GENERAL CONDITIONS APPLICABLE TO PROJECTS WHERE THE OWNER HAS RETAINED THE SERVICES OF A CONSTRUCTION MANAGER
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GENERAL CONDITIONS

APPLICABLE TO PROJECTS WHERE THE OWNER HAS
RETAINED THE SERVICES OF A CONSTRUCTION MANAGER

ARTICLE 1  DEFINITIONS; INTERPRETATION AND PRIORITY OF DOCUMENTS

1.1  Definitions.

When used in the Contract Documents, the following terms shall carry the meanings herein
ascribed to them, unless the context clearly requires to the contrary:

1.1.1.  As used in connection with the CPM Schedule, the term “Activity” means a discrete
portion of the Work for a Project that can be identified for planning, scheduling, monitoring and controlling
the Project.

1.1.2.  “Addenda” are written or graphic instruments issued by the Owner or the Design
Professional prior to the execution of the Contract Documents which modify or interpret the Drawings and
Specifications, by addition, deletion, clarification, or correction.

1.1.3.  The “Agreement” is the Agreement for Construction Management Services between the
Owner and the Construction Manager, as amended by Modifications. These General Conditions and a
“Schedule of Project Details” are attached to, and incorporated by reference into, the Agreement.

1.1.4.  “Applicable Laws” means all applicable codes, statutes, ordinances, laws (including the
Americans With Disabilities Act [“ADA”]), rules and regulations, and lawful orders of all public authorities
having jurisdiction over the Owner, any member of the Construction Team, the Project, the Work Site, the
Work or the prosecution of the Work.

1.1.5.  A “Bulletin” is a written or graphic instrument issued by the Owner or the Design
Professional after the execution of the Agreement which (i) describes a change in the Work or (ii)
requests a proposal from the Construction Manager that, if accepted by the Owner, will cause the
execution of a Change Order.

1.1.6.  A “Certificate of Substantial Completion” is a document in form and substance
reasonably acceptable to the Owner that has been executed by the Design Professional, the Construction
Manager and the Owner to indicate that Substantial Completion of the Work has been accomplished.

1.1.7.  “Change Order” is a written instrument signed by the Owner, the Design Professional, and
the Construction Manager, stating their agreement upon a change in one or more of the following:

(1)  the Work;

(2)  the Construction Time; or

(3)  the Guaranteed Maximum Price.

If any one or more of the foregoing is not specifically addressed in a Change Order, the parties shall be
deemed to have agreed that it is unaffected by the Change Order. For example, if a Change Order
modifies the Work and the Construction Time but is silent as to the Guaranteed Maximum Price, the
parties shall be deemed to have agreed that the Guaranteed Maximum Price is not affected by the
Change Order.
1.1.8. “CM Change Order Request” is a request from the Construction Manager for an extension of time or additional compensation served on the Owner in accordance with the provisions of Sections 7.3.2 or 9.5 below.

1.1.9. The “Commencement Date” is the date on which construction of the Work shall commence, which shall be the earlier of:

(1) The Owner’s issuance of a written order to proceed, or

(2) The Owner’s first written authorization to Construction Manager to award a Trade Contract.

1.1.10. A “Construction Change Directive” is a written order signed by the Owner directing a change in the Work and which may (but need not) state a proposed basis for adjustment in Guaranteed Maximum Price and/or the Construction Time.

1.1.11. The “Construction Manager” is that party identified in the Agreement, who will manage and direct and who is, except as expressly provided in the Contract Documents, in every way responsible to the Owner for the timely and proper performance of the Work. The “Construction Manager” means Construction Manager or Construction Manager’s authorized representative.

1.1.12. The “Construction Manager’s Fee” shall mean the amount set forth in the Schedule of Project Details.

1.1.13. The “Construction Phase Services” are those services required of the Construction Manager under the Contract Documents and rendered in respect of any bid package following bidding and the award of one or more contracts for that bid package.

1.1.14. “Construction Schedule” is the Critical Path Method (“CPM”) schedule for construction of the Work submitted as part of the Construction Manager’s Guaranteed Maximum Price Proposal or request for release of the first bid package, whichever comes first, prepared by the Construction Manager and approved by the Owner in accordance with Section 4.9 below. As provided below, the Construction Schedule can be modified only by Change Order; following any such modification, the term “Construction Schedule” shall mean the most recent Owner-approved version.

1.1.15. The “Construction Team” includes the Construction Manager, the Trade Contractors, Subcontractors and Suppliers and (i) all other persons in privity of contract with any of them in connection with the Work (except the Owner), (ii) anyone else providing labor, materials, supplies, equipment or services as part of or in connection with the Work (except those, if any, hired directly or indirectly by the Owner), and (iii) all of their officers, employees, agents, and independent contractors.

1.1.16. The “Construction Time” is the number of calendar days described in the Construction Schedule in which (or, alternatively, the date set forth in the Construction Schedule by which) Substantial Completion shall be achieved, subject to any extensions granted in executed Change Orders or otherwise specifically permitted by the Contract Documents.

1.1.17. The “Contract Documents” consist of: the Agreement and the documents incorporated by reference into it, any Supplemental or Special Conditions applicable to the Work, the Drawings, Specifications, and Addenda, the Construction Schedule, all Bulletins, Change Orders and Construction Change Directives, other documents so designated in the Agreement, these General Conditions or the Schedule of Project Details, all Modifications issued after the date of the Agreement, and any documents incorporated by reference into any of the foregoing. The Contract Documents do not include any other documents, unless designated or incorporated by reference as provided above, such as (i) bidding requirements, advertisements or invitations to bid, instructions to bidders, sample forms, soils, geotechnical, or other reports, surveys, or analyses, which may be printed, bound, or assembled with the
Contract Documents, or otherwise made available for review or information, (ii) bids, or (iii) portions of the Addenda relating to bidding requirements.

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

1.1.19. The term “day” as used in the Contract Documents shall mean a calendar day unless otherwise specifically defined.

1.1.20. The “Design” consists of the Drawings, Specifications, Addenda and Modifications for the Work prepared by the Design Professional.

1.1.21. The “Design Professional” is referred to throughout the Contract Documents as if singular in number and masculine in gender, although this may not necessarily be the case. The term “Design Professional” means the Design Professional or its representative. If the employment of the Design Professional is terminated, the Owner shall appoint a design professional against whom the Construction Manager makes no reasonable objection and whose status under the Contract Documents shall be that of the former design professional.

1.1.22. The “Drawings” are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

1.1.23. “Extraordinary Measures” are corrective measures necessary to expedite the progress of construction, including (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, (iii) expediting the delivery of materials, and (iv) other similar measures. Subject to the Construction Manager’s rights under Section 9.5, the Owner shall have the right to order Construction Manager to take Extraordinary Measures when it determines that the performance of the Work, as of a Milestone Date, has not progressed to or reached the level of completion required by the Contract Documents.

1.1.24. “Final Completion” is the time when Final Payment is due pursuant to Section 12.5 below.

1.1.25. “Final Payment” is the last payment due to the Construction Manager under Section 12.5 below.

1.1.26. The term “Float” means the amount of time an Activity can be delayed without adversely affecting the early start of the following Activity.

1.1.27. The “Indemnities” are the Owner, including its Regents, officers, agents and employees.

1.1.28. “Interest” means interest calculated at two (2) percentage points above the “Consensus Prime Rate” published in The Wall Street Journal, as adjusted from time to time.

1.1.29. “Liens” are any claims, notices, liens, or the like asserted, filed or brought against (i) the Indemnitees, (ii) the Work, (iii) the site of any of the Work, (iv) the Project Site and any improvements thereon, (v) payments due Construction Manager, or (vi) any property of any of the Indemnitees, arising out of or in connection with the failure of the Construction Manager to make a payment due under the Agreement.

1.1.30. The “Milestone Dates” are those dates included in the Project Schedule or the Construction Schedule that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.
1.1.31. A “Modification” is (i) a written amendment to one or more of the Contract Documents signed by both parties, (ii) a Change Order, (iii) a Construction Change Directive, (iv) an instruction ordering a minor change in the Work pursuant to Section 9.4 below, or (v) a written interpretation of the Design by the Design Professional.

1.1.32. The “Owner” is the Regents of the University of Michigan, a Michigan constitutional corporation. The term “Owner” means Owner or Owner’s authorized representative, as identified in writing.

1.1.33. An “Owner Delay” means an actual delay to Construction Manager’s completion of the Work to the extent caused by one or more of the following: (i) Modifications (excluding minor changes in the Work and Design Professional interpretations), (ii) the Owner’s failure (or that of any other person for whom the Owner is responsible to the Construction Manager including, subject to the provisions of Part 2.14 of the Agreement, the Design Professional or a separate contractor hired by the Owner) to provide any data or information requested by the Construction Manager in writing that is reasonably necessary for Construction Manager to carry out its duties and is the Owner’s obligation to provide (so long as the Owner and any other responsible person are given adequate time to respond); or (iii) interference by the Owner or persons for whom it is responsible to the Construction Manager, including, subject to the provisions of Part 2.14 of the Agreement, the Design Professional or a separate contractor hired by the Owner, with the Construction Manager’s performance of the Work (which continues after written notice to the Owner of such interference).

1.1.34. “Permitted Materials” are general supplies and equipment that have a hazardous or potentially hazardous nature and are or will be used for their intended purpose and which do not pose any significant threat of contamination to the Project Site or neighboring properties.

1.1.35. The “Post-Construction Phase Services” are those described in Part 5 of the Agreement.

1.1.36. The “Pre-Construction Phase Services” are those services required of the Construction Manager under the Contract Documents or rendered by the Construction Manager that are not Construction Phase Services or Post-Construction Phase Services, such as the Services in preparation for Construction described in Part 3 of the Agreement and the preparation of the Guaranteed Maximum Price proposal pursuant to Part 7 of the Agreement, and, generally, all services rendered by the Construction Manager in respect of any bid package prior to bidding and the award of one or more contracts for that bid package.

1.1.37. “Product Data” are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Construction Manager or one of the Construction Team to illustrate materials or equipment for some portion of the Work.

1.1.38. The “Project” is described in the Schedule of Project Details. The Work may be the whole or a part of the Project, and the Work may include construction by the Owner or contractors not hired by the Construction Manager.

1.1.39. The “Project Manual” is that volume, if any, assembled for the Work which may include the bidding requirements, sample forms, and portions of the Contract Documents.

1.1.40. The “Project Schedule” is the preliminary schedule for the Work to be developed by the Construction Manager under Section 3.6.1 of the Agreement and which shall, at a minimum, provide for major elements such as preparation of the Design, phasing of construction, the time of commencement and completion required for each anticipated Bid Package.

1.1.41. The “Project Site” is the place where the Work is being carried on.
1.1.42. "Punchlist" means a list of uncompleted or unacceptable items of Work which do not interfere with the use or occupancy of any part of the Work for its intended purpose and which, unless delayed by a need to order materials that should not reasonably have been anticipated by the Construction Manager, collectively are capable of being completed within ninety (90) days.

1.1.43. The "Record Documents" are all documents referred to in Section 4.14 below.

1.1.44. The "Record Drawings" are one current, updated record copy of the Drawings in good order that the Construction Manager shall maintain at the Work Site in accordance with Section 4.14 below and which it shall make available to the Owner and the Design Professional. Upon Final Completion of the Work, the Record Drawings shall depict the Work “as built.”

1.1.45. “Samples” are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

1.1.46. The “Schedule of Values” is a document allocating the Cost of the Work, or a portion of the Work, over its component parts.

1.1.47. The “Services” are all construction management services necessary or appropriate to the timely completion of the Work in accordance with the Contract Documents, including both the specific services described in the Contract Documents and those which are reasonably inferable from the terms, provisions and conditions of the Contract Documents.

1.1.48. “Shop Drawings” are drawings, diagrams, schedules and other data specially prepared for the Work by a member of the Construction Team to illustrate some portion of the Work.

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

1.1.50. A “Subcontract” is an agreement between a Trade Contractor and a Subcontractor. Where it would be reasonable in the context of its usage, the term “Subcontract” shall include sub-subcontracts of all tiers.

1.1.51. A “Subcontractor” is a person who is hired by a Trade Contractor, not the Owner or the Construction Manager, (i) to perform a portion of the Work at the Work Site which is the responsibility of a Trade Contractor under a Trade Contract or (ii) to furnish materials fabricated to a special design according to the Contract Documents which it is the responsibility of a Trade Contractor to furnish under a Trade Contract. Where it would be reasonable in the context of its usage, the term “Subcontractor” shall include sub-subcontractors of all tiers.

1.1.52. “Substantial Completion” is that stage in the progress of the Work when the Work or designated portion of the Work is sufficiently complete and functional, with all systems and components approved and operational, in accordance with the requirements of the Contract Documents so the Owner can legally use and occupy it for its intended purposes without material interference from unfinished or improperly finished items of Work and subject only to Punchlist items which do not preclude occupancy. Substantial Completion shall not be achieved until the Design Professional has certified that the Work is substantially complete, the Design Professional, the Owner and the Construction Manager have executed a Certificate of Substantial Completion pursuant to Section 7.2.1 below, and, the Construction Manager has completed all training of Owner personnel required by the Contract Documents and delivered to the Owner (i) where required by Applicable Law, a written certification from the applicable governmental authority authorizing occupancy of the Work, (ii) all warranties and a complete warranty contact list, (iii) a fully-executed Punchlist, and (iv) all system training, operation and maintenance manuals.
1.1.53. A “Supplier” is a person who is hired by a Trade Contractor, not the Owner or the Construction Manager, to provide materials, equipment or supplies in connection with the Work which are not fabricated to a special design according to the Contract Documents.

1.1.54. A “Supply Contract” is an agreement between a Trade Contractor and a Supplier.

1.1.55. A “Trade Contract” is an agreement between the Construction Manager and a Trade Contractor. Where it would be reasonable in the context of its usage, the term “Trade Contract” shall also include Subcontracts.

1.1.56. A “Trade Contractor” is a person who is hired by the Construction Manager, not the Owner, (i) to perform a portion of the Work at the Work Site or (ii) to furnish materials fabricated to a special design according to the Contract Documents. Where it would be reasonable in the context of its usage, the term “Trade Contractor” shall include subcontractors of all tiers, and all Suppliers, working beneath a Trade Contractor.

1.1.57. “Value Engineering” means the detailed analysis of systems, equipment, materials, services, facilities, and supplies required by the Contract Documents for the purpose of achieving the desired and essential functions of the Owner’s program at the lowest cost consistent with required and necessary performance, reliability, quality and safety.

1.1.58. The “Work” consists of all goods and services, such as labor, transportation, materials, tools, and equipment (i) to be incorporated into the Project (or the Construction Manager’s portion of the Project if the Construction Manager is not responsible for the entire Project), (ii) required of the Construction Manager under the Contract Documents, or (iii) necessary or appropriate to fully construct, fixture, operate and maintain the Project (or the Construction Manager’s portion of the Project if the Construction Manager is not responsible for the entire Project). The Work shall be performed strictly in accordance with the Contract Documents. The Work may constitute the whole or a part of the Project.

1.1.59. The words “consent,” “approved,” “satisfactory,” “proper,” “as directed,” any derivatives of them, or similar terms, mean written approval by the Owner, and may include approval of the Design Professional if the Owner so directs. Except where a different standard is specifically established, the Owner has the right to grant or withhold approval in its sole discretion.

1.1.60. The word “provide” and any derivatives thereof, and similar terms, mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Contract Documents.

1.1.61. The terms “known,” “knowledge,” “recognize,” “believe,” and “discover,” and any derivatives thereof and similar terms, when used in reference to the Construction Manager, shall mean that which the Construction Manager knows or should reasonably know, recognizes or should reasonably recognize, and discovers or should reasonably discover in exercising the care, skill, and diligence required of the Construction Manager by the Agreement. Analogously, the expression “reasonably inferable” and similar terms mean reasonably inferable by a construction manager familiar with the Work and exercising the care, skill and diligence required of the Construction Manager by the Agreement. Nothing in this paragraph, however, alters the requirements of and the standard set forth in Part 2.14 of the Agreement.

