve the Contractor of the responsibility for insuring against any loss or damage to owned or borrowed or rented property or property of employees, of whatever kind or nature occurring from the above named causes or due to any other cause, including but not limited to tools, materials, supplies, equipment, forms, scaffolding, towers, staging, bunkhouses and other temporary structures including their contents, regardless of ownership of such contents, except for such contents as are to be included in and remain a part of the permanent construction. The Owner shall in no event be liable for any loss or damage to any of the aforementioned items, or the work connected with the Contractor or the Architect/Engineer, or employees, agents or servants of same, which is not to be included in and remain a part of the permanent construction. The Contractor, Subcontractors, and Sub-subcontractors severally waive any rights of recovery they may have against the Owner and Architect/Engineer for damage or destruction of their own or borrowed or rented property, or property of their employees, of whatever kind or nature.
- e. The Owner's "All Risk" policy excludes losses on account of faulty workmanship, faulty material, faulty construction and/or faulty design, from any cause. The Contractor is liable and indemnifies the Owner from all loss under the contract, as outlined within Article 35 hereof, titled, "Contractor's Liability for Bodily Injury, Sickness, Disease and Property Damage;

Indemnification". Reference is also made to Article 13 hereof, titled, "Protection of Work and Property: Safety", for further Contractor liability under the performance of the contract.

- f. The Contractor shall report to the Owner each claim immediately after an occurrence of a loss.
- g. Compliance by the Contractor with the foregoing requirements shall not relieve the Contractor of the Contractor's liabilities or obligations under this Article 36 or any other portion of the Contract Documents.

ARTICLE 37: GUARANTY BONDS

The Owner shall have the right, prior to the signing of the Contract, to require the Contractor to furnish good and satisfactory bonds covering the faithful performance of the Contract, and the payment of all obligations arising thereunder, in such form as the Owner may prescribe and with such sureties as the Owner may approve. If such bonds are required by instructions given previous to the submission of bids, the premium shall be paid by the Contractor; if subsequent thereto, it shall be paid by the Owner.

ARTICLE 38: ASSIGNMENT

- a. Neither party to the Contract shall assign the Contract without the written consent of the other, which consent shall be given at the sole discretion of the relevant party, nor shall the Contractor assign any sums due or to become due to the Contractor hereunder without the previous written consent of the Owner.
- b. No assignment of the Contract shall be valid unless it shall contain a provision that the funds to be paid to the assignee under the assignment are subject to a prior lien for services rendered and/or materials supplied for the performance of the Work called for in said Contract in favor of all persons, firms, or corporations rendering such services and/or supplying such materials.

ARTICLE 39: SEPARATE CONTRACTS

- a. The Owner reserves the right to let other separate contracts in connection with the Project or perform portions of the Project with the Owner's own forces. The Contractor shall afford separate contractors or the Owner's forces, as the case may be, reasonable opportunity for the introduction and storage of their materials and equipment and for the execution of their work. The Contractor shall properly connect and coordinate the Contractor's Work with work of separate contractors or work of the Owner.

- b. If any part of the Contractor's Work depends, for proper execution or results, upon the work of any other separate contractor or the Owner's work, the Contractor shall inspect and promptly report to the Architect/Engineer any defects in such work that render it unsuitable for such proper execution and results. The Contractor's failure to inspect and report such defects shall constitute an acceptance of the work.
- c. To insure proper execution of subsequent Work, the Contractor shall measure work already in place and shall at once report to the Architect/Engineer any discrepancy between the executed work and the requirements of the Contract Documents, subject to the conditions of Article 2 paragraphs g and h hereof.
- d. When the Contractor's Work is dependent upon the work of the Owner or the Owner's separate contractors, the Contractor shall notify the Owner of such condition in ample time to prevent any delays to the Project's progress.