1.1.62. The word “including” shall not be a word of limitation, but instead shall be construed as introducing one or more nonexclusive examples.

1.1.63. Whenever the word “strictly” is used, it means “strictly, not substantially.” Likewise, use of the word “strict” means “strict, not substantial.”
1.1.64. When the phrases “at no cost to the Owner,” “without additional cost to the Owner,” “without increase in the cost to the Owner,” “without adjustment to the Construction Manager’s Compensation,” or phrases having like import are used, they shall mean that the required task shall be performed solely at the expense of the Construction Manager, without any additional cost to the Owner, whether by increase in the Guaranteed Maximum Price, use of any contingency, claim or otherwise.

Other terms may be defined elsewhere in the Contract Documents. If the Contract Documents contain words or abbreviations that are not defined but have well-known technical, trade or construction industry meanings, those meanings shall be ascribed to them. The singular shall include the plural and vice versa. Pronouns are interchangeable. The word “person” includes human beings and recognized legal entities. When a defined document is later modified by the parties, any reference to that document shall mean the document as modified. In the interest of brevity, terms and phrases frequently omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Use of the words “Part” and “Section” include any subdivision of each Part of the Agreement or Article of these General Conditions. (Unless the context clearly requires otherwise, reference to a Part or Section shall include all subsections beneath it bearing identical introductory numbers.)

1.2 Interpretation and Priority of Documents.

The intent of the Contract Documents is to include everything necessary for the proper execution and completion of the Work. These documents are complementary, and what is required by one shall be as binding as if required by all. Work called for on the Drawings and not mentioned in the Specifications, or vice versa, shall be performed as though fully set forth in both. Nothing in this Section 1.2, however, shall relieve the Construction Manager of any of its obligations under the Contract Documents. Other conflicts between or among the Contract Documents shall be resolved under the following rules of construction:

a. The Construction Manager shall always (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirement, either or both in accordance with the Design Professional’s interpretation.

b. The specific shall govern over the general.

c. Specified dimensions shown on the Drawings shall govern, even though they may differ from dimensions scaled on the Drawings, if any;

d. Drawings of larger scale shall govern over those of smaller scale; any special Drawing details shall govern over standard detail;

e. Specifications shall govern over Drawings in matters of material or equipment specified; Drawings shall govern over Specifications in matters of construction or installation detail;

f. Documents of later date shall always govern; except that

g. The Agreement shall govern over all other documents, regardless of their dates.

1.2.1. Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified. 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 Work wherever such general detail shall apply unless otherwise specifically provided in the Contract Documents.
1.2.2. The organization of the Specifications into divisions, sections, and/or articles, and the
arrangement of the Drawings, shall not dictate to the Construction Manager in any way how the Work is
to be divided among Trade Contractors, or establish the extent of Work to be performed by any trade.
Similarly, the organization of the Construction Manager's duties into different phases or categories in the
Agreement is for convenience only and shall not limit the generality of the Construction Manager's
obligation to provide all of the Services whenever necessary.

1.2.3. All references in the Contract Documents to standards (such as commercial standards,
federal specifications, trade association standards or similar standards), whether for materials, processes,
assemblies, workmanship, performance or any other purpose, shall mean, unless otherwise noted, the
most recent available published version of such standard as of the date of that part of the Contract
Documents bearing the reference. All standards referred to, except as modified in the Contract
Documents, shall have the same force and effect as though printed therein. These standards will not be
furnished to the Construction Manager, as the Construction Manager and all members of the Construction
Team are required to be familiar with their requirements.

1.2.4. Whenever a provision of the Contract Documents conflicts with agreements or regulations
in force among members of trade associations, unions or councils which regulate or distinguish the
portions of the Work which shall or shall not be performed by a particular trade, the Construction Manager
shall make necessary arrangements to reconcile the conflict without delay, damage, cost or recourse to
the Owner. Delays in the Work resulting from the failure of the Construction Manager to use its best
efforts to reconcile any such conflicts shall not result in an extension of the Construction Time or added
cost to the Owner.

1.2.5. The Construction Manager acknowledges that there may be items of the Work which the
Construction Manager is responsible to provide under the Agreement which are not drawn or specified in
the Design but which are necessary for the proper execution and completion of the Work and are
consistent with and reasonably inferable from the Drawings and Specifications. All such items shall be
provided as part of the Work without delay in its progress and without any increase in the Guaranteed
Maximum Price.

ARTICLE 2 THE ROLE OF THE DESIGN PROFESSIONAL

2.1 Administration of the Contract

2.1.1. The Design Professional will assist with the administration of the contract for construction
as provided in this Article 2.

2.1.2. The Design Professional will perform its duties (1) before and during construction, (2) until
Final Payment is due and (3) with the Owner's concurrence, from time to time during any correction
period. The Design Professional will advise and consult with the Owner. The Design Professional will
have authority to act on behalf of the Owner only to the extent the Owner has granted that authority in
writing.

2.1.3. The Design Professional will visit the Project Site as provided in its agreement with the
Owner to familiarize itself with the progress and quality of the Work and to determine if the Work is
proceeding in accordance with the Contract Documents. On the basis of its on-site observations, the
Design Professional will keep the Owner informed of the progress of the Work, and will endeavor to guard
the Owner against defects and deficiencies in the Work.

2.1.4. The Design Professional will not have control or charge of construction means, methods,
techniques, sequences or procedures, or for safety precautions and programs in connection with the
Work.
2.1.5. The Construction Manager shall provide adequate facilities at the Work Site so that the Design Professional may properly perform its duties.

2.1.6. Based on the Design Professional’s observations and an evaluation of the Construction Manager’s Applications for Payment, the Design Professional will assist the Owner with the review and, when they are in proper form, certification of the Construction Manager’s Applications for Payment.

2.1.7. The Design Professional will have authority to reject Work which does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable to implement the intent of the Contract Documents, the Design Professional will have authority to require additional inspection or testing of the Work, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to any member of the Construction Team.

2.1.8. The Design Professional will review and approve or take other appropriate action upon the Construction Manager’s submittals, such as Shop Drawings, Product Data and Samples. The Design Professional’s review of the Construction Manager’s submittals shall not reduce the Construction Manager’s obligations under the Contract Documents. The Design Professional’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.1.9. At the written request of the Owner, the Design Professional will interpret and decide matters concerning the Design. All interpretations and decisions of the Design Professional shall be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of Drawings.

1. The Construction Manager shall promptly comply, and cause all Trade Contractors to comply with the Design Professional’s written interpretations and decisions, subject to its rights under Section 9.5 if any interpretation or decision changes one or more of the Contract Documents.

2.1.10. The Design Professional’s response to requests for interpretation or for approval of submittals will be made with reasonable promptness and within any time limits agreed upon in writing. The parties recognize that timely response by the Design Professional is important to the success of the Work. Accordingly, the Owner, the Construction Manager and the Design Professional shall meet promptly after execution of the Agreement to establish mutually acceptable time lines for Design Professional’s responses.

2.1.11. The Design Professional will conduct inspections to help the Owner determine the date or dates of Substantial Completion and the date of Final Completion.

2.1.12. If and to the extent required by its agreement with the Owner, the Design Professional will provide one or more project representatives to carry out the duties assigned to it. The Construction Manager shall cooperate with the Design Professional’s representatives.

ARTICLE 3 THE RIGHTS, DUTIES AND RESPONSIBILITIES OF THE OWNER

3.1 The Owner’s Responsibilities.

3.1.1. The Owner shall provide the Construction Manager with information regarding the requirements of the Work.

3.1.2. [Intentionally Omitted]
3.1.3. At the time the Agreement is executed, the Owner shall designate in writing a representative to act on the Owner’s behalf with respect to the Work. Upon written notice, the Owner may, from time to time, in its sole and absolute discretion, change its representative.

3.1.4. The Owner will not modify the Design Professional’s services, duties, and responsibilities in a manner which materially affects any of the responsibilities of the Construction Manager without executing appropriate Modifications to the Agreement.

3.1.5. The Owner shall furnish selected soil borings taken from the Work Site, surveys describing the boundaries and topography of the Project Site, and, when appropriate to the project scope, the approximate location of utilities. The Construction Manager may, acting in accordance with the Standard of Care, rely upon the accuracy of these documents.

3.1.6. The Owner shall furnish the services of additional consultants when such services are reasonably required by the scope of the Work, but only if such consultants are not specifically identified in the Contract Documents as the responsibility of the Construction Manager.

3.1.7. The Owner shall furnish, but the Construction Manager shall provide administrative assistance to the Owner in connection with and coordinate all Owner-requested consultants and testing, such as acoustics, structural, mechanical, chemical consultants, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests not otherwise required by the Contract Documents.

3.1.8. To the extent the form of certificates or certifications have not been agreed to prior to the execution of the Agreement and attached hereto by way of exhibit, proposed language of certificates or certifications requested of the Construction Manager or any member of the Construction Team shall be submitted to the Construction Manager for review and approval at least seven (7) business days prior to execution.

3.1.9. The Owner shall, when necessary, assist the Construction Manager in connection with the planning, scheduling, installation, testing and activation of all public or private utilities.

3.1.10. The Owner shall furnish the Construction Manager with copies of written communications deemed by the Owner to be necessary for the performance of the Construction Manager’s obligations between the Owner and the Design Professional. The Owner may elect to have the Construction Manager communicate directly with the Design Professional. Unless the employment of the Construction Manager has been terminated, the Owner shall communicate with Trade Contractors, Subcontractors and Suppliers through the Construction Manager, except in the case of an emergency.

3.1.11. The Owner shall furnish the required information and services and shall render approvals and decisions with reasonable promptness as necessary for the orderly progress of the Work, but the Owner shall always be given sufficient time to permit adequate review.

3.1.12. The Owner shall pay the Construction Cost in accordance with Article 12 below.

3.2 The Owner’s Agents.

3.2.1. The Owner may at any time and from time to time designate a third-party, such as an architect or engineer or other professional consultant, to perform any of its duties under the Agreement. In the event of any such designation, the Owner shall provide written notice to the Construction Manager and shall be responsible to the Construction Manager for the actions, errors, and omissions of such persons.
3.2.2. The duties, responsibilities and limitations of authority of any third party designated by the Owner pursuant to Section 3.2.1 above, shall not be restricted, modified or extended without written consent of the Owner.

3.3 Limitations on Owner’s Responsibility.

3.3.1. [Intentionally omitted.]

3.3.2. The Owner will not under any circumstances have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Construction Manager’s responsibility. Owner will not be responsible for the Construction Manager’s failure to carry out the Work in accordance with the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of any member of the Construction Team.

3.3.3. The Construction Manager shall only be entitled to rely upon instructions and directions provided by the Owner’s authorized representative(s).

3.3.4. The Owner may, in addition to delivering them to the Design Professional, from time to time review and approve or take other appropriate action upon the Construction Manager’s submittals, such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with the Owner’s objectives and goals. Review of such submittals will not be conducted for the purpose of determining their accuracy and completeness of details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Manager. The Owner’s review and approval of or taking other appropriate action on the Construction Manager’s submittals shall not relieve the Construction Manager or the Design Professional of any of their obligations. The Owner’s approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Owner’s receipt of any informational submittals, of any submittals relating to equipment or systems designed by the Construction Manager, or of any submittals relating to alternatives proposed by any member of the Construction Team shall not constitute approval of or action by the Owner on such submittals. All such submittals will be received by the Owner for record purposes only.

3.3.5. The Owner may from time to time review or observe or take other appropriate action concerning the Work and any Administrative Management Plans, documents, and the selection of Trade Contractors, Subcontractors and Suppliers. The Owner’s doing so shall be solely for the limited purpose of providing the Construction Manager with information as to how such items relate to the Owner’s objectives and goals with respect to the Work and not for the purpose of determining their accuracy and completeness and shall in no way create any responsibility on the part of the Owner for or complicity by the Owner in errors, inconsistencies, or omissions, nor shall any such review, approval, other action or payment of the Construction Manager alter or in any way reduce the Construction Manager’s obligations under the Agreement.

ARTICLE 4 THE ROLE OF THE CONSTRUCTION MANAGER DURING CONSTRUCTION

4.1 Labor and Materials; Utilities.

4.1.1. Except as otherwise provided in the Contract Documents, the Construction Manager shall hire, contract, coordinate, administer, supervise, and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, light, power, utilities, transportation, and other goods, facilities and Services necessary for or appropriate to the proper and timely execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work, including any temporary heat, any temporary utilities, scaffolding, bracing, barricades, structures and the like. If the Work is to be performed in phases, the provisions of the Contract Documents shall apply fully to each phase.
1. In all cases involving utilities, unless the Contract Documents specifically provide otherwise, it shall be the Construction Manager’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. The Construction Manager shall coordinate any work required by private and/or public utility companies to provide utilities to the Work and/or shall coordinate relocation of utilities as required by the Work. Any reference to the Owner’s 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.

(a) Utilities or other services which are shown on surveys, or not shown but encountered or otherwise found, shall be protected by the Construction Manager from any damage from any Work and operations under the Contract Documents, unless or until they are abandoned. Unless or until they are abandoned, or to be abandoned, the Construction Manager shall immediately repair, or cause the responsible party to repair, any damage from the Work or operations and restore the utilities and services to an equal or better condition than that which existed prior to the damage or disruption. The cost of repair shall be borne solely by the Construction Manager or the responsible party without recovery, whether under the Guaranteed Maximum Price or otherwise.

(b) To the extent practical, the Construction Manager shall be entitled to tie into the Owner’s existing water, power and steam facilities without charge as to any usage in connection with the Work.

(c) All persons performing plumbing, mechanical, or electrical work on property owned or operated by the Owner are required to contact the Code Inspection Office in the Owner’s Department of Architecture, Engineering and Construction prior to starting work, to arrange for Code Inspection coordination and consultation with the Construction Manager. The Owner provides, at no charge to the Construction Manager, plumbing, mechanical, 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 Construction Manager and are for the purpose of determining if the Work is in compliance with applicable codes. In all cases, the Construction Manager 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 Construction Manager shall uncover the Work, at the Construction Manager’s expense.

(d) No one except the Owner is permitted to connect or activate any utility services in any building or facility owned or occupied by the Owner. When such connection or activation services are required, the Owner shall be contacted, and all such work shall, unless otherwise specifically provided in the Contract Documents, be performed by Owner personnel. In all cases, the Construction Manager shall give notice of the need for such services, to the Owner, in a timely manner (at least seventy-two [72] hours in advance) so as to avoid delays to the Project's progress.

2. 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 Design Professional and the Owner or unless specifically permitted or required by the Contract Documents. The Design Professional and the
Owner shall have the right to have any such improperly used materials or equipment removed from the Project site or completed Work whenever detected. The Design Professional’s or Owner’s failure to detect such used materials or equipment shall not relieve the Construction Manager of its obligations under this paragraph. Neither the Design Professional nor the Owner shall have any obligation to inspect for or detect used materials or equipment.

4.1.2. All members of the Construction Team 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 Construction Manager’s decision as to the procedure to be followed.

4.1.3. Except in cases of unreasonable interference that constitutes an Owner Delay, the Construction Manager shall not be relieved of its obligation to perform its Services and cause the Work to be performed on time in accordance with the Contract Documents by the activities or duties of anyone involved in the administration of the contract, or by tests, inspections or approvals required or performed and coordinated by someone other than the Construction Manager.

4.1.4. The Owner will employ a commissioning agent to fully commission the Project. A master commissioning manual shall be developed by the commissioning agent, to document the commissioning process. The Construction Manager shall fully support the Project commissioning effort and shall coordinate Trade Contractor, Subcontractor and Supplier participation in the process.

4.2 Physical Condition.

The Construction Manager shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Article 3. It shall also compare all of the foregoing with the observable physical condition of the Project Site. The Construction Manager shall take field measurements and verify field conditions and underground utility locations and shall carefully compare such field measurements and conditions and other information known to the Construction Manager with the Contract Documents before each portion of the Work is commenced. In both cases, the Construction Manager shall at once report to the Owner any errors, inconsistencies or omissions it discovers. If the Construction Manager permits any construction activity to be performed, that involves an error, inconsistency or omission in the Contract Documents or a physical condition at the Project Site it recognized or should, employing the degree of diligence required of it under the Contract Documents, have recognized without having given notice to the Owner and having received authorization to proceed, the Construction Manager shall assume responsibility for such performance and bear all costs attributable to correction, without recovery, whether under the Guaranteed Maximum Price or otherwise.