ARTICLE 40: MUTUAL RESPONSIBILITY OF CONTRACTORS;
CO-RESPONSIBILITY

- a. Should the Contractor cause damage to any separate contractor or to the work of a separate contractor on the Project, the Contractor agrees, upon due notice, to remedy such damage or otherwise settle with such separate contractor by agreement for the costs associated with such remedy. If such separate contractor sues the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall defend such proceedings on behalf of the Owner at the Contractor's expense. If any judgment against the Owner arises therefrom, the Contractor shall pay or satisfy it and pay all costs incurred by the Owner, including attorney fees.
- b. Should the Contractor cause damage to any Work performed by the Owner, the Contractor agrees, upon due notice, to remedy such damage or otherwise pay for the costs associated with such remedy.
- c. Should the Contractor refuse to remedy damages or pay for the cost of such as outlined in Article 40 paragraphs a and b hereof, the Owner may have such damages corrected in accordance with Article 23 hereof.
- d. Should either the Owner's forces or a separate contractor under the control of the Owner, cause damage to the Contractor's Work, such Work shall be remedied or the costs of such remedy be borne by the party causing such damage.
- e. All claims made in connection with this Article 40 must be made in accordance with Article 43 hereof.
- f. If the Contract Documents require material furnished by a separate contractor or the Owner to be set or installed by the Contractor, or vice versa, arrangements shall be made by the

Contractor and the separate contractor or the Owner for the time and place of delivery of such. After acceptance of any such material by the Contractor for setting or installing, the Contractor shall be responsible for it in the same manner as the Contractor's own Work.

ARTICLE 41: SUBCONTRACTS

- a. The Contractor shall, prior to the execution of the Contract, notify the Architect/Engineer, and the Owner, in writing, of the names of Subcontractors and Suppliers and their business classifications, proposed for the principal parts of the Work and for such others as the Architect/Engineer, or the Owner may direct. If the Architect/Engineer or the Owner has a reasonable objection to any of the proposed Subcontractors or Suppliers, the Contractor shall not enter into a contract with any such Subcontractor or Supplier.
- b. The Architect/Engineer shall, on request, furnish to any Subcontractor, wherever practicable, evidence of the amounts certified and actions taken on the Contractor's account, in connection with the Subcontractor's Work.
- c. The Contractor is fully responsible for the acts and omissions of Subcontractors and Suppliers, and of any persons or entities either directly or indirectly employed by such Subcontractors and Suppliers, to the same extent as the Contractor is responsible for the acts and omissions of persons or entities directly employed by the Contractor.
- d. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor, Sub-subcontractor or Supplier and the Owner.
- e. Should material, workmanship, or parties furnishing the same prove objectionable under the provisions of the Contract, or should a violation of the Contract exist at the Project and continue after the Contractor has received from the Architect/Engineer, or the Owner a reasonable notice, then, after seven (7) calendar days written notice from the Architect/Engineer, or the Owner, such objectionable parties shall be dismissed, removed from the Work and excluded from the Project. In this case, the Contractor shall remedy and continue the Work to the satisfaction of the Architect/Engineer, and the Owner.

ARTICLE 42: OWNER, CONTRACTOR AND SUBCONTRACTOR RELATIONS

- a. The Contractor agrees to bind every Subcontractor, and every Subcontractor agrees to be bound by the terms of the Contract Documents, including the following provisions of this Article 42, unless specifically noted to the contrary, in writing, by the Architect/Engineer, and the Owner. Subcontractor and Sub-subcontractor relations shall also include the provisions of this article.

b. Each Subcontractor agrees:

- (b-1) to be bound to the Contractor by the terms of the Contract Documents and to assume toward the Contractor all obligations and responsibilities that the Contractor assumes toward the Owner;
- (b-2) to submit to the Contractor accurate applications for payment in such reasonable time as to enable the Contractor to apply for payment under Article 28 hereof; and
- (b-3) to make all claims for extras or changes, for extensions of time and for damages for delays or otherwise, to the Contractor in the manner provided for in the Contract Documents.
- (b-4) to make no demand for damages or penalty for delay in any sum in excess of the Owner's loss for such delay, and agrees that the Owner is not responsible for the payment of any delay damages to the Contractor.

c. The Contractor agrees:

- (c-1) to be bound to each Subcontractor, by all the obligations that the Owner assumes to the Contractor under the terms of the Contract Documents, and by all the provisions thereof affording remedies and redress to the Contractor from the Owner;
- (c-2) to pay the Subcontractor those amounts certified on account of the Subcontractor in accordance with Article 29 hereof;
- (c-3) to pay each Subcontractor a just share of any fire and extended coverage insurance money received by the Contractor under Article 36 hereof;
- (c-4) to make no demand for damages or penalty for delay in any sum in excess of the Owner's loss for such delay, and agrees that the Owner is not responsible for the payment of any delay damages to the Contractor.

d. Nothing in this Article 42 shall create any obligation on the part of the Owner to pay or to see to the payment of any sums to any Subcontractor or Supplier.

ARTICLE 43: ARCHITECT'S/ENGINEER'S STATUS

a. The Architect/Engineer will assist the Owner in the general administration of the Contract between the Contractor and the Owner, acting in any and all of the various capacities assigned in the contract between the Architect/Engineer and the Owner and as established by the Contract Documents. The Architect/Engineer and their representatives shall have access to the Work at all times. The Architect/Engineer, or the Owner

shall have the right to reject or condemn all materials furnished and/or Work performed which, in their judgment, do not meet the requirements of the Contract Documents.

- b. The Architect/Engineer will be the initial interpreter of the requirements contained in the Contract Documents and the judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents or to the performance and furnishing of the Work and claims in respect to extras or changes in the Contract Sum or the Contract Time will be initially referred to the Architect/Engineer in writing with a request for a formal decision. The Architect/Engineer will render a decision, in writing, within a reasonable time. Written notice of each claim, dispute and other matter will be delivered by the claimant to the Architect/Engineer and to the other party to such claim, dispute or other matter promptly and within the time frames established by the specific requirements of the Contract Documents.
- c. Prior to the Contractor's exercise of any other remedies that may be available under the Contract, by laws or regulations, the Contractor shall submit all claims, disputes or other matters in the manner described in Article 43 paragraph b above for a rendering of a decision by the Architect/Engineer. Should the Contractor file any claims or disputes during the course of the Work that continue to be unresolved, the Contractor agrees to proceed diligently at all times with the performance of the contract Work, maintain progress of the contract Work, and complete the contract Work on or before the contract completion date.
- d. The Architect/Engineer may assign a field representative to assist in carrying out the responsibilities of the Architect/Engineer. The names, duties, responsibilities and limits of authority of such representatives will be established by the outline procedure for the routine of business identified in Article 3 hereof.
- e. The Contractor shall secure, protect, defend, hold harmless and indemnify the Owner and the Architect/Engineer from all claims and liability for damage, loss or expense which may arise on account of or as the result of faulty Work, or Work performed which is at variance with the Contract Documents or Work omitted, regardless of whether such damage, loss or expense has occurred prior to, during or subsequent to the discovery, rejection and/or condemnation of faulty Work, or of Work which is at variance with the Contract Documents or of Work omitted.
- f. The Architect's/Engineer's decisions, in matters relating to aesthetic effect, shall be final, if consistent with the terms and intent of the Contract Documents.

ARTICLE 44: TAXES

- a. The Contract Sum shall include all applicable Federal, State, Local, County or Municipal taxes of whatever nature and description. The Contractor shall be responsible for the payment of all such taxes.
- b. The Contractor shall also be responsible for the payment of any payroll taxes and/or contributions for unemployment and workers' compensation insurance or old age pensions or annuities which are measured by the wages, salaries, or other remuneration paid to the employees of the Contractor.
- c. The Owner reserves the right to require evidence of payment of all taxes prior to final payment to the Contractor.

ARTICLE 45: CASH ALLOWANCES

The Contractor shall include in the Contract Sum all allowances named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors and Suppliers and for such sums as the Architect/Engineer or the Owner may direct, the Contract Sum being adjusted accordingly where such sums exceed or are less than the identified allowances. Unless stated otherwise by the Contract Documents, the Contractor declares that the Contract allowances include such sums for the costs of material and/or equipment identified by such allowances, including freight to the Project site and all related taxes, less applicable trade discounts. The Contractor's cost of unloading, handling, storing, protecting, installing, and overhead, profit and other expenses contemplated for the allowances shall be included in the Contract Sum and not in the allowance amount. No demand for such expenses, overhead, profit and other expenses contemplated will be allowed. The Contractor shall not be required to employ for any such Work, Subcontractors or Suppliers against which the Contractor has a reasonable objection.

ARTICLE 46: USE OF PREMISES AND UTILITY DISRUPTIONS

- a. The Contractor shall confine all apparatus, the storage of materials and the operations of workmen employed by the Contractor to limits indicated by applicable laws, ordinances, permits, the Contract Documents or directions of the Architect/Engineer, or the Owner. The Contractor shall not unreasonably encumber the premises with materials or equipment to be incorporated into the Work or otherwise.
- b. If at any time it becomes necessary to move material or equipment which has been temporarily located or stored by the Contractor on the site during construction, the Contractor shall, when directed, move them to another location without charge to the Owner.
- c. The Contractor shall not load or permit any part of the structure to be loaded with a weight that will endanger the structural integrity of the structure or the safety of workmen or any other persons on or about the Work.

- d. The Contractor shall enforce the Architect's/Engineer's, or the Owner's instructions regarding signs, advertisements, fires and smoking. No smoking will be permitted, except in designated areas.
- e. Should any room or part of an existing building or facility be temporarily used by the Contractor as a shop, storeroom, locker room, an office, or for any other purpose, such room or part shall, prior to completion and when so directed, be thoroughly cleaned and returned to its original condition. All damage to any such room or part of an existing building or facility arising therefrom shall be corrected, and the whole left in a condition, acceptable to the Owner, by the Contractor. No room or part of an existing structure shall be so used without the written consent of the Owner.
- f. Smoke pipes and exhausts from boilers, engines, or other devices, shall in all cases be extended above roofs of buildings, or a substitute arrangement made subject to approval of the Architect/Engineer, and the Owner.
- g. The Contractor is not permitted to connect, disconnect, turn on or off any utility services in any building or facility owned or occupied by the Owner. In all cases where such services are required the Owner's Representative will be contacted and such services, unless noted otherwise by the Contract Documents, shall be performed by Owner personnel. In all cases the Contractor shall give notice of the need for such services, to the Owner, in a timely manner so as to avoid delays to the Project's progress. In all cases the Owner requires a minimum of seventy two (72) hours notice prior to when such services are needed.

ARTICLE 47: PARKING, SITE ACCESS AND ROUTING OF TRAFFIC

- a. The Contractor shall consult with the Owner to determine authorized parking locations and access to the site, including the routing of the Contractor's, Subcontractor's and the Sub-subcontractor's vehicles during construction, and the Contractor shall organized the Work in relation thereto. For any other parking or routing of traffic on property other than the Owner's, the Contractor shall contact the municipality or other agency having jurisdiction over such property for instructions.
- b. It shall be the Contractor's responsibility to provide and pay for all trades persons parking. To arrange for parking on the Owner's property, the Contractor shall contact the University of Michigan Parking Services Office.
- c. Parking may be provided only in a designated Owner parking lot or parking structure by payment of a permit fee through the Parking Services Office. The Parking Services Office may restrict which parking lots or structures are available for Contractor parking.