4.2.1. Except and only to the extent otherwise provided in Section 3.1.5 above or Section 15.4 below, by signing the Agreement, the Construction Manager agrees:

1. To bear the risk of concealed or unknown conditions, if any, which may be encountered in performing the Work; and
2. That the Guaranteed Maximum Price will be established and this responsibility accepted with full knowledge of this risk.

In agreeing to bear the risk of concealed or unknown conditions to the extent herein provided, the Construction Manager understands that, except and only to the extent provided otherwise in Section 3.1.5 above or Section 15.4 below, concealed and/or unknown conditions shall not excuse the Construction Manager from its obligation to achieve full completion of the Work within the Construction Time, and shall not entitle the Construction Manager to an adjustment of the Guaranteed Maximum Price. Except as provided in Section 3.1.5 above, the Owner has not determined the accuracy or completeness of any information it may provide concerning physical conditions at the Project Site, and all such information is
made available to the Construction Manager, and shall by the Construction Manager be made available to bidders without any representation or warranty by the Owner whatsoever as to its accuracy, completeness, or relevancy. The Construction Manager and the bidders shall independently evaluate such information for their use and shall be solely responsible for use or interpretation of such information. Any such use or interpretation shall not be the basis of any claim whatsoever against the Owner.

4.2.2. If the Construction Manager encounters concealed or unknown conditions that differ materially from those anticipated or expected, whether or not it is entitled to assert a Claim under Section 15.4 below, the Construction Manager shall promptly notify the Owner in writing of such conditions so that the Owner can determine if such conditions require design details which differ from those design details shown in the Design or some other remedial action. The Construction Manager shall be liable to the Owner for any extra costs incurred as the result of the Construction Manager’s failure to promptly give such notice.

4.2.3. [Intentionally omitted.]

4.2.4. In all cases of interconnection of the Work with existing or other work, the Construction Manager shall verify at the Project Site all dimensions relating to such existing or other work.

4.2.5. The Construction Manager shall review conditions at the Project Site to determine if field assembly of the equipment is required and notify the manufacturer accordingly if units are to be shipped in sections.

4.2.6. [Intentionally omitted.]

4.3 Work Already Performed.

The Construction Manager shall be responsible for inspecting portions of Work already performed to determine that they are in proper condition to receive subsequent Work.

4.4 Control of Project Site; Surveys; Permits.

4.4.1. The Construction Manager, and not the Owner, shall be in control of the Project Site. The Owner shall require the Design Professional and Owner’s separate contractors and consultants to abide by the Construction Manager’s control of the Project Site. The Owner shall require such other contractors and consultants to indemnify Construction Manager, to the same extent the Owner obtains such indemnification for itself. The Owner shall also require such other contractors and consultants to name Construction Manager as additional insured on their liability insurance and to require that such insurance is primary, not excess or contributory.

4.4.2. The Construction Manager shall be responsible for and shall secure and pay for all surveys required to establish building alignment and elevations. The Design Professional, or the Owner shall either provide or direct the Construction Manager to reference points for the Construction Manager to rely upon in order to establish required alignment and elevations. The Construction Manager shall be responsible for protecting and preserving these reference points. The Construction Manager shall employ a registered land surveyor to stake out and locate all the construction and reference points needed to properly locate the Work for its use and the use of others. The surveyor shall locate all significant points of each element and pertinent features of the Project site and establish necessary references and benchmarks. The Construction Manager shall preserve all such stakes and benchmarks and replace at its expense any that are lost or destroyed. All Work shall be located with respect to such references and benchmarks, except where locations are determined by columns, existing openings or other building features. In the case of a discrepancy between a location determined by reference, column or other building feature, the Construction Manager shall immediately report same to the Design Professional for resolution.
1. The Construction Manager shall recognize the need to obtain accurate field dimensions in ample time to permit fabrication of certain items (e.g., casework, cabinets and other work) and allow for delivery and installation in time to maintain the Construction Schedule. All Trade Contractors shall cooperate in completing Work phases to accommodate the schedule for obtaining dimensions and to prevent fabrication delay. If it is impractical to have Work in place to permit field dimensions, the Construction Manager shall guarantee necessary dimensions, before construction, to the various fabricators and be responsible to ensure the dimensions.

4.4.3. 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 Construction Manager shall secure a permit, license or temporary easement and give adequate notice to the municipality and/or any other agency having jurisdiction over it.

4.5 Pre-purchased Equipment.

The Construction Manager shall cause pre-purchased equipment and material to be delivered to the Project Site or temporarily stored to assure coordination with other trades. The Construction Manager shall be responsible to verify that such equipment is in accordance with the Specifications.

4.6 Taxes.

4.6.1. The Construction Manager shall pay or cause other members of the Construction Team to pay all sales, consumer, use and similar taxes for the Work imposed by laws legally enacted at the time bids are received or negotiations concluded, whether or not such taxes are then effective or merely scheduled to go into effect. However, the Owner reserves the right to purchase any and all equipment, materials and supplies itself which may have the effect of reducing the Construction Cost by eliminating the sales tax in whole or in part.

4.7 Royalties and Patents.

The Construction Manager shall pay all royalties and license fees. The Construction Manager shall at its expense, without recovery from the Owner, under the Guaranteed Maximum Price, any contingency or otherwise, defend suits or claims for infringement of patent rights and shall indemnify the Owner against and hold it harmless from any and all loss, damage or liability, including attorneys’ fees and costs, on account thereof. The Construction Manager shall not, however, be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents and did not originate with the Construction Manager, unless the Construction Manager knew or should have known that any required design, process or product is an infringement of a patent and fails to promptly furnish appropriate information to the Owner.

4.8 Permits, Fees and Notices.

4.8.1. The Construction Manager shall identify, secure, pay for, and as soon as practical furnish the Owner with copies of certificates of, all permits, fees, licenses and inspections necessary for the proper execution, completion and occupancy of the Work, including, without limitation, all building permits. The cost of such items shall not be included in the Construction Cost, but shall instead be billed to the Owner as a reimbursable expense. On the other hand, all connection charges, assessments or inspection fees imposed by any municipal agency or utility company are included in the Guaranteed Maximum Price and shall be the Construction Manager’s responsibility.

4.8.2. The Construction Manager shall give notices required by Applicable Laws. The Construction Manager shall also obtain and pay all charges related to street and sidewalk closings, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the proper performance of the Work.
4.8.3. The Construction Manager 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.

4.9 The Construction Schedule.

4.9.1. Using the Project Schedule as a basis, the Construction Manager shall, as part of its Guaranteed Maximum Price Proposal or request for release of the first bid package, whichever occurs first, prepare and submit to the Owner a proposed Construction Schedule, to serve as the schedule for the performance of the Work. Except with the Owner’s prior written approval, the Construction Schedule shall maintain the critical path and any milestones and deadlines established in the Project Schedule. The Construction Schedule shall be reviewed monthly or at appropriate intervals as required by the conditions of the Work, and shall provide for expeditious and practicable execution of the Work.

1. The Construction Schedule shall be in a detailed critical path method format satisfactory to the Owner which shall also: (i) provide a graphic representation coordinating and sequencing all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; (iii) set forth Milestone Dates and manpower loading.

2. The Construction Schedule shall allow for and depict the following:
   (a) local weather conditions;
   (b) local jurisdictional or other work restrictions;
   (c) specific restrictions, constraints and Contract completion dates stipulated in the Contract Documents;
   (d) intermediate completion dates stipulated in the Contract Documents;
   (e) time for needed approvals by the Owner, Design Professional, or other agency or authority;
   (f) Owner, Design Professional, or other agency or authority inspections and/or tests where required by the Contract Documents;
   (g) the work of separate contractors or the Owner;
   (h) necessary resources to accomplish the Work within the Contract Time;
   (i) other information that may be provided by the Design Professional or the Owner; and
   (j) a legend for each report or chart which clearly identifies how to interpret each.
   (k) design release dates

3. Upon review and acceptance by the Owner, the Construction Schedule shall be deemed part of the Contract Documents and shall not be subject to change except in accordance with Section 7.3 and Article 9 below. If it is not accepted, the Construction Schedule shall be promptly revised by the Construction Manager in accordance with the recommendations of the Owner and resubmitted for acceptance.
(a) The Construction Schedule, subject to any Modification granted in accordance with the Agreement, shall establish the Contract Time within which the Construction Manager must achieve Final Completion of the Project. It shall also serve as the basis for the Construction Manager’s Guaranteed Maximum Price.

(b) The Construction Manager shall meet at least bi-weekly with the persons providing labor or materials under each trade package to review their progress and take appropriate action to maintain the Construction Schedule.

(c) The accepted Construction Schedule shall be updated (i) monthly to compare actual progress with projected progress and (ii) at any other time if requested by the Owner. The updated Construction Schedule shall reflect the status of the Project’s progress at the date of update and the Construction Manager’s planned progress of remaining portions of the Work.

(d) The Construction Manager shall develop recovery schedules when critical path or Milestone Dates are or may be at risk.

(e) The Construction Manager is responsible for the completeness of the Construction Schedule. The Construction Manager shall confirm in writing, with each submission of the Construction Schedule, that the Construction Manager has reviewed the Construction Schedule with Trade Contractors 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.

(f) The sequence of activities in the Construction Schedule will reflect the Construction Manager’s intended approach to the execution of and completion of the Work. The Construction Schedule shall be broken into work areas to provide for a clear identification of the planned progress of the Work. Unless it is impractical, the duration of each activity will not be greater than thirty (30) calendar days. All durations shown will be in calendar days.

(g) The Owner’s or the Design Professional’s review of Construction Schedule shall not constitute or imply the acceptance of or relieve the Construction Manager of the responsibility for the means, methods, sequences, techniques or procedures used in the performance of the Work.

(h) The Construction Schedule shall represent the Construction Manager’s plan for organizing, directing, managing, controlling, staffing and executing the Work required by the Contract Documents. The Owner will rely on the Construction Schedule to coordinate and otherwise plan the work of the Owner, Design Professional, or other separate contractors, and to evaluate progress for payment purposes or other purposes as described in the Contract Documents.

(i) All Float time in the Construction Schedule shall be used as mutually agreed, but in all cases for the benefit of the Project.
(j) The updated Construction 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.

(k) At the completion of the Work and as a condition precedent to final payment to the Construction Manager, the Construction Manager shall submit two (2) copies of the final updated Construction Schedule to the Owner.

4. The Construction Manager shall proceed strictly in accordance with the critical path set forth in the Construction Schedule. The Construction Manager shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. If any progress report indicates any delays, the Construction Manager shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment of the Construction Time or any Milestone Date or the Guaranteed Maximum Price unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

4.10 Shop Drawings, Product Data and Samples.

4.10.1. Shop Drawings, Product Data, Samples, catalog cuts, brochures, illustrations, material lists, equipment lists, performance data, diagrams, schedules, other data and similar submittals (collectively “Submittals”) are not Contract Documents. Their purpose is to demonstrate for those portions of the Work for which submittals are required the way the Construction Manager proposes to conform to the information given and the Design concept expressed in the Contract Documents.

1. As part of the document control system, the Construction Manager shall develop and keep current a Submittal log which is coordinated with the Construction Schedule.

2. The Construction Manager shall monitor the time required for submission of Submittals to the Design Professional, as well as the time required for their review and approval by the Design Professional. The Construction Manager shall take corrective action as appropriate to ensure the timely submission and review of Submittals.

4.10.2. All Submittals shall first be sent directly to the Construction Manager. The Construction Manager shall review (and when appropriate reject and require resubmission) and, following its approval, submit to the Design Professional Submittals required by the Contract Documents, requested by the Design Professional or the Owner, or otherwise necessary for or appropriate to the proper execution of the Work. Submittals shall be submitted with reasonable promptness so as to allow the Design Professional reasonable time (and in no case less than any specific period set forth in these General Conditions) to review them and in such sequence as to avoid any delays in delivery of materials or in the progress or completion of the Work, and in 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. Submittals for critical material deliveries shall indicate a reasonable date by which the Construction Manager requests them to be reviewed and returned by the Design Professional. Submittals made by the Construction Manager which are not required by the Contract Documents and not requested by the Design Professional or the Owner, or otherwise necessary for or appropriate to the proper execution of the Work, may be returned without action.

1. The Construction Manager shall check thoroughly all such Submittals, including those it prepares itself, as to measurements, sizes of members, materials and all other details, to assure that they conform to the intent of the Contract Documents.
2. The Construction Manager shall promptly return to the Trade Contractors, Subcontractors and/or Suppliers, for correction, any of the Submittals that are found inaccurate or otherwise erroneous.

3. After the Construction Manager has checked and approved such Submittals, the Construction Manager shall place thereon the date of its approval and the legible signature of the individual who reviewed them and shall then submit them to the Design Professional for review. The quantity required and the manner of submission will be as required by the outline procedure for the routine of business. The Design Professional may refuse to check or review any Submittals which are not submitted in compliance with these requirements.

4. Submittals describing manufactured equipment must be "project specific." Every submission copy must be clearly marked to fully define the intended model number, configuration and other applicable product information.

5. Among other things, the Construction Manager shall be responsible for the constructability, content, completeness and consistency of all Submittals.

6. The Construction Manager shall notify the Owner when Submittals are received. It shall deliver copies to the Owner upon request.

7. The Construction Manager shall notify the Owner and the Design Professional in writing if any Submittals appear to modify the requirements of the Contract Documents. This notice shall identify each and every change.

8. The Construction Manager shall furnish to the Design Professional 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 the required number of them shall be submitted before the Work utilizing the materials they exemplify 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 required by the Construction Schedule. All materials furnished and finishes applied to the Work shall be fully equal to the submitted Samples.

   (a) Samples shall be forwarded to the Design Professional with all shipping charges prepaid. 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, the names of its producer, Construction Manager, and the Project.

   (b) 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.

9. Each Shop Drawing which details by original line drawings the 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 Design Professional will obtain prints from the transparency as required for use and will return the reviewed and noted, or corrected, transparency to the Construction Manager 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 blueline print made therefrom submitted. Such procedure shall be followed until review is final. The Construction Manager shall obtain and provide such number of prints from the final transparency, which carry the Design Professional’s stamp of approval, as may be required
for distribution. This shall include the forwarding of one print each to the Design Professional and the Owner for record, and necessary quantity of prints for the Owner’s use.

4.10.3. The Construction Manager shall permit no portion of the Work requiring submittal and review of any Submittal to be performed until it has been approved by the Design Professional. Once they have been approved, Work shall be in accordance with the approved Submittals.

4.10.4. By approving and submitting Submittals, the Construction Manager represents that the Construction Manager has determined and verified materials, field measurements and field construction criteria related thereto, or will do so prior to any Work being performed in reliance upon them, and has checked and coordinated the information contained within such Submittals with the requirements of the Work and or the Contract Documents and Submittals for related work. However, the Construction Manager’s review and approval of Submittals does not include review and approval for conformance with the design intent.

1. The Design Professional will check and review the Submittals with reasonable promptness and within any time limits agreed upon in writing 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 Design Professional, may be necessary to meet the requirements of the Contract Documents. The Construction Manager shall then review such notations, instructions, or directions, and if the Construction Manager concurs therein, shall make or have made such corrections, and shall, when so noted on the submittals or requested by the Design Professional, resubmit corrected Submittals to the Design Professional as soon as possible, for final check and review. Such final check and review by the Design Professional of Submittals so corrected and resubmitted will be limited to the corrections only, and the Construction Manager, by such resubmission shall be held to have represented that such submittals contain no other alterations, additions, or deletions, unless the Construction Manager, in writing, directs the Design Professional’s specific attention to same. Should the Construction Manager question or disagree with such notations, instructions, or directions, the Construction Manager shall direct the Design Professional’s attention to same for further clarification before resubmitting them. Corrections or changes indicated on Submittals shall not be construed as an order for a change in the Work or to perform extra work.