ARTICLE 48: GROUND, STAGING AREA AND RESTORATION

- a. The Contractor will consult with the Owner's Representative concerning any necessary Contractor operations at the Project site, including staging area limits, office or storage trailer locations, dumpster operations, equipment and material deliveries, hoisting areas and any other construction impacts on the Owner's grounds.
- b. All areas used by the Contractor or the Contractor's forces must be properly fenced. Unless the Contract Documents designate the specific type of temporary fencing to be used, the minimum temporary fencing requirement will be the use of orange plastic webbed fencing or snow fencing. Temporary barricades shall also be provided by the Contractor, as necessary for the safety of the general public.
- c. The Contractor shall locate all underground utilities and lawn irrigation piping prior to driving fence posts.
- d. Materials, equipment, trailers, vehicles and all other Contractor operations are not to be located under or within the drip line of trees. Construction, staging or storage operations in flower and shrub plantings and beds are to be avoided.
- e. Driving of vehicles on lawn areas is strictly prohibited.
- f. Any tree trimming or tree root disturbances required by the Contractor's operations shall be performed only after consultation and inspection by the Owner's Representatives.
- g. All existing traffic control devices, such as bollards, chain and posts, building signs, or traffic signs shall not be removed without specific approval from the Owner's Representative.
- h. Unless stated otherwise in the Contract Documents, the Contractor will be responsible to restore, to the Owner's satisfaction, all disturbed areas caused by the Contractor's operations.
- i. All lawn, shrub and tree restoration work, including soil aerification, tree trimming and plant material replacements shall be performed by a qualified landscape contractor.
- j. The Contractor shall also repair streets, drives, sidewalks, walls, lights, signs, fences, poles and the like where disturbed or damaged by the Contractor's operations, and shall leave them in the same condition after completion of the Work as before operations started.
- k. The Contractor shall provide and maintain pedestrian walkways and other means of access to and from any building or facility requiring such as a result of the Contractor's execution of

the Work. Such means of access shall be as required by the Contract Documents and/or the Owner's directions.

ARTICLE 49: CUTTING, PATCHING AND DIGGING

- a. The Contractor shall do all cutting, fitting or patching on the Work that may be required to make its several parts come together properly and fit the Work to receive or be received by work of other contractors shown by, or reasonably implied by, the Contract Documents for the completed Project. The Contractor shall repair or otherwise make good all such cutting, fitting, or patching after the required Work has been completed as the Architect/Engineer may direct.
- b. The Contractor shall not endanger any Work by cutting, digging, or performing other similar activities, and shall not cut or alter the work of any other contractor without the written consent of the Architect/Engineer and the contractor of such work.
- c. The Contractor shall notify the municipality, public utilities, agencies, Miss Dig and the Owner, in a timely manner so as to allow reasonable response time, before digging any tunnels or similar underground work; and shall protect all existing utilities, sidewalks, streets, and similar improvements, while performing the Work.

ARTICLE 50: CLEANING UP

The Contractor shall at all times keep the premises free from accumulations of waste material or rubbish caused by the Contractor's Work. At the completion of the Work, the Contractor shall remove all Project signs and all rubbish from and about the Project and the Project site. The Contractor shall remove all tools, scaffolding and surplus materials and shall leave the Work broom clean or its equivalent, unless more exactly specified in any part of the Contract Documents. If the Contractor fails to clean up as required by the Contract Documents, the Owner may do so, and the costs associated with such cleanup shall be charged to the Contractor. Refer to Article 10 paragraph (c-20) hereof for additional cleaning requirements.

ARTICLE 51: CLEANING OF GLASS

Immediately before turning any portion of the Project over to the Owner, the Contractor shall have all glass cleaned by professional window washers. Care shall be taken not to scratch any glass. Acid or other cleaning material which will injure or mar the surface or adjacent Work will not be allowed. Any damage resulting from glass cleaning shall be corrected by the Contractor, including the furnishing of new glass of same character and quality or the replacement of other Work damaged or disturbed.

ARTICLE 52: TEMPORARY STAIRS, RUNWAYS AND LADDERS

- a. The Contractor shall provide and maintain temporary stairs, main ladders and runways for access to all areas for the use of all trades.
- b. The Contractor shall provide additional runways and ladders as may be required for the execution of the Contractor's Work.
- c. All such apparatus, equipment and construction shall meet all requirements for safety and all provisions of federal, state or local laws and ordinances applicable thereto.
- d. Permanent stairs shall be erected as soon as possible, and the Contractor shall provide same with protective treads, handrails and shaft protection.