2. The Design Professional’s review of Submittals 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 Construction Manager. The Design Professional does not assume responsibility for errors, omissions or deviations from the Contract Documents contained in such Submittals. Any such errors, omissions or deviations from the Contract Documents must be corrected by the Construction Manager, irrespective of the receipt and review of the Submittals by the Design Professional, and even though the work is done in accordance with such Submittals, unless such error, omission or deviation from the Contract Documents is specifically called to the Design Professional’s attention by the Construction Manager in a separate written letter of communication, at the time of submittal, and the Design Professional has given written approval of such error, omission or deviation.

4.10.5. The Construction Manager shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner’s or Design Professional’s approval of Submittals unless the Construction Manager has specifically informed the Owner and the Design Professional in writing of such deviation at the time of Submittal and the Owner and the Design Professional have given written approval to the specific deviation.

4.10.6. The Construction Manager shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar Submittals, to revisions other than those required by the Design Professional on previous Submittals.

4.10.7. Informational Submittals upon which the Design Professional is not expected to take responsive action may be so identified in the Contract Documents.
4.10.8. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Construction Manager shall provide the person or party providing the certification with full information on the relevant performance requirements and on the materials, systems, or equipment that are expected to operate at the Project Site. To the extent certification is required by the Contract Documents, the certification shall be based on performance under the operating conditions generally prevailing or expected at the Project Site. The Owner and the Design Professional shall be entitled to rely upon the accuracy and completeness of such certifications.

4.11 Use of Site

4.11.1. The Construction Manager shall confine operations at the Project Site to areas permitted by the Agreement, Applicable Laws, permits and the Contract Documents and shall not unreasonably encumber the Project Site with materials or equipment.

4.11.2. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project Site. After equipment is no longer required for the Work, if feasible, it shall be promptly removed from the Project Site. For example, the Construction Manager shall be responsible for causing the bases of all tower cranes to be removed from the Project Site, unless it receives the Owner’s approval to leave them in place. Protection of construction materials and equipment stored at the Project Site from weather, theft, damage and all other casualty is solely the responsibility of the Construction Manager, who shall bear the risk thereof except to the extent of property insurance the Owner is responsible to provide under the Agreement.

1. Prior to Substantial Completion, all temporary work, of every nature, shall be dismantled and removed from the Owner’s premises.

2. If at any time it becomes necessary to move material or equipment which has been temporarily located or stored on the site during construction, the Construction Manager shall, when directed, cause them to be moved to another location without charge to the Owner.

4.11.3. There shall be no offsite storage of materials or equipment without the Owner’s prior written approval in each instance. If the Owner consents to offsite storage, the Construction Manager shall also comply with the following specific requirements:

1. Title to such materials shall be vested in the Owner, after payment therefor to the Construction Manager, as evidenced by documentation satisfactory in form and substance to the Owner, including bills of sale, recorded financing statements, UCC filings and UCC searches. The Construction Manager shall procure insurance satisfactory to the Owner for materials stored off the Project Site in an amount not less than the total replacement value thereof.

2. Only assembled components may be stored off the Project Site.

3. Representatives of the Owner shall have the right to make inspections of the storage areas at any time.

4. Such materials shall be (1) protected from diversion, destruction, theft and damage to the satisfaction of the Owner, (2) specifically marked for use in the Work, and (3) segregated from other materials at the storage facility.

4.11.4. No member of the Construction Team shall erect any sign on the Project Site without the Owner’s prior consent.

4.11.5. The Construction Manager shall ensure that the Work is at all times performed in a manner that affords the Owner, the Design Professional, and the Owner’s separate contractors reasonable access, both vehicular and pedestrian, to the Project Site and all adjacent areas. The Work
shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent
to the Project Site shall be free from all debris, building materials and equipment. Without limiting any
other provision of the Contract Documents, the Construction Manager shall use its best efforts to
minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to
the Project Site or (2) portions of the Project in which Work is not being carried out in the event of partial
occupancy.

4.11.6. The Construction Manager shall not, without the Owner’s prior written approval, permit
any workers to use any existing facilities at the Project Site, including, without limitation, lavatories, toilets,
entrances, and eating and parking areas, other than those designated by the Owner. Without limiting any
other provision of the Agreement, the Construction Manager shall enforce compliance with all rules and
regulations promulgated by the Owner in connection with the use and occupancy of the Project Site and
the surrounding area. The Construction Manager shall immediately notify the Owner in writing if, during
the performance of the Work, the Construction Manager reasonably determines compliance with any
portion of such rules and regulations to be impractical, setting forth the problems of such compliance and
suggesting alternative means through which the results intended by such portions of the rules and
regulations can be achieved. The Owner may, in its discretion, adopt such suggestions, develop new
alternatives or require compliance with the existing requirements of the rules and regulations. The
Construction Manager shall also cause all members of the Construction Team to comply with all
insurance requirements and collective bargaining agreements applicable to use and occupancy of the
Project Site and the surrounding area. However, the Construction Manager shall not be responsible to
regulate the workers’ conduct outside of work hours except as may be permitted under applicable laws
and collective bargaining agreements.

1. Should any room or part of an existing building or facility be temporarily used by
any member of the Construction Team 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
Construction Manager. No room or part of an existing structure shall be so used without the written
consent of the Owner.

4.11.7. Anything contained in the Contract Documents to the contrary notwithstanding, no one
except the Owner shall be permitted to disrupt the operation of any building system or any other services
without the Owner’s prior written consent. Any request to perform such work shall be in writing, received
by the Owner no less than five (5) days prior to the commencement of the requested disruption, and shall
detail (i) the exact nature and duration of such interruption, (ii) the area affected, and (iii) any impact upon
the Construction Schedule caused by such proposed temporary disruption. The Construction Manager’s
failure to comply with the notice provisions of this section shall constitute a waiver by the Construction
Manager of any right it may have to an adjustment of its compensation, or the Construction Time, on
account of any postponement, rescheduling, or other delays ordered by the Owner in connection with any
Work for which the required notice was not furnished.

4.11.8. The Construction Manager will consult with the Owner concerning any necessary
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.

1. All areas used by member of the Construction Team must be properly fenced. Unless the Contract Documents designate another specific type of temporary fencing to be used, the minimum temporary fencing requirement will be the use of chain-link fence having a minimum exposed height of eight (8) feet above grade. Temporary barricades shall also be provided as necessary for the safety of the general public.

2. The Construction Manager shall locate all underground utilities and lawn
irrigation piping prior to driving fence posts.
3. Materials, equipment, trailers, vehicles and all other 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.

4. Driving of vehicles on lawn areas is strictly prohibited.

5. Any tree trimming or tree root disturbances shall be performed only after consultation, inspection and approval by the Owner.

6. 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.

7. Unless stated otherwise in the Contract Documents, the Construction Manager will be responsible to restore, to the Owner’s satisfaction, all disturbed areas caused by the Work.

8. All lawn, shrub and tree restoration work, including soil aerification, tree trimming and plant material replacements shall be performed by a qualified landscape contractor.

9. The Construction Manager shall also cause all streets, drives, sidewalks, walls, lights, signs, fences, poles and the like where disturbed or damaged by the Work to be repaired, and shall leave them in the same condition after completion of the Work as before operations started.

10. The Construction Manager 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 execution of the Work. Such means of access shall be as required by the Contract Documents and/or the Owner’s directions.

11. The Construction Manager shall, subject to the approval of the Owner, designate areas for eating, provide adequate receptacles, and maintain the area in a sanitary condition free of rodents and pests. Remnants of food shall not be allowed to spread beyond the trash receptacles in the designated eating areas. The trash receptacles for the designated eating areas shall be emptied at least once each work day.

4.11.9. The Construction Manager shall provide and maintain temporary stairs, main ladders and runways for access to all areas for the use of all trades. The Construction Manager shall provide additional runways and ladders as may be required for the execution of the Construction Manager’s Work. 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. Permanent stairs shall be erected as soon as possible, and the Construction Manager shall provide same with protective treads, handrails and shaft protection.

4.11.10. The Construction Manager shall provide suitable toilet facilities, at locations approved by the Owner, for the use of all its employees and those of the Trade Contractors and Subcontractors and shall maintain same in proper sanitary condition acceptable to the Owner. All temporary toilet facilities shall be removed upon completion of the Work. The Construction Manager, its employees or other members of the Construction Team will not be permitted to use toilet facilities in the building under construction, or other buildings on or near the Project site.

4.11.11. 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 Construction Manager shall, at the Construction Manager’s expense, make arrangements with the elevator Trade Contractor or Subcontractor to provide, install and maintain one new elevator for temporary use. Elevator service shall be furnished free of charge to the Owner, Design Professional, their employees, 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.
1. Before temporary use of the elevator, the Construction Manager 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.

2. Temporary wiring to elevator machinery for temporary use shall be provided by a member of the Construction Team. The Construction Manager shall furnish, at the Construction Manager’s expense, the services of competent elevator operators during the entire time that elevators are used for construction purposes.

3. At the completion of the Work the Construction Manager shall turn over the elevator used on a temporary basis to the Owner in a first class condition. The Construction Manager shall pay the costs of all refurbishing or repairs, required to satisfy this requirement.

4.11.12. The Construction Manager shall provide telephone service at the Project site for use by the Construction Manager, Owner and Design Professional.

1. The cost of installation, rent, message unit charges, and removal shall be paid by the Construction Manager. All long distance calls shall be paid by the party making such calls.

2. Telephones addressed in this Article shall remain until the completion of the Work.

4.12 Cutting and Patching.

4.12.1. The Construction Manager shall be responsible for all cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

4.12.2. No portion of the Work or any fully or partially completed construction of the Owner or separate contractor or other member of the Construction Team shall be damaged or endangered by cutting, digging, patching or otherwise altering such construction, or by excavation, and no such Work shall be performed, except with written consent of the Owner and of the separate contractor or other member of the Construction Team. The Construction Manager shall not unreasonably withhold its consent to cutting or otherwise altering the Work by the Owner or a separate contractor.

4.12.3. Only tradespersons skilled and experienced in cutting, fitting and patching shall perform such Work.

1. An appropriate member of the Construction Team 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. An appropriate member of the Construction Team shall repair or otherwise make good all such cutting, fitting, or patching after the required Work has been completed as the Design Professional may direct.

4.12.4. The Construction Manager shall not cut or otherwise alter any portion of any structure of which the Work is a part or to which the Work is attached without in each instance having first submitted to the Owner Shop Drawings accurately locating each such cut or alteration. The Design Professional’s approval of such Shop Drawings must be obtained prior to making any such cut or alteration.

4.13 Cleaning Up.

4.13.1. The Construction Manager shall keep the Project Site and all staging and surrounding areas free from accumulation of waste materials or rubbish caused by the Work. Upon completion of the
Work, all waste materials, rubbish, tools, scaffolding, construction equipment, machinery, surplus materials and other materials used on the Project Site shall be removed from the Project Site and all staging and surrounding areas.

1. Construction debris and rubbish as generated by the Work shall be removed from the point of origin daily and not allowed to accumulate. It shall be deposited in a trash container provided on the site until hauled away. Scrap materials for reuse in temporary Work shall be segregated and properly stored, protected and covered as for new materials. The result of the above shall be the maintenance of a clean project, with a minimum of fire hazards. The Construction Manager shall establish and implement a clean-up routine.

4.13.2. If the Construction Manager fails to keep the Project Site and all staging and surrounding areas clean as required by the Contract Documents and in accordance with the instructions of the Owner, the Owner may, following forty-eight (48) hours' notice, do so and the cost thereof shall be charged to the Construction Manager. Such charge may be deducted from the payment or payments next owed to the Construction Manager, or if they are insufficient to cover the amount owing, the Owner may send an invoice to the Construction Manager for payment, and the Construction Manager will pay the invoice upon demand.

4.13.3. Unless the Contract Documents require a different standard, the Construction Manager shall leave all Work installed or modified under the Agreement and all existing materials and surfaces affected by the Work and each area of the Project Site clean to the satisfaction of the Owner. This shall include at a minimum: complete dusting, sweeping, vacuuming, mopping, polishing, and other activities as necessary to remove all dust, dirt and other construction residues, and removal of all tools and equipment, construction debris, rubbish, and surplus materials.

4.13.4. Immediately before turning any portion of the Project over to the Owner, the Construction Manager 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 Construction Manager, including the furnishing of new glass of same character and quality or the replacement of other Work damaged or disturbed.

4.14 Record Documents.

4.14.1. The Construction Manager shall maintain at the Project Site on a current basis for review by the Owner, the Design Professional, and all members of the Construction Team, the Record Documents, which include: a record copy of all logs, reports, Contract Documents, and Record Drawings, in good order and marked to record all changes made during construction; all approved Shop Drawings, Product Data, Samples, and other Submittals; applicable handbooks; maintenance and operating manuals and instructions; and other related documents and revisions which arise out of the Contract Documents or the Work. As part of the Record Documents, the Construction Manager shall maintain records of principal building layout lines, elevations of the bottoms of footings, project floor levels and key site elevations certified by a qualified surveyor. The Construction Manager shall at all times make all records (excluding internal memoranda or reports, privileged communications and documents with incidental references to the Work, or documents which discuss multiple projects) available to the Owner and the Design Professional, and, at the completion of the Work, shall deliver all such Record Documents to the Owner neatly organized, bound and indexed. The Construction Manager shall monitor preparation of as-built Drawings by Trade Contractors on a monthly basis and shall take corrective action as appropriate when as-builts are not being properly updated. The Construction Manager shall be permitted to retain a copy of the Record Documents for its own use after the Work is completed and, in any event, the Owner shall continue to provide access to the Record Documents, for the Construction Manager to inspect and copy.

4.14.2. The Record Drawings shall be prepared and updated during the prosecution of the Work. The prints for Record Drawing use will be a set of blackline prints provided by the Design Professional to
the Construction Manager at the start of construction. The Construction Manager shall maintain said set in good condition and shall use colored pencils or other methods reasonably acceptable to the Owner to mark up said set with "record information" in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (v) such other information as the Owner may reasonably request.

4.14.3. The Construction Manager 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 Construction Manager's notes on the record field Drawings shall be neatly transcribed onto a clean set of Drawings furnished by the Design Professional. The Construction Manager shall submit the final Record Drawings to the Design Professional for review.

4.14.4. During construction, the Construction Manager shall maintain on the Project site, a separate, clean set of Drawings for the sole purpose of recording changes and actual 'as installed' information. This set shall be accessible for inspection by the Owner and the Design Professional at all times. The Construction Manager shall bring this set of Drawings to the scheduled construction progress meetings. The Construction Manager shall record all information as the Work progresses, clearly and neatly, in color and maintain it on a current basis as directed by the Owner and submit these Drawings to the Owner within thirty (30) days after Substantial Completion. As a general guide, the type of information to be recorded includes, but is not limited to: (1) revisions made except minor or non-critical dimensional changes, (2) omissions, including Work omitted by Change Order or accepted alternates, (3) exact dimensioned locations of concealed lines, (4) locations of all control devices, (5) any additions to Work, (6) changes in significant details, (7) and any other information of a similar nature.

4.14.5. Upon substantial completion of the project, the Construction Manager shall submit to the Owner the Construction Manager's mechanical and electrical coordination Record Drawings prepared during construction by the Construction Manager. 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 Construction Manager produces drawings by computer aided drafting, the Construction Manager 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.

4.15 Warranties and Manuals.

4.15.1. The Construction Manager 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 Construction Manager and submitted to the Owner at one time, prior to the issuance of the certificate of Substantial Completion.

ARTICLE 5 SAFETY; EMERGENCIES; PROTECTION OF PROPERTY

5.1 Safety.

5.1.1. The Construction Manager shall develop and implement a project-specific health and safety plan and program to be titled the "(Project Name) Jobsite Safety Plan" ("Safety Plan"). The Construction Manager warrants that it shall read, understand, adhere to and incorporate in its plan, at a minimum, the requirements set forth in the Owner's current “Construction Safety Requirements” document, available for viewing and download at http://www.oseh.umich.edu under the “Contractor
Safety” link. The Construction Manager acknowledges that any Owner’s review and acceptance of the Safety Plan is not intended to, and does not constitute an expression by the Owner that the Safety Plan is adequate to protect persons or property from loss, damage or injury. The Owner shall assume no duty by reviewing the proposed Safety Plan.

5.1.2. The Construction Manager acknowledges that it, and not the Owner, is solely in control of the Project Site and solely responsible, not only for implementing and assuring compliance with the Safety Plan as defined in Section 5.1.1 above, but also for taking, at its expense, whatever action may be necessary or appropriate to fully protect persons and property from any and all loss, damage or injury that may arise out of, or in connection with the Work. The Construction Manager shall take all necessary precautions to ensure the safety of passersby, employees, and visitors on, about or adjacent to the Project Site.

5.1.3. The Construction Manager’s failure to implement or assure compliance with the Safety Plan shall constitute an event of default under this Agreement. The Construction Manager 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, the Indemnitees and the public, including passersby.

5.1.4. The Construction Manager shall designate a member of its organization whose responsibility will include the administration of the Construction Manager’s safety program, and the prevention of accidents. The name and position of this person shall be reported to the Design Professional and the Owner at the start of the Work and shall not be changed unless notice is given to the Design Professional and the Owner.

5.1.5. The Construction Manager shall provide a general review of safety programs developed by each of the Trade Contractors, including a verification that each Trade Contractor/Subcontractor has submitted its report of the recommended safety precautions and programs, as required by the Contract Documents. If the Construction Manager observes a safety violation, the Construction Manager shall require a Trade Contractor to correct it. After written notification to the Trade Contractor to correct the safety violation, if the Trade Contractor does not correct the problem in a timely fashion, the Construction Manager shall cause the Work to be corrected by other means. The performance of such services by the Construction Manager shall not relieve the Trade Contractors of their responsibilities for performance of the Work and for the safety of persons and property, and for compliance with all federal, state and local statutes, rules, regulations and orders applicable to the conduct of the Work. The Construction Manager shall conduct regular safety meetings with Trade Contractors’ superintendents to ensure the Trade Contractors’ compliance with federal, state or local statutes, rules, and regulations relating to the workers’ safety or any other aspect of the Work.

5.2 Emergencies

5.2.1. In an emergency affecting the safety of persons or property, the Construction Manager shall take whatever action may be necessary to prevent such threatened loss, damage or injury. Any compensation claimed by the Construction Manager on the account of emergency work shall be determined in accordance with the provisions contained in Article 9 below.

5.3 Protection of the Work

5.3.1. The Construction Manager shall continuously maintain adequate protection of all Work from damage and shall protect the Owner’s property from injury or loss. The Construction Manager shall make good any such damage, injury or loss at no cost to the Owner, except to the extent directly caused by agents or employees of the Owner. The Construction Manager shall adequately protect the Work and adjacent property as required by law, the Contract Documents, or as otherwise required, to cause no damage to the Work and adjacent property during the execution of the Work. This requirement shall also apply to structures above and below ground as conditions of the site require.
5.3.2. The Construction Manager shall provide protection to prevent damage or loss to:

1. the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody or control of the Construction Manager or any of the Construction Team;

2. other property at the Project Site such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction; and

3. any property adjacent to the Project Site and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Construction Manager.

5.4 Limitation of Impact to Owner

5.4.1. 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 Construction Manager 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 Construction Manager where necessary to divide the Work area from the Owner's occupied areas.

5.4.2. During the prosecution of the Work, the Owner may use and occupy the buildings and site adjacent to and surrounding the Project Site. At all times during the construction period, safe and convenient access shall be maintained to and from these buildings and any other portions of the site occupied by the Owner and/or Trade Contractor/Subcontractors.

5.5 Explosives & Other Hazardous Activities

5.5.1. When use or storage of explosives or Hazardous Materials or equipment or unusual methods are necessary for execution of the Work, the Construction Manager shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When in the course of the Work use or storage of explosives or Hazardous Materials or equipment or unusual construction methods are necessary, the Construction Manager shall give the Owner reasonable advance notice.

1. 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 Construction Manager, as are any costs associated with damages, injuries or losses arising out of the use of such explosives.

5.6 Incident Reporting

5.6.1. The Construction Manager shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner. The obligations in this Section are in addition to the Construction Manager’s reporting obligations under Applicable Laws.

5.7 Hazardous Materials.

5.7.1. The Construction Manager shall not, nor shall it permit any member of the Construction Team, to bring on, keep, store, use, release or dispose of any Hazardous or potentially Hazardous Material on, in or about the Project Site except Permitted Materials.
5.7.2. The Construction Manager shall cause the presence, use, storage and/or disposal of Permitted Materials by any member of the Construction Team to be in strict compliance in every respect with all Applicable Laws and shall promptly notify the Owner if any amount of Permitted Materials or any other Hazardous Materials are released on the Project Site at any time in a quantity that would have to be reported or remediated under any Applicable Laws.

1. The Construction Manager shall at its expense, without recovery from the Owner, under the Guaranteed Maximum Price, any contingency or otherwise, fully and promptly remediate each and every release of Permitted Materials and any other Hazardous Materials in full compliance with all Applicable Laws, to the most stringent standards available under all Applicable Laws, and in cooperation with the Owner, except to the extent of contamination (i) that existed before Work began at the Project Site and neither the Construction Manager nor any other member of the Construction Team has exacerbated such pre-existing contamination after recognizing the presence and general location of such contamination, or (ii) was caused directly by the Owner, the Design Professional, a contractor of the Owner who is not a member of the Construction Team, or any third party. The Construction Manager shall be responsible if and to the extent, after recognizing the presence and general location of Hazardous Materials that were pre-existing at the Site, or after it should have recognized such presence and general location, it exacerbates such contamination.

5.7.3. The Construction Manager shall at its expense, without recovery from the Owner, under the Guaranteed Maximum Price, any contingency or otherwise, be solely responsible to the Indemnitees for and shall defend, indemnify and hold harmless the Indemnitees and the Project Site from and against all claims, damages costs, fines, judgments and liabilities, including attorneys’ fees and costs, arising out of or in connection with the storage, use, disposal or presence of Permitted Materials or Hazardous Materials at the Project Site by or due to any member of the Construction Team or for any noncompliance with Section 5.7 by any member of the Construction Team. The indemnity in the previous sentence and in 5.7.4 below does not include claims, fines, etc., to the extent they arise from (i) contamination that existed before Work began at the Project Site which was not exacerbated by the Construction Manager or any member of the Construction Team (after it recognized or should have recognized the presence and general location of such contamination) or (ii) contamination that was caused directly by the Owner, the Design Professional, a contractor of the Owner who is not a member of the Construction Team, or any third party.

5.7.4. The Construction Manager’s responsibility under the foregoing indemnification shall include any and all governmentally mandated removal and/or cleanup of any such Permitted Materials or Hazardous Materials.

5.7.5. If the Construction Manager shall receive any notice, whether oral or written, of any inquiry, test, investigation, enforcement proceeding, environmental audit or the like by or against the Construction Manager, any member of the Construction Team, or the Work with regard to any Hazardous Materials at or emanating from the Project Site, the Construction Manager shall immediately notify the Owner.

5.7.6. If any member of the Construction Team encounters on the Project Site material which it believes is a Hazardous Material in any form (other than Permitted Materials being used in an appropriate manner or asbestos, asbestos containing materials or polychlorinated biphenyl (PCBs) which have been rendered harmless), the Construction Manager shall (i) immediately stop Work in the area affected, (ii) report the condition to the Owner as expeditiously as possible, and (iii) clear all persons from the area of exposure. The Work in the affected area shall not be resumed until the Hazardous Material has been removed or rendered harmless as evidenced by written agreement of the Owner and the Construction Manager. The term “rendered harmless” shall be interpreted to mean that the levels are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project Site by any member of the Construction Team. Except for the Permitted Materials, no member of the Construction Team shall use any fill or other materials to be incorporated into the Work which are Hazardous Material, toxic or comprised of any items that are Hazardous Material or toxic.
1. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Construction Manager, Trade Contractors, and agents and employees or either of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work in an area affected by Hazardous Materials (excluding Permitted Materials and other Hazardous Materials brought to the site by the Construction Manager or persons for whom it is responsible and excluding all claims, damages, etc., arising out of or resulting from any exacerbation of pre-existing contamination after they recognized or should have recognized the presence or general location of such pre-existing contamination), if (i) in fact, the material presents the risk of bodily injury or death and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent that such damage, loss or expense is not due to the negligence of the person seeking indemnity after the presence and general location of the contamination was known to or should have been known by such person, or (ii) the Construction Manager is held liable for the cost of remediation of a Hazardous Material.

5.7.7. The Construction Manager shall not be required to cause performance without its consent any Work relating to asbestos or PCB or other Hazardous Material, except as otherwise required under this Section 5.7. The Construction Manager agrees to excavate and stockpile on site soils with levels of contamination such that it can be safely and lawfully handled without special protective equipment if the Owner so requests. In such a circumstance, the Construction Manager shall comply with all Applicable Laws, shall be fully responsible for any non-compliance with all Applicable Laws, and shall indemnify, defend and hold harmless the Owner for any and all claims arising from the Construction Manager’s failure to so comply with an Applicable Law.

5.7.8. The Construction Manager shall take care to minimize the use of Hazardous Materials to the extent consistent with the orderly conduct of the Work. To the maximum extent practical, the Construction Manager shall cause Permitted Materials which contain Hazardous Materials (and any explosive materials which are not Hazardous Materials) to be stored off the Project Site and off Owner’s premises. Except for Permitted Materials, all Hazardous Materials used, stored or generated at the Project Site by the Construction Team shall be used, stored, transported and disposed of in strict conformity with Applicable Laws, codes, rules, regulations, guidelines and orders of governmental authorities having jurisdiction, and the Construction Manager shall maintain—and provide promptly to Owner upon demand—appropriate and complete documentation evidencing the Construction Manager’s compliance with all such laws, codes, rules, regulations, guidelines and orders. (The term “Hazardous Materials” as used in the Contract Documents includes any toxic or hazardous materials or substances as defined in any environmental law or regulation, including Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et. seq. [or any successor statute], Part 201 of Michigan’s Natural Resources and Environmental Protection Act, MCL 324.1 et seq., asbestos, PCB’s and petroleum). The Construction Manager shall not permit inclusion of asbestos, polychlorinated biphenyls or urea formaldehyde in any construction materials. The Construction Manager shall be responsible for the removal and cleanup of all Hazardous Materials and wastes brought to the Project Site or generated at the Project Site by any member of the Construction Team. The Construction Manager shall indemnify and defend the Indemnitees against and hold them harmless from all claims, suits, damages, losses, fines, penalties, costs and expenses, including reasonable attorneys’ fees, arising from or in connection with or otherwise relating to the use, generation, storage, release, transporting and disposal of any Hazardous Materials or waste in connection with the Work excluding such items as were pre-existing at the Site or brought to the Site without the fault or involvement of the Construction Manager or persons for whom it is responsible, including all claims, etc. arising from or in connection with any exacerbation of pre-existing contamination.

5.7.9. The foregoing portions of Section 5.7 shall not apply when the remediation of Hazardous Materials is part of the scope of the Work. In that case, the Construction Manager shall comply in all respects with the specifications for the Project, all Applicable Laws, and the Contract Documents.
5.7.10. The Construction Manager shall undertake all activities under this Section in full cooperation and consultation with the Owner’s Occupational Safety & Environmental Health Department ("OSEH").

5.8 **Security.**

5.8.1. The Construction Manager hereby acknowledges that the nature of the Owner’s operations requires strict security measures. All members of the Construction Team shall cooperate with the Owner’s security personnel and shall comply with all of the Owner’s security requirements. Such requirements shall include, without limitation, if requested by the Owner, delivering to the Owner’s security personnel, prior to the commencement of the Work on each day, a list of all personnel who will be permitted access to the Work. The foregoing, however, shall not relieve the Construction Manager of any obligation to provide a safe and secure workplace for all parties entering the Project Site.

1. The Construction Manager shall be responsible for providing Project site security to the extent necessary to safeguard the building, tools, materials, and completed Work. The Construction Manager’s written plan for Project site security shall be submitted to the Owner for approval within twenty (20) days of the execution of the Agreement.

2. The entrances to the Project site will remain open during normal working hours for the use of all members of the Construction Team. Prior to and after normal working hours, all entrances and exits will be closed and secured by the Construction Manager. The Construction Manager shall provide to the Owner copies of keys (2 each) for all doors and gates secured.

5.8.2. The Owner reserves the right to bar access to any individual for reasonable security reasons. Furthermore, the Owner reserves the right to limit the location of entries to the Work which may be used by members of the Construction Team.

5.9 [Intentionally Omitted]

5.10 **Fire Precautions.**

5.10.1. All members of the Construction Team 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 members of the Construction Team 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.

1. 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.

2. Before starting Work, the Construction Manager shall consult with the Owner regarding established rules and regulations relative to fire protection requirements and procedures governing any welding and cutting operations. The Construction Manager shall strictly conform and shall cause all members of the Construction Team to 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.

3. No open fires will be permitted. No tar or other melting kettles will be allowed within fifty (50) feet of any building.

4. All tarpaulins used during the course of the Work shall be of flameproof type, secured in place against damage or flapping from wind.
5. 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.

6. Gasoline, benzene or like combustible material shall not be poured into sewers, manholes, or traps, but shall be disposed of, together will all flammable or waste material subject to spontaneous combustion, in a manner to avoid hazard or damage to persons or property.

7. 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.

8. Temporary heating facilities shall be inspected regularly to assure that they are in a safe and proper operating condition at all times. The Construction Manager shall provide continuously during operation properly trained personnel for said inspections.

9. 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.

10. 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.

5.10.2. The Construction Manager shall provide necessary personnel and firefighting 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.

1. The Construction Manager 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.

5.10.3. 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.

5.10.4. Only a reasonable working supply of flammable building materials shall be located inside of or on the roof of any building.

5.11 Fire Protection

5.11.1. The Construction Manager shall maintain free access to the building areas for firefighting equipment and shall at no time block off main roadways or fire aisles without providing adequate auxiliary
roadways and means of entrance for firefighting equipment, including heavy fire department trucks, where applicable.

5.11.2. The Construction Manager 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.

5.11.3. The Construction Manager 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 Design Professional. The system shall, at a minimum, meet the requirements set forth in the Contract Documents and of Applicable Laws. 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.

5.11.4. The Construction Manager shall maintain during construction an appropriate number of fire extinguishers to meet the requirements of Owner’s insurance carriers. Fire extinguishers shall be in good working order, conveniently located, clearly visible and readily accessible for proper protection of the Work.

5.11.5. 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.

5.11.6. All other parties with temporary structures on the project shall provide and maintain fire extinguishers in each of such structures.

ARTICLE 6 TRADE CONTRACTORS

6.1 Changes Pertaining to Trade Contractors.

6.1.1. In connection with the hiring and the Work of the Trade Contractors, the Construction Manager shall review requests for changes and negotiate Trade Contractors’ proposals. The Construction Manager shall keep the Owner and Design Professional apprised of the current changes by maintaining a current Change Order log for each Trade Contractor, and shall work with each Trade Contractor to ensure a timely resolution of all Change Orders.

1. If changes to the Work pertaining to Trade Contractors are outside the scope of the Guaranteed Maximum Price, the Construction Manager shall recommend necessary or desirable construction contract changes to the Design Professional and the Owner, and if they are accepted by the Owner, the Construction Manager shall prepare Trade Contractor Change Orders. The Construction Manager shall consult with the Design Professional with regard to scope aspects of a proposed change, and shall submit the Change Orders to the Design Professional for signature.

6.1.2. Subject to the Owner’s approval or at the Owner’s direction, the Construction Manager will issue a Construction Change Directive to a Trade Contractor if a change is required and the Construction Manager has not been successful in negotiating the cost of such Work prior to its commencement, so as to ensure completion of the Work in accordance with the Construction Schedule. If the Construction Manager has not been successful in negotiating the cost of the change, the Construction Manager shall provide the Owner with its best estimate of the Actual Cost of the Changes (as defined below).
6.2   Relations with Trade Contractors.