ARTICLE 53: FIRE PRECAUTIONS; HOT WORK PERMIT

- a. The Contractor, Subcontractors and Sub-subcontractors shall take all necessary precautions to guard against and eliminate all possible fire hazards and to prevent fire damage to any construction Work, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private. The Contractor, Subcontractors and Sub-subcontractors shall comply with all conditions and requirements set forth herein, and shall immediately correct any hazardous conditions resulting from their operations when brought to their attention.
- b. Materials and/or equipment stored in cardboard cartons, wood crates, or other combustible containers, shall be stored in an orderly manner and shall be readily accessible.
- c. Before starting Work, the Contractor shall consult with the Owner regarding established rules and regulations relative to fire protection requirements and procedures governing any welding and cutting operations. The Contractor shall strictly conform with such rules and regulations in carrying out the Work. No such operations shall be carried out without proper safeguards for fire safety.
- d. No open fires will be permitted. No tar or other melting kettles will be allowed within fifty (50) feet of any building.
- e. The Contractor shall provide necessary personnel and fire fighting equipment to effectively control fires resulting from welding, flame cutting, or other operations involving the use of flame, sparks, or sparking devices. During such operations, all highly combustible or flammable materials shall be removed from the immediate working area. If removal is impossible the same shall be protected with fire blankets or suitable non-combustible shields.
- f. Not more than one day's supply of flammable liquids, such as oil, gasoline, solvent, or roofing materials, shall be brought into any building at any one time. All flammable liquids

having a flash point of 110 degrees F, or below, which must be brought into any building, shall be confined to Underwriters Laboratories labeled safety cans. The bulk supply of any flammable liquid shall be stored at a sufficiently safe distance from any building and from yard storage of building materials. Spigots on drums containing flammable liquids are prohibited on the Project site. Drums are to be equipped with approved vented pumps.

- g. Only a reasonable working supply of flammable building materials shall be located inside of or on the roof of any building.
- h. All tarpaulins used during the course of the Work shall be of flameproof type, secured in place against damage or flapping from wind.
- i. All oil soaked rags, papers and other similar combustible material shall be removed from any building at the close of each day's Work, or more often if necessary, and placed in metal containers with self-closing lids.
- j. Gasoline, benzene or like combustible material shall not be poured into sewers, manholes, or traps, but shall be disposed of, together with all flammable or waste material subject to spontaneous combustion, in a manner to avoid hazard or damage to persons or property.
- k. All heating devices in connection with temporary heating facilities shall be of the least hazardous type, shall have all proper safety provisions and shall be installed at such locations and in such manner as will minimize the hazard. Oil fired stoves, gas fired heaters and heating units shall be of types approved by Underwriters Laboratories and shall have proper safety combustion controls. Oil fired heaters shall have integral fuel tanks not to exceed fifteen (15) gallons capacity for each unit. No more than one (1) day's supply of fuel shall be permitted to each heater which are inside of any building or facility.
- l. Temporary heating facilities shall be inspected regularly to assure that they are in a safe and proper operating condition at all times. The Contractor shall provide, continuously during operation, properly trained personnel for said inspections.
- m. The Contractor's temporary structures of combustible construction shall not be placed inside of any structure. Such temporary structures shall be detached at a sufficiently safe distance from any building. Totally non-combustible temporary structures may, if necessary and feasible, be located inside of the structure.
- n. Heaters and/or stoves installed in field offices or storage structures shall have fire resistant material underneath and at

all sides, partitions and walls. Pipe sleeved shall be used where stove pipes run through walls or roof.

- o. The Contractor must obtain from the Owner a cutting/welding Hot Work Permit and comply with the requirements and precautions contained in such. The permit is available for review by prospective bidders from the Owner.

ARTICLE 54: FIRE PROTECTION

- a. The Contractor shall maintain free access to the building areas for fire fighting equipment and shall at no time block off main roadways or fire aisles without providing adequate auxiliary roadways and means of entrance for fire fighting equipment, including heavy fire department trucks, where applicable.
- b. The Contractor shall at all times cooperate with the Owner and keep the municipal fire department informed of the means of entrance and changes to roadways or fire aisles as needed to provide fire department access to or around to Project site.
- c. The Contractor shall, during the entire construction period and until the completion of the Work, provide and maintain all material, equipment and services necessary for an adequate fire protection system, which shall meet the approval of the Owner and/or the Architect/Engineer. The system shall, at a minimum, meet the requirements set forth in the Contract Documents. These requirements shall be augmented and/or the installations relocated, as may be necessary to meet, at all times, the demands of adequate protection in all areas and shall not be reduced prior to the completion of the Work without the written approval of the Owner.
- d. The Contractor shall maintain during construction an appropriate number of fire extinguishers to meet Factory Mutual requirements. Fire extinguishers shall be in good working order, conveniently located, clearly visible and readily accessible for proper protection of the Work.
- e. Fire extinguishers shall be an approved type, equivalent to 2-1/2 gallon water pressurized, suitable for the hazards to be encountered. In areas of flammable liquid, asphalt, or electrical hazards, fire extinguishers shall be equivalent to the carbon dioxide type or dry chemical type. During freezing weather, extinguishers shall be enclosed in heated cabinets or be of an antifreeze type.
- f. The Contractor, Subcontractors and Sub-subcontractors and other parties with temporary structures on the project shall provide and maintain fire extinguishers in each of such structures.

ARTICLE 55: TEMPORARY USE OF NEW ELEVATOR DURING CONSTRUCTION

- a. When the Work has progressed sufficiently to permit the installation of new elevators, and after the enclosing walls of the elevator shaft have been built, the Contractor shall, at

the Contractor's expense, make arrangements with the elevator Subcontractor to provide, install and maintain one new elevator for temporary use. Elevator service shall be furnished free of charge to the Owner, Architect/Engineer, employees of the same, and all other persons or parties performing services for the Owner. All labor for loading and unloading of materials, shall be by the party using the elevator.

- b. Before temporary use of the elevator, the Contractor shall protect the elevator cab with a metal screen ceiling below the permanent ceiling. Padding and a substantial wood lining to protect the walls and floor against damage shall also be installed. During the temporary use, the elevator shall be equipped with electric lights and car gates, and the shaft opening shall be protected with temporary gates as required for safety and by applicable law.
- c. Temporary wiring to elevator machinery for temporary use shall be provided by the Contractor. The Contractor shall furnish, at the Contractor's expense, the services of competent elevator operators during the entire time that elevators are used for construction purposes.
- d. At the completion of the Work the Contractor shall turn over the elevator used on a temporary basis to the Owner in a first class condition. The Contractor shall pay the costs of all refurbishing or repairs, required to satisfy this requirement.

ARTICLE 56: TELEPHONE

- a. The Contractor shall provide telephone service at the Project site for use by the Contractor, Owner and Architect/Engineer.
- b. The cost of installation, rent, message unit charges, and removal shall be paid by the Contractor. All long distance calls shall be paid by the party making such calls.
- c. The Contractor shall provide a public telephone, conveniently located, for the use of others.
- d. Telephones addressed in this Article 56 shall remain until the completion of the Work.

ARTICLE 57: NON-DISCRIMINATION PROVISION AND WAGE AND HOUR ACT

During the performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor shall not discriminate against any employee or applicant for employment, because of sex, race, creed, color, religion, age, height, weight, marital status or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their sex, race, creed, color, religion, age, height, weight, marital status,

national origin, ancestry, sexual orientation, disability, or Vietnam-era Veteran status.

- (2) Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- (3) The Contractor will, in all solicitations, or advertisements for employees, placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to sex, race, creed, color, religion, age, height, weight, marital status, national origin, ancestry, sexual orientation, disability, or Vietnam-era Veteran status.
- (4) The Contractor will send to each labor union or representative of worker with which the Contractor has a collective bargaining agreement or other contract or understanding, a notice, advising the labor union or workers' representative of the Contractor's commitments under Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order No. 11246, and of the rules, regulations, and relevant orders of any government agency or authority having jurisdiction.
- (6) The Contractor will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations and orders of any government agency or authority having jurisdiction. The Contractor shall permit access to the Contractor's books, records, and accounts by the administrative agency and the Secretary of Labor for the purposes of investigation to ascertain compliance with such rules, regulations and orders.
- (7) In the event of the Contractor's noncompliance with the non-discrimination clauses of this Contract, or with any of the said rules, regulations or orders, this Contract may be canceled, terminated or suspended in whole or in part, and the Contractor may be declared ineligible for future University contracts or federally assisted contracts in accordance with procedures authorized in Executive Order No. 11246, or by rule, regulation or order of any government agency or authority having jurisdiction.
- (8) The Contractor will include the provisions of paragraphs 1 through 8, of this Article 57, in every subcontract or