6.2.1. By appropriate written agreement, the Construction Manager shall require each Trade Contractor to be bound to the Construction Manager by terms of the Contract Documents, and to assume toward the Construction Manager all the obligations and responsibilities which the Construction Manager assumes toward the Owner. Each Trade Contract shall preserve and protect the rights of the Owner with respect to the Work to be performed by the Trade Contractor so that such rights will not be prejudiced. Where appropriate, the Construction Manager shall require each Trade Contractor to enter into similar agreements with other members of the Construction Team. The Construction Manager shall make available to each proposed Trade Contractor, prior to the execution of the Trade Contract, copies of the Contract Documents to which the Trade Contractor will be bound. Trade Contractors shall similarly make copies of applicable portions of such documents available to other members of the Construction Team. If a Trade Contractor refuses to agree to certain of the requirements identified above or elsewhere in the Contract Documents and yet otherwise appears suitable for award of a Trade Contract, the Construction Manager will consult with the Owner concerning the matter and the Owner will give good faith consideration to modifying certain requirements of the Agreement as they may be applicable to such proposed Trade Contractor.

6.2.2. Work performed for the Construction Manager by a Trade Contractor shall be performed pursuant to a written Trade Contract, which shall (in addition to the requirements of Sections 6.2 above and 6.14 below) contain provisions that:

1. requires that such portion of the Work be performed in accordance with the requirements of the Contract Documents;

2. requires timely submission of Trade Contractor’s applications for payment and ancillary materials in order to enable the Construction Manager to apply for payment in accordance with the provisions of Article 12 and also requires compliance with Section 12.6.3;

3. waives all rights the contracting parties may have against one another or that the Trade Contractor may have against the Owner for damages caused by fire or other perils covered by the property insurance described in Article 10;

4. recognizes the rights of the Owner pursuant to the Contingent Assignment of Subcontracts contained in these General Conditions and require the Trade Contractor (upon notice by the Owner that the Owner has terminated the Agreement with the Construction Manager pursuant to the terms of Article 14 below, and that the Owner has elected to retain the Trade Contractor pursuant to the terms of its Trade Contract with the Construction Manager) to complete the unperformed obligations under such Trade Contract and, if requested by the Owner, to enter into an appropriate agreement evidencing the fact that the Trade Contractor is bound to the Owner under its Trade Contract in the manner in which it had been bound to the Construction Manager;

5. requires the Trade Contractor performing labor at the Project Site to carry and maintain the insurance described in Article 10, unless otherwise approved by the Owner, and to deliver certificates of insurance to the Construction Manager prior to commencement of its portion of the Work;

6. includes the following sentence: “Owner is an intended third-party beneficiary of this Trade Contract.”;

7. requires dispute resolution in the manner provided below in Article 15;

8. requires each Trade Contractor to make all claims for changes or extensions of time to the Construction Manager strictly in the manner provided in the Agreement;

9. limits claims and damages in the manner provided in the Agreement; and
10. are in no way inconsistent with any provision of the Agreement.

Subcontracts and Supply Contracts shall be subject to identical conditions. The failure of the Construction Manager or any member of the Construction Team to comply strictly with the requirements of this Section 6.2.2 shall render the noncompliant party liable to the Owner for any and all loss, liability, cost or damage that the Owner suffers as a result of the omission.

6.2.3. Upon request, the Construction Manager shall deliver a copy of any Trade Contract, Subcontract or Supply Contract to the Owner.

6.3 Coordination of Trade Contractors.

6.3.1. The Construction Manager shall provide supervisory, administrative, management, inspection and related services as required to properly coordinate, schedule and sequence the Work of the Trade Contractors with each other (to avoid both duplication and omission of Work) and with the activities and responsibilities of the Construction Manager, the Owner and the Design Professional to complete the Work in accordance with the requirements of the Contract Documents with respect to cost, time and quality and to ensure that the other goals of the Work are otherwise met or exceeded.

6.3.2. The Construction Manager shall schedule and conduct with the Trade Contractors pre-construction and construction progress and any other meetings deemed necessary to discuss such matters as procedures, progress, problems, safety, inspections, sequencing, and scheduling, and shall prepare and promptly distribute minutes. Construction progress meetings will be conducted by the Construction Manager weekly unless otherwise directed by the Owner and attended by all Trade Contractors whose Work has not been completed. Executive level progress meetings will be held on a monthly basis. All progress meeting minutes shall be provided to the Owner by the Construction Manager within five (5) days after the meeting and distributed to all attendees promptly after they have been approved by the Owner. The Owner will act promptly in providing its approval. The Construction Manager in consultation with the Owner and the Design Professional shall develop, implement and maintain a process of “partnering” involving both of them and all Trade Contractors so that (i) the goals and objectives of each are clearly understood and accepted by all, and (ii) potential problems, bad feelings, personal difficulties and the like are identified and resolved promptly. The Owner and Design Professional shall cooperate fully in meeting these objectives.

1. The partnering objective shall be to identify and develop mutual goals, which may include, as examples, achieving Value Engineering savings, meeting the financial goals of each party, limiting cost growth, limiting review periods for contract submittals, avoiding and resolving disputes, facilitating early completion and minimizing lost time because of injuries. The partnering process shall emphasize open communication, collegiality and cooperation among all parties, as well as prompt and efficient dispute resolution at the lowest appropriate level of management. Claims and disputes not resolved in the partnering process shall be subject to the procedures specified in Article 15 below.

6.4 Schedule of Trade Contractors’ Work.

By submitting a bid, each Trade Contractor agrees to be contractually bound to the requirements of the applicable Bid Package Construction Schedule and the Construction Schedule (or if the Construction Schedule has not been prepared, then the Project Schedule). Each Trade Contractor shall agree to cooperate with the Construction Manager in developing a detailed CPM manpower-based schedule applicable to its portion of the Work within forty-five (45) days after award of contract unless otherwise specified. The Construction Manager shall assist in the development of all Trade Contractor schedules and shall prepare such schedules if any Trade Contractor fails to do so. Trade Contractors shall meet as often as necessary with the Construction Manager to complete their detailed CPM schedules. However, the Bid Package Construction Schedule and the Construction Schedule (or if the Construction Schedule has not been prepared, then the Project Schedule) will take precedence over any schedules prepared by Trade Contractors with respect to time of completion for each bid package. If any such schedule indicates that additional time or effort will be required to maintain these schedules, the
Construction Manager, Trade Contractor shall agree to work additional time, including weekends if necessary, or to add manpower, all at no extra cost to the Owner.

6.4.1. The Construction Manager shall prepare and deliver to the Owner and each of the Construction Team that are part of a particular bid package a “short term/two week look ahead schedule,” and it will take appropriate action to enforce compliance therewith.

6.5 TRADE CONTRACTORS’ PERFORMANCE.

The Construction Manager shall ensure satisfactory and timely (with reference to both Milestone and Substantial Completion Dates) performance from each of the Trade Contractors. The Construction Manager shall take appropriate measures when any Trade Contractor is not performing its obligations satisfactorily.

6.6 PAYMENTS TO TRADE CONTRACTORS.

Upon award of the Trade Contract, the Construction Manager shall have each Trade Contractor prepare and submit a Schedule of Values allocating that portion of the Construction Cost attributable to its Trade Contract to the various portions of the Work. Each Schedule of Values shall be prepared in a form and substance acceptable to the Construction Manager (which form shall previously have been approved by the Owner) and supported by such data as may be necessary to substantiate its accuracy. The Construction Manager shall develop and implement procedures for the review and processing of applications by Trade Contractors for progress and final payments. Payment packages shall include, but shall not be limited to, each of the following documents: schedule of values, sworn statements, and appropriate forms of full or partial construction lien waivers or other similar waivers and releases of claims.

6.7 [Intentionally Omitted]

6.8 WORK.

The Construction Manager shall determine in general that the Work of each Trade Contractor is being performed in accordance with the requirements of the Contract Documents, and shall guard the Owner against defects and deficiencies in the Work. As appropriate, the Construction Manager shall require special inspection or testing, or make recommendations to the Design Professional regarding special inspection or testing, of Work not in accordance with the provisions of the Contract Documents whether or not such Work has been then fabricated, installed or completed, and shall reject Work which does not conform to the requirements of the Contract Documents. The Construction Manager shall coordinate any inspections which may be required by any governmental agencies.

6.9 INTERPRETATION.

The Construction Manager shall consult with the Design Professional and the Owner if any Trade Contractor requests interpretations of the meaning and intent of any of the Contract Documents, and shall assist in the resolution of questions which may arise.

6.10 INSURANCE CERTIFICATES.

The Construction Manager shall receive certificates of insurance from the Trade Contractors, and shall review such certificates for compliance with the requirements of the Contract Documents, and shall forward the original certificates to the Owner or the Owner’s agent. No member of the Construction Team shall be permitted to have a presence at the Project Site without complying with all insurance requirements of the Contract Documents. The Construction Manager shall monitor the same to ensure the certificates of insurance remain current, and shall advise the Trade Contractors of the impending expiration of their respective certificates, but the failure of Construction Manager to give such advice shall...
not, as between the Construction Manager and any of the Trade Contractors, excuse the obligation of the Trade Contractors to maintain current, unexpired certificates.

6.11 Systems Readiness.

The Construction Manager shall, in the company of the Design Professional and the Owner’s maintenance personnel, observe the Trade Contractors’ evaluation of utilities, operational systems and equipment for readiness, and shall assist in their initial start-up and testing.

6.12 Trade Contractors’ Warranty Acknowledgment.

The Construction Manager shall execute and deliver to the Owner, and shall cause anyone giving warranties that is contractually bound to the Construction Manager to execute and deliver to the Owner, the following Warranty Acknowledgment (completed as required by the Schedule of Project Details) before a Certificate of Final Completion is issued:

Warranty Acknowledgment.

(Name of Trade Contractor or Subcontractor) (“Contractor”) warrants that all of its Work complies with the requirements of the Contract Documents. If, within [_______(______)] year[s] after the date of Substantial Completion of the Work or designated portion of the Work, any of Contractor’s Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct the Work at its sole expense promptly after receipt of written notice from the Owner. This [_______(______)] year period shall be extended (i) with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of Contractor’s Work, and (ii) with respect to warranty work for an additional [_______(______)] year period following each correction. This obligation shall survive acceptance of the Work and termination of our contract.

This Warranty shall be in addition to the terms of any other warranty or longer period of obligation specified in the Contract Documents, any applicable special warranty required by the Contract Documents, or the terms of any general warranty and is not in lieu of any of them. This warranty shall not be construed to establish a period of limitation with respect to other obligations which Construction Manager might have under the Contract Documents and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time which any proceeding may be commenced.

6.13 Products.

6.13.1. To the extent a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Construction Manager shall require the Trade Contractor to present an affidavit from the manufacturer when requested by the Owner or required in the Specifications, certifying that the product complies with the particular Standard or Specification. When requested by the Owner or specified, support test data shall be submitted to substantiate compliance.

6.13.2. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made. However, the Construction Manager may suggest substitutes as part of its Value Engineering responsibilities.
6.14 **Contingent Assignment of Trade Contracts.**

6.14.1. Each Trade Contract is assigned by the Construction Manager to the Owner provided that:

1. assignment is effective only after termination of the Agreement by the Owner pursuant to the terms of the Agreement and only for those Trade Contracts which Owner accepts by notifying the Trade Contractor in writing; and

2. assignment is subject to the prior rights of the surety, if any, obligated under a bond relating to the Work.

6.14.2. If any assignment under this Section 6.14 becomes effective, the Owner shall be deemed to have agreed to defend and indemnify the Construction Manager against and hold it harmless from all claims, losses or expenses (including attorneys’ fees) arising from or in connection with the assigned Trade Contract as a result of any event happening after the assignment becomes effective, and the Construction Manager shall be deemed to have agreed to defend and indemnify the Owner against and hold it harmless from all claims, losses or expenses (including attorneys’ fees) arising from or in connection with the assigned Trade Contract as a result of any event happening before the assignment becomes effective, except insofar as the Owner is responsible to reimburse the Construction Manager.

6.14.3. Upon the Owner’s reasonable request, the Construction Manager shall execute further documentation conditionally assigning each Trade Contract to the Owner on the terms stated above (and the Construction Manager shall cause the Trade Contractor to acknowledge said assignment). Copies of the executed Trade Contracts shall be delivered to the Owner upon the Owner’s request.

**ARTICLE 7  ARTICLE G: DELAYS; PROJECT COMPLETION**

7.1 **Construction Time.**

7.1.1. The Construction Manager shall cause the Work to begin on the Commencement Date. Subject to executed Change Orders granting extensions of time, Substantial Completion shall be within the Construction Time.

1. The Construction Manager shall see to the diligent, expeditious performance of the Work, with adequate resources so that all the Work will be completed within the Construction Time. The Construction Manager shall require overtime, multiple shifts and any other action necessary to the timely completion of the Work, all without additional cost to the Owner except as otherwise specifically provided in Section 7.4.1.1 or in a Change Order or Construction Change Directive. The Construction Manager shall not, without the Owner’s prior approval, reschedule or re-sequence the Work so that an action, approval, or activity of the Owner moves onto the critical path or otherwise becomes critical to the Construction Time so long as such action, approval, or activity would not in fact have been critical but for the rescheduling or re-sequencing.

2. Should the Construction Manager, fail, refuse or neglect to supply sufficient workers or to cause the delivery of equipment and materials promptly to prevent delay, fail in any material respect to commence and prosecute the Work diligently in accordance with the Contract Documents, or if the Work falls behind schedule, the Owner may require the Construction Manager to take Extraordinary Measures and to have the members of the Construction Team do likewise, all at no additional cost to or compensation from the Owner. Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner’s right to require Extraordinary Measures is solely for the purpose of ensuring the Construction Manager’s compliance with the Construction Schedule.
(a) The Construction Manager shall not be entitled to an adjustment in its compensation in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 7.1 or in the Guaranteed Maximum Price except as specifically provided in Section 7.4.1.1 or in a Change Order or Construction Change Directive.

(b) The Owner may exercise the rights furnished it under or pursuant to this Section 7.1 as frequently as necessary to ensure that the Construction Manager’s performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

(c) Subject to reasonable prior notice and opportunity to cure, and except to the extent caused by Owner Delay, the Owner shall also have the right to offset against any amounts then or thereafter due to the Construction Manager, or to be reimbursed by the Construction Manager for, any costs incurred as a result of an increase in the Owner’s own labor force or for overtime, Saturday, Sunday, and/or holiday work as a result of implementing Extraordinary Measures for which the Construction Manager is responsible to pay.

7.2 Completion.

7.2.1. When the Construction Manager has performed all tasks necessary to achieve Substantial Completion of the entire Work, the Construction Manager shall notify the Owner and request that a Certificate of Substantial Completion be issued. Along with this notification, the Construction Manager shall submit a list of all Work not completed or Work that the Construction Manager believes to not be completed in accordance with the requirements of the Contract Documents. All manufacturers’ warranties shall clearly indicate the names, addresses and telephone and fax numbers of personnel to contact for service and/or information. Within a reasonable time after being notified, the Design Professional will review the list of Work not completed and make a preliminary inspection of the Work to determine if it is substantially complete. If in the opinion of the Design Professional the Work is not substantially complete, the Construction Manager will be so notified and will be required to bring the Work to a state of Substantial Completion and have it re-inspected by the Design Professional at no increase in the Guaranteed Maximum Price. After the Design Professional certifies the date of Substantial Completion, the Construction Manager, Design Professional, and Owner shall execute a Certificate of Substantial Completion.

1. Upon the issuance of a 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 Construction Manager, however, shall be responsible for any damages caused by the Construction Manager’s efforts to complete the Work, including any cleanup costs. The Construction Manager shall also remain responsible for any safety precautions associated with the Construction Manager’s completion of any Work.