purchase order unless exempted by rules, regulations, or other orders of the President's Committee on Equal Employment Opportunity issued pursuant to Executive Order No. 11246, so that such provisions will be binding upon each Subcontractor or Supplier. The Contractor will take such action with regards to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a Subcontractor or Supplier as a result of such direction by the administering agency, the Contractor may request the United States of America to enter into such litigation to protect the interests of the United States of America.

- (9) The Owner may require the Contractor and Subcontractors to provide a written affirmative action program for this project.

ARTICLE 58: PREVAILING WAGE AND FRINGE BENEFIT RATES

- a. The rates of wages and fringe benefits to be paid to each class of mechanics by the Contractor, Subcontractors and Sub-subcontractors shall not be less than the wage and fringe benefit rates prevailing in the locality in which the Work is to be performed, as determined from time to time by the Michigan Department of Consumer & Industry Services, Bureau of Safety & Regulation, Wage Hour Division.
- b. The Contractor and every Subcontractor and Sub-subcontractor shall keep posted on the construction site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates prescribed in the Contract and shall keep an accurate record showing the name and occupation of and the actual wages and benefits paid to each construction mechanic employed in connection with said Contract. This record shall be available for reasonable inspection.
- c. The Owner, by written notice to the Contractor, and to the surety of the Contractor, may terminate the Contractor's right to proceed with that part of the Contract for which less than the prevailing rates of wages and fringe benefits have been or will be paid, and may proceed to complete to Contract by separate agreement with another contractor or otherwise, and the original Contractor and the Contractor's surety shall be liable to the Owner for any excess costs occasioned thereby. Any person, firm or corporation or combination thereof, including the officers of any contracting agent, violating the provisions of the Act is guilty of a misdemeanor.
- d. In case there is an omission of any trade from the list of wage rates and fringe benefits to be paid to each class of mechanics by the Contractor, it shall be understood that the trades omitted shall also be paid not less than the wage and

fringe benefit rates prevailing in the locality in which the Work is to be performed.

ARTICLE 59: COMPLIANCE WITH "KICK-BACK" STATUTE AND REGULATIONS

The Contractor and each Subcontractor and Sub-subcontractor shall comply with the following statutes, and with regulations issued pursuant thereto, which are incorporated herein by reference:

(1) Title 18 U.S.C. Section 874:

"874. Kick-back from public work employees - whoever, by force, intimidation or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public works, or building or work financed in whole or in part by loans or grants from the United States of America, to give up any part of the compensation to which they are entitled under their contract of employment, shall be fined not more than \$5,000.00, or imprisoned not more than five (5) years, or both."

(2) Title 40 U.S.C. Section 276C:

"276C. Regulations governing Contractors and Subcontractors - The Secretary of Labor shall make reasonable regulations for Contractors and Subcontractors engaged in the construction, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States of America, including a provision that each Contractor and Subcontractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week."

ARTICLE 60: MEDICARE AND MEDICAID PROVISIONS

If it is determined that section 952 if the Medicare and Medicaid provisions of the Omnibus Reconciliation Act of 1980 (Section 952 amends section 1861 (v) (1) of the Social Security Act) applies to the Contract, then until the expiration of four years after the furnishings of services required by this Contract, the Contractor shall make available, upon written request, to the secretary of the Department of Health and Human Services or upon request to the Controller General of the United States or any of their duly authorized representatives, the Contract, any books, documents, and records of such Contractor which are deemed necessary to certify the nature and extent of costs for services furnished under the Contract, and if the Contractor carries out any of the duties of this Contract through a subcontract with a value or cost of \$10,000.00 or more over a 12 month period, with a related organization, such subcontract shall also contain a clause binding the Subcontractor to the identical provisions contained in this Article 60.

END