7.2.2. The Construction Manager shall coordinate with the Design Professional to ensure that the Punchlist, which shall be updated by the Design Professional at Substantial Completion, shall be in a database format compatible with that of the Construction Manager and the Owner. The Punchlist shall be attached to and shall become a part of each Certificate of Substantial Completion. Failure to include an item on such list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. The Construction Manager shall proceed promptly to cause completion and correction of all items on the Punchlist. The Construction Manager shall monitor each Trade Contractor’s progress in completing its Punchlist items satisfactorily, and shall work with the Trade Contractor to ensure that, unless delayed by a need to order materials that should not reasonably have been anticipated by the Construction Manager, its Punchlist items are completed in ninety (90) days or less following the date of Substantial Completion. The Construction Manager understands that the
Design Professional shall make only two (2) Punchlist reviews: (a) one to create the initial Punchlist; and (b) a second to determine that the initial Punchlist items have been completed.

1. The Construction Manager shall maintain a running/rolling Punchlist with each Trade Contractor throughout the job in an attempt to resolve Punchlist items on an on-going basis to minimize the length of the Punchlist to be developed by the Design Professional at Substantial Completion. A copy shall be submitted to the Owner and to the Design Professional at least monthly during the progress of the Work.

7.2.3. When the Construction Manager considers that the entire Work is in a state of Final Completion, the Construction Manager shall notify the Design Professional and the Owner of such condition. Within a reasonable time after being notified, the Design Professional and the Owner will inspect the Work. If the Design Professional determines that the entire Work is not in a state of Final Completion, the Construction Manager shall be so required to bring the Work to such state, at no additional cost to the Owner. Should the Owner, following the initial “final” inspection, find that the Work is not acceptable under the Contract Documents and the obligations of the Construction Manager not fully performed, costs associated with the Owner’s and the Design Professional’s reinspections under this Section will be reimbursed through a deductive Change Order to the Owner by the Construction Manager upon demand. When the Design Professional determines that the Work is in a state of Final Completion, the Construction Manager shall submit an “Application for Final Payment” to the Design Professional, who will certify the Application. When the Work is in a state of Final Completion and upon certification thereof by the Design Professional, the Owner will make payment in accordance with the requirements of Section 12.5 hereof.

7.3 Delays and Extensions of Time.

7.3.1. Except as provided in this Section 7.3, the Construction Manager shall be fully responsible for the timely completion of the Work in accordance with the Construction Schedule. The Construction Manager shall cause all members of the Construction Team to meet all Milestone Dates in the Construction Schedule. The Construction Manager agrees to use its best efforts to avoid the occurrence of any cause for delay, to avoid any extension of performance dates, and to mitigate the effect of any delay that does occur. The Construction Time will be extended only under the exact circumstances described in this Section 7.3 and then if and only if the Construction Manager complies strictly with the requirements of this Section 7.3.

7.3.2. Notices in connection with delays shall be made by the Construction Manager to the Owner in accordance with this Section 7.3.2. The Construction Manager shall use its best efforts to provide verbal notice to the Owner within twenty-four (24) hours after the commencement of a delay. It must in any event do so as soon as possible and not later than three (3) days after commencement of the delay. Any verbal notice given shall be confirmed in writing within four (4) days after verbal notice. If the Construction Manager fails to deliver verbal notice within three (3) days after the commencement of a delay, it shall not be entitled to any relief pertaining to the period of time before it gave verbal notice. If the Construction Manager fails to confirm any verbal notice within four (4) days after the verbal notice was given, it shall not be entitled to any relief for the period of time beginning after the passage of such four (4) days and ending when the confirmation is actually received by the Owner. And, if the Construction Manager fails to provide verbal notice within ten (10) days after the commencement of a delay or to confirm any verbal notice within ten (10) days after the verbal notice was given, the Construction Manager shall be barred from seeking any relief whatsoever relating to the delay. Immediately following the commencement of any such cause for delay, representatives of the Construction Manager and Owner shall confer for the purpose of determining the probable length of the delay and a course of action which would end or eliminate the occurrence or event which is causing delay. The Construction Manager shall also within twenty-one (21) days after the cessation of such delay notify the Owner of the date of such cessation and the total amount of delay, if any, in performance dates which the Construction Manager is entitled to claim by reason of any such occurrence. If the Construction Manager intends to request an extension of time for any delay, it shall accompany the notice of cessation of delay with a CM Change Order Request stating the specific extension or adjustment requested and justifying the reason for the
request. The Construction Manager shall thereafter submit such additional information as may be required by the Owner to evaluate the CM Change Order Request. The Owner shall decide whether to grant, grant in part or deny the CM Change Order Request. Any extension of time or adjustment granted shall be memorialized in the form of a Change Order. Acceptance and execution of any such Change Order by the parties shall constitute an accord and satisfaction that forever bars any and all claims arising out of or in connection with the delay giving rise to the Change Order. If the Construction Manager disagrees with the Owner’s decision, it may pursue the remedies available to it under Article 15 below. However, failure of the Construction Manager to timely assert any alleged delay or claim for extension strictly in accordance with the provisions of this Section 7.3 shall constitute a waiver of and shall forever bar that claim, even if the Owner was not prejudiced thereby.

7.3.3. Except in the case of changes to the Work covered by Article 9 below, the Construction Manager shall not be entitled to an extension of time unless the event or circumstance giving rise to a delay constitutes a Force Majeure Event and the Construction Manager can demonstrate that the activity delayed will result in a Critical Delay.

1. A delay is a “Critical Delay” if and only to the extent it adversely affects the critical path of the Work as established in the Construction Schedule or subsequent Trade Contractor schedules that fall within the Construction Schedule. Under this Subsection 7.3.3.1, when two (2) or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delay(s) would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Construction Time should be adjusted, such concurrent critical delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.

2. Subject to the restrictions contained in Section 7.3.3.4 below, “Force Majeure Event” means, and is limited to, the following: (i) strikes, lockouts, or picketing (legal or illegal) of an area-wide, trade-wide, Owner-wide, or industry-wide nature (a strike, lockout or picket (legal or illegal) specific to the Project Site, or directed at the Construction Manager or a Trade Contractor shall not be considered an area-wide, trade-wide or industry-wide strike, and is not a Force Majeure Event unless it occurs after the Construction Manager has used its best efforts to avoid it); (ii) governmental action and condemnation; (iii) riot, civil commotion, insurrection, and war; (iii) fire or other casualty, acts of God or the public enemy; (iv) unusual adverse weather conditions not reasonably expected for the location of the Work and the time of the year in question; (v) unavailability of fuel, power, supplies or materials; (vi) the passage or unexpected interpretation or application after the Commencement Date of the Work of any statute, law, regulation or moratorium of any governmental authority; or (vii) Owner Delay.

3. The Construction Manager acknowledges that in preparing the Construction Schedule and in agreeing to the times or dates of completion required by the Contract Documents it will make a reasonable allowance for such events that are not Force Majeure Events.

4. Adjustments in the Construction Time will be permitted for any Force Majeure Event, including an Owner Delay, only to the extent such delay (i) is not caused or contributed to, and could not have been anticipated, by the Construction Manager using the degree of diligence required by the Contract Documents, (ii) could not be limited or avoided by the Construction Manager’s timely notice to the Owner of the delay, and (iii) is of a duration of not less than one (1) day.

7.3.4. The Owner’s exercise of any of its rights under the Contract Documents or the Owner’s good faith exercise of any of its remedies, including requirement of correction or re-execution of any Defective Work, regardless of the extent, number or frequency of the Owner’s good faith exercise of such rights or remedies, shall not under any circumstances be construed as intentional interference with the Construction Manager’s performance of the Work or an event of default.

7.3.5. The Construction Manager shall use its best efforts to mitigate the effects of any delay, whether or not it is caused by a Force Majeure Event.
7.3.6. This Article 7 does not preclude the recovery of other damages by the Owner for delay under other provisions of Section 7.4.1.1 below.

7.3.7. If the Construction Manager, but for a delay not within its control, would have completed the Work prior to the expiration of the Construction Time, the Construction Manager shall not be entitled to recovery of damages arising out of any event or delay whatsoever which prevented such early completion of the Work, provided, however, that this provision shall not preclude recovery of delay damages by the Construction Manager pursuant to Section 7.4.1.1 below to the extent a delay causes it to complete the Work after the scheduled completion date.

7.4 No Damage for Delay.

7.4.1. Except only as provided in Section 7.4.1.1 below, an extension in the Construction Time or adjustment of the Construction Schedule, to the extent permitted under Section 7.3, and the Construction Manager’s rights in connection with a suspension of the Work, as provided in the Agreement, shall be the sole and exclusive remedies (in lieu of all other remedies whatsoever) of the Construction Manager for any delay, interference, hindrance in the performance of the Work, loss of productivity, manpower inefficiencies, impact damages and similar claims and damages, whether or not contemplated by the parties. Except only as provided in Section 7.4.1.1 below, in no event shall the Construction Manager be entitled to any compensation or recovery of any damages in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Construction Manager hereby expressly waives and covenants and agrees not to assert any claims against the Owner for any damages, costs, losses or expenses of any nature whatsoever which any member of the Construction Team may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any act or omission of the Owner, its representatives or agents, it being understood and agreed that their sole and exclusive remedy in such event shall be an extension of the Construction Time, but only in accordance with the provisions of this Article 7.

1. In the event of Owner Delay, the Construction Manager shall be entitled only to an equitable adjustment in the Guaranteed Maximum Price. This adjustment shall be based solely upon and limited to additional direct out-of-pocket expenses to the extent they are incurred directly as a result of the Owner Delay. Without limiting the generality of the foregoing, such out-of-pocket expenses shall be calculated on an “actual cost” basis, and shall exclude home office expense and other overhead, profit and the value of lost opportunities. However, the Construction Manager shall use its best efforts to avoid or reduce delay damages to any member of the Construction Team caused by Owner Delay.

ARTICLE 8 TESTS AND INSPECTIONS; QUALITY CONTROL

8.1 Requirement.

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 Construction Manager 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 Design Professional or the Owner shall not relieve the Construction Manager 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 Design Professional’s and the Owner’s attention in writing, and subsequently and explicitly accepted by the Design Professional, and the Owner, in writing.

8.1.1. Neither the right of the Design Professional, 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 Design Professional or the Owner to any member of the Construction Team, or to any surety. No
inspection or test, or other action or inaction, on the part of the Design Professional, or the Owner, shall constitute or imply the acceptance of or the responsibility for the Construction Manager’s means, methods, techniques, sequences or procedures in the performance of the Work, or safety precautions and programs.

8.2 Procedures.

The Construction Manager shall inspect the Work, including all materials and installations, with such regularity as may be necessary to fulfill its obligations under the Contract Documents to verify compliance with the Design, ensure that the quality control plan is met or exceeded, and reject nonconforming Work.

8.2.1. Tests, inspections and approvals of portions of the Work required by the Agreement, the Contract Documents, or by Applicable Laws, shall be made on a timely basis. Except as may be otherwise specifically provided in the Agreement, the Construction Manager shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity designated by the Owner, or with the appropriate public authority, and the Owner shall bear all related costs of tests, inspections and approvals. The Construction Manager shall give the Owner and the Design Professional timely advance notice of when and where tests and inspections are to be made so they may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded. The Owner may (but shall not be obligated to) from time to time, at its own cost and expense, perform or cause to be performed additional tests and inspections of the Work as the Owner may determine to be necessary or appropriate, and the Construction Manager shall, upon receipt of reasonable prior written notice identifying any such tests and inspections, coordinate the Work so as to accommodate the performance of such tests and inspections. Copies of any results of such Owner initiated tests and inspections shall be made available to the Construction Manager if the Construction Manager so requests, provided, the Construction Manager shall not be entitled to rely upon such results (and the Owner makes no representation or warranty as to the accuracy or completeness thereof) and the Owner’s performance of any such tests and inspections shall not serve to relieve the Construction Manager of its obligation to perform the Work in accordance with the requirements set forth in the Contract Documents.

8.2.2. If the Design Professional determines that any Work requires special inspection, testing, or approval which Section 8.2.1 does not include, it will, upon written authorization from the Owner, instruct the Construction Manager to order such special inspection, testing or approval, and the Construction Manager shall give notice as provided in Section 8.2.1.

8.2.3. If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 8.2.1 above, Owner may instruct the Construction Manager to make arrangements for such additional testing, inspection or approval by an entity designated by Owner, and the Construction Manager shall give timely notice to Owner of when and where tests and inspections are to be made so Owner may observe such procedures. Owner shall bear such costs except as provided in Section 8.2.4 below.

8.2.4. If such procedures for testing, inspection or approval under Sections 8.2.1, 8.2.2, or 8.2.3 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Construction Manager shall bear all costs made necessary by such failure, including the costs of testing, the costs of those of repeated procedures, compensation for the Design Professional’s additional services made necessary by such failure, and compensation for Owner’s services and expenses.

8.2.5. Required certificates for testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Construction Manager and promptly delivered to Owner.

8.2.6. Tests or inspections conducted pursuant to Contract Documents shall be made promptly to avoid unreasonable delay in the Work.
8.3 **Log.**

The Construction Manager shall prepare and maintain a test and inspection log.

8.4 **Fire/Smoke Ratings.**

The Construction Manager shall submit, not later than thirty (30) days prior to the date of Substantial Completion, certifications for all interior finish material attesting to compliance with the specified fire/smoke ratings. The certificates shall be notarized affidavits that state:

- Name of product.
- Indication that product has been vested by a nationally recognized independent testing laboratory.
- Name of testing laboratory.
- Laboratory project or test number.
- Date of test.
- Test results.
- Product was installed as tested.

8.5 **Quality Control.**

8.5.1. The term **Quality Control** refers, but is not necessarily limited, to quality control program development, inspections, testing and associated requirements and activities of the Construction Manager to ensure that the quality intended by the Contract Documents is attained. Except as specifically excluded in the Contract Documents, the Construction Manager shall be responsible to provide all quality control/testing/inspection necessary to verify and ensure compliance with the Contract Documents.

1. **Residual Construction Manager 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 Construction Manager’s responsibility. The costs for these required services by independent testing laboratories are recognized to be included in the Guaranteed Maximum Price. Unless noted otherwise or specifically approved by the Design Professional and the Owner, all tests and inspections shall be performed by independent agencies in accordance with the requirements contained in Subsection 8.5.1.4.

2. **Construction Manager’s General Responsibility:** No failure of testing agencies, whether engaged by the Owner or the Construction Manager, to perform adequate inspections or tests or to properly analyze report results, shall relieve the Construction Manager of responsibility for the fulfillment of the requirements of the Contract Documents. Any testing by the Owner is not intended to limit the Construction Manager’s regular quality control program. The Owner reserves the right to conduct tests beyond those indicated to be conducted by the Owner in theContract 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 Design Professional, or the Owner to any member of the Construction Team, or to any surety. The Owner’s election not to exercise this right shall not relieve the Construction Manager of any of its obligations under the Contract Documents.
3. **General Workmanship Standards:** The Construction Manager and all members of the Construction Team shall comply with recognized workmanship quality standards within the industry as applicable to each unit of Work. 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.

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 Construction Manager 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.

5. Where inspection and test reports and certificates are required by governing authorities, the Construction Manager 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 Construction Manager shall provide copies of all such reports and certificates to the Design Professional and the Owner.

6. The Construction Manager and all members of the Construction Team 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 Construction Manager shall control delivery schedules so as to minimize unnecessary long-term storage at the Project site prior to installation.

7. **Coordination with Owner’s Agencies:** The Construction Manager 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 Design Professional’s, any testing agency’s or other governmental or regulatory agency’s inspections, tests or observations to be performed. The Construction Manager 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 Construction Manager 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 Construction Manager shall supply and operate tools and construction equipment at the Construction Manager’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 Construction Manager at the Construction Manager’s expense, except as otherwise specifically set forth therein.

8. Testing agencies, regardless of whether they are engaged by the Owner or the Construction Manager, 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 Construction Manager and shall perform its work promptly so as not to delay the Work. The Construction Manager 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 Construction Manager and Design Professional in the most expeditious way possible, and shall be recorded in writing to the Construction Manager, Design Professional and the Owner. Agency personnel shall not interfere with or assume the duties of the Construction Manager.

9. 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 Construction Manager, Design Professional and the Owner.

10. **Pre-Installation Conferences:** Well in advance of the installation of every major unit of Work which requires coordination with other Work, the Construction Manager shall meet at the Project site with the installers and representatives of the Trade Contractors, Subcontractors, and 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 Construction Manager shall review progress of other Work and preparations for the particular Work under consideration, including requirements of the Contract Documents, options, 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 Construction Manager shall record significant discussions of each conference and agreements and disagreements along with the final plan of action to be taken. The Construction Manager shall distribute records of each meeting promptly to everyone concerned, including the Design Professional and the Owner.

11. The Construction Manager shall not allow a specific component of the Work to proceed if the associated pre-installation conference cannot be concluded successfully. If required, the Construction Manager shall implement actions to resolve impediments to the performance of the Work, and shall reconvene the pre-installation conference at the earliest date feasible.

12. **Installers Inspection of Conditions:** The Construction Manager 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 Construction Manager, the Design Professional and the Owner. The Construction Manager shall provide copies of each such report to the Design Professional 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.

13. **Manufacturers’ Instructions:** Where installations include manufactured products, the Construction Manager 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.

14. The Construction Manager shall inspect each item of material or equipment immediately prior to installation and reject damaged and defective items.

15. As Work under each Trade Contract commences, the conditions of the Work under previous Subcontracts, if any, shall be verified and accepted by each Trade Contractor. Verification shall include a joint review by the Trade Contractor, the previous Trade Contractor(s), and the Construction Manager to note any of the corrective Work required, damage to the previous work, verification of elevations, tolerances, levels and plumbness, critical dimensions, surface conditions, and similar items affecting the Work. As applicable, the verification review procedures and findings shall be documented in writing by the Trade Contractor, signed by all parties, and copies provided to the Owner and the Design Professional. Any corrective Work necessary to satisfy the requirements of the Contract Documents shall be performed promptly by the previous Trade Contractor to prevent delay to the Work. After the corrective Work is accomplished, the Trade Contractor shall furnish written acceptance of the Work as noted above.

16. The Construction Manager shall cause a member of the Construction Team to 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
provider shall: allow for expansions and building movements; provide uniform joint widths in exposed Work, organized for best possible visual effect, acceptable to the Design Professional.

17. The Construction Manager shall recheck measurements and dimensions of the Work as an integral step of starting each installation.

18. The Construction Manager shall cause Work to be installed 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 Construction Manager shall cause each unit of Work to be isolated from non-compatible Work, as required to prevent deterioration.

19. The Construction Manager 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.

20. Mounting Heights: Except as otherwise indicated, individual units of Work shall be mounted at industry recognized standard mounting heights for applications indicated. The Construction Manager shall refer questionable mounting height choices to the Design Professional and the Owner for final decision. The Construction Manager shall comply with the Owner’s and the State of Michigan’s requirements for physically handicapped mounting heights.

21. The Construction Manager shall cause a member of the Construction Team to 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.

22. Each Trade Contractor shall be responsible for protecting its finished Work and materials from damage and shall maintain such protection until acceptance of the Work by the Owner.

23. Where Work is performed over finished floors, the Trade Contractor shall provide an acceptable cover to protect the finished surface against damage, paint, or stains at areas where Work is being performed.

24. After the installation of casework, millwork and equipment, precautions must be exercised to prevent marring of surfaces or other damage. Work over and around casework, millwork and equipment is to be minimized by completing as much Work (except necessary finishing of painting, floor covering and final connections) as possible prior to installation.

ARTICLE 9  CHANGES IN THE WORK

9.1 Changes.

9.1.1. The Construction Manager acknowledges (i) that the Owner may, without invalidating the Agreement, order changes in the Work (including extra Work, less Work or alterations) at any time and (ii) that changes in the Work, regardless of their scope or number, are within the contemplation of the parties. Changes in the Work may be ordered only by Change Order or Construction Change Directive.

1. To the extent provided in Section 10.7.1.5 below, changes in the Work may be made without notice to sureties, and absence of such notice shall not relieve such sureties of any of their obligations to the Owner.
2. 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 Construction Manager’s sole responsibility.

9.1.2. A Change Order shall be based upon agreement between the Owner, Design Professional and Construction Manager. A Change Order may result from a Bulletin or a Construction Change Directive.

1. Agreement on any Change Order shall constitute a final settlement of and a waiver of and permanent bar to all claims and matters relating to the change in the Work which is the subject to the Change Order and of all previous changes in the Work, including all direct and indirect costs associated with such change and any and all adjustments to the Guaranteed Maximum Price and the Construction Time. The Construction Manager shall include the Work covered by such Change Orders in its Applications for Payment as if such Work were originally part of the Contract Documents.

9.1.3. A Construction Change Directive may be issued by the Owner alone and may or may not be agreed to by the Construction Manager.

1. The Guaranteed Maximum Price and the Construction Time shall be adjusted appropriately when changes in the Work are ordered via a Construction Change Directive. However, the Construction Time shall be adjusted only if the Construction Manager demonstrates to the Owner that the changes in the Work required by the Construction Change Directive adversely affect the critical path of the Work.

2. A Construction Change Directive may be used in the absence of total agreement on the terms of a Change Order.

3. If the Construction Change Directive provides for an adjustment to the Guaranteed Maximum Price, it shall state the method that the Owner proposes to be used for the adjustment.

4. Upon receipt of a Construction Change Directive, the Construction Manager shall advise the Owner of the Construction Manager’s agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Guaranteed Maximum Price or the Construction Time.

5. A Construction Change Directive signed by the Construction Manager indicates the Construction Manager’s agreement with all of its terms, including adjustment in the Guaranteed Maximum Price and the Construction Time or the method for determining them. Such agreement shall be effective immediately and shall have the same legal effect of and be recorded as a Change Order.

9.1.4. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Construction Manager shall cause the Work involved to be commenced and completed promptly, unless the Change Order or Construction Change Directive provides otherwise. Any change in the Guaranteed Maximum Price or the Construction Time must result from the provisions of this Article 9. Accordingly, no verbal instructions, course of conduct or dealings between the parties, except as expressly permitted by Section 9.1.4.1 below, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall in the absence of a written Change Order or Construction Change Directive be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents. All such claims are hereby waived by the Construction Manager and are forever barred.
1. In advance of commencing the change in the Work, upon receipt of a Construction Change Directive from the Owner, the Construction Manager shall proceed with a change in the Work, while simultaneously preparing a quotation for the changed Work, and the Owner shall, upon receipt of the Construction manager's quotation, proceed with preparation and submission of a proposed Change Order.

2. EXCEPT AS PROVIDED IN SECTION 9.5 BELOW, OR SECTION 9.1.3.1 ABOVE, IN NO EVENT SHALL THE CONSTRUCTION MANAGER BE ENTITLED TO RECEIVE ANY PAYMENT OR ANY EXTENSION OF TIME FOR ADDITIONAL OR CHANGED WORK, WHETHER PARTIALLY OR FULLY COMPLETED OR SIMPLY PROPOSED, UNLESS SUCH ADDITIONAL WORK IS AUTHORIZED BY A WRITTEN CHANGE ORDER OR CONSTRUCTION CHANGE DIRECTIVE SIGNED BY THE OWNER, NOR SHALL THE CONSTRUCTION MANAGER BE OBLIGATED TO PROCEED WITH ANY SUCH WORK. ONLY THE OWNER SHALL HAVE THE RIGHT TO ISSUE A WRITTEN CHANGE ORDER OR CONSTRUCTIVE CHANGE DIRECTIVE TO THE CONSTRUCTION MANAGER AUTHORIZING AN ADDITION, DELETION OR OTHER REVISION IN THE SCOPE OF THE WORK AND/OR AN ADJUSTMENT IN THE GUARANTEED MAXIMUM PRICE OR THE CONSTRUCTION SCHEDULE. THE CONSTRUCTION MANAGER WAIVES THE RIGHT TO RECEIVE ANY PAYMENT OR ANY EXTENSION OF TIME FOR ADDITIONAL OR CHANGED WORK AND AGREES THAT THE OWNER SHALL NOT BE OBLIGATED TO PAY FOR ANY ADDITIONAL OR CHANGED WORK, NOR SHALL THE CONSTRUCTION MANAGER BE ENTITLED TO AN EXTENSION OF TIME FOR SAME, UNLESS THE CONSTRUCTION MANAGER AND THE OWNER HAVE EXECUTED A WRITTEN CHANGE ORDER WHICH SETS FORTH THE DOLLAR AMOUNT OF THE ADJUSTMENT TO THE GUARANTEED MAXIMUM PRICE AND/OR THE NUMBER OF DAYS BY WHICH THE CONSTRUCTION TIME SHALL BE EXTENDED AND THE SCOPE OF THE ADDITIONAL WORK TO BE PERFORMED OR THE OWNER HAS ISSUED A CONSTRUCTION CHANGE DIRECTIVE.


9.2.1. If one or more changes in the Work are contemplated by the Owner or the Design Professional, a "Bulletin" may be prepared by the Design Professional and be delivered to the Construction Manager describing the change(s) and requesting the submission of a pricing quotation. The Construction Manager shall not proceed with any changes referred to in a Bulletin unless the Owner has issued a Construction Change Directive or the parties have executed a Change Order.

9.2.2. If a change in the Work is required, the Owner may issue a Construction Change Directive. Even though the Construction Manager shall cause the changes in the Work therein described to be performed immediately, it shall, while the changed Work is being performed, also develop a pricing in accordance with Section 9.2.3 below.

9.2.3. Within ten (10) days of its receipt of a Bulletin or promptly upon receipt of a Construction Change Directive, the Construction Manager shall provide a preliminary estimate of any change in the Guaranteed Maximum Price or the Construction Time associated with the change described therein. The Construction Manager shall within twenty (20) days thereafter "firm up" the amount of any change to the Guaranteed Maximum Price or the Construction Time in a more detailed pricing proposal and including an itemization of all costs of material and labor with extensions listing quantities and total costs, and a substantiation of any claim for an extension of the Construction Time by preparing a revised Construction Schedule depicting the change's impact upon the Work's critical path. If the Owner wishes to proceed with the Changes in the Work based upon the pricing quotation, it shall submit a proposed Change Order to the Construction Manager, together with the Design Professional's revised or new documents that, if approved by the Construction Manager, will become part of the Contract Documents setting forth the exact amount of any adjustment in the Guaranteed Maximum Price or the Construction Time.

1. If the Construction Manager reasonably believes that after using its best efforts, it will be unable to comply with the ten and/or twenty day deadlines set forth in Section 9.2.3, it shall
promptly (i) so advise the Owner in writing, (ii) tell the Owner in writing when it will, using its best efforts, provide the requisite information, and (iii) promptly provide a rough “order of magnitude” pricing.

9.2.4. If the Construction Manager accepts a proposed Change Order, it shall be executed by the Construction Manager, the Design Professional and the Owner, and the Guaranteed Maximum Price or the Construction Time or both shall be adjusted to the extent provided in the Change Order.

9.2.5. Nothing contained herein shall limit the right of the Owner to order changes in Work, even if the Construction Manager has not accepted a proposed Change Order, and the Construction Manager shall promptly cause all Work required under the Contract Documents or a Construction Change Directive to be performed despite its refusal to accept or execute a Change Order.

9.3 Cost of Changes; Extension of Time

9.3.1. Adjustments in the Guaranteed Maximum Price resulting from changes in the Work 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 Documents or subsequently agreed upon, subject to the provisions contained in Section 9.3.2.5(a) hereof.

Method No. 3—On the basis of the Actual Cost of the Changes as provided for in Section 9.3.2.1 hereof, plus a fee to the Construction Manager for overhead and profit as determined by Section 9.3.2.3 hereof. The Construction Manager shall keep and present in such a form as the Design Professional or the Owner may direct, an itemized accounting, together with supporting data and vouchers, of all costs associated with the extra or changed Work.

9.3.2. If the Construction Manager complies with the provisions of Section 9.2.3 but the Owner and the Construction Manager fail to agree upon the adjustment in the Guaranteed Maximum Price, upon issuance of a Construction Change Directive from the Owner, the Construction Manager shall cause the changes in Work to be promptly commenced and completed, and in such case the Guaranteed Maximum Price adjustments shall be made in accordance with “Method No. 3” above. The Construction Manager, upon the receipt of such a directive, shall promptly proceed to carry out the extra or changed Work.

1. The term “Actual Cost of the Changes” means the sum of all costs necessarily incurred and paid by the Construction Manager in the proper performance of the changed Work. All such costs shall be in amounts no higher than those prevailing in the locality of the Work. The following costs shall constitute the recoverable Actual Cost of the Changes to which the Construction Manager is entitled when performing extra or changed Work, or making any other claim for a Guaranteed Maximum Price adjustment. These costs will also form the basis for the Construction Manager’s recoverable costs which are associated with extensions of the Construction Time caused by extra or changed Work, or other cause solely within the control of the Design Professional, or the Owner, and which are further substantiated by the Construction Manager in accordance with the requirements of Section 9.3.2.6.

(a) Payroll costs for employees of the Construction Manager 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 Construction Manager 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 Construction Manager’s Work staff, or their time
on the Work 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.

(1) Overtime, when specifically authorized by the Owner in a
Change Order for reasons other than the failure of the Construction Manager to perform the Work in
accordance with the Construction Schedule or otherwise in conformity with the Contract Documents (but
not overtime resulting from the Owner’s direction to use Extraordinary Measures, the cost of which shall
be solely the Construction Manager’s responsibility), shall be paid for by the Owner solely on the basis of
the overtime rates established in each bid package.

(2) Costs of all materials and equipment furnished and incorporated
into the Work by the Construction Manager, 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.

(3) Payments made by the Construction Manager to Trade
Contractors for Work performed. Trade Contractors recoverable costs shall be determined in the same
manner as the Construction Manager’s. If required by the Owner, the Construction Manager shall obtain
competitive bids from Trade Contractors who are acceptable to the Construction Manager, and the
Construction Manager will contract with those accepted by the Owner.

(4) Sales, consumer, use or similar taxes related to the Work, and
for which the Construction Manager is liable, or are otherwise imposed by laws and regulations.

(5) Construction equipment costs of Construction Manager’s
equipment or rental costs from others; hourly, daily, weekly or monthly rates will be applied where
appropriate.

(6) Other supplemental costs which are substantiated by the
Construction Manager as specifically being required for the proper execution of the extra or changed
Work, unless specifically prohibited by Section 9.3.2.2 hereof.

2. The Construction Manager’s recoverable Actual Cost of the Changes shall not
include any of the following costs when performing extra or changed Work, or in making any other claim
for a Guaranteed Maximum Price adjustment, including any claims associated with extensions of the
Construction Time:

(a) Payroll costs and other compensation of the Construction Manager’s
officers, executives, principals, general managers, project managers,
construction managers, engineers, architects, estimators, attorneys,
auditors, accountants, purchasing or contracting agents, expediters,
clerks, or any other employees or agents who are not specifically
employed full-time on the Work. Those employees or agents not
employed full-time on the Work are to be considered as administrative
costs which are covered by the Construction Manager’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.
(b) Expenses of the Construction Manager’s principal and branch offices other than the Construction Manager’s office located on the Work site.

(c) Any part of the Construction Manager’s capital expenses, including interest on Construction Manager’s capital employed for the Work and charges against Construction Manager for delinquent payments.

(d) Costs associated with Work arising from the one year correction of the Work period, warranties, or guarantees which are required by the Contract Documents.

(e) Additional vehicle parking costs which exceed the parking reimbursement allowable within the payroll cost. (See Subsection C3.1.2.1 above.).

(f) Any other supplemental costs which are not substantiated by the Construction Manager as specifically being required for the proper execution of the extra or changed Work.

3. When using “Method 3” of Article 9.3.1 above, the Construction Manager’s fee for overhead and profit shall be determined in accordance with the applicable provisions of the Agreement. Trade Contractors shall be allowed a mark-up, to cover overhead, profit, bonding and insurance and other items, of fifteen percent (15%) on Work performed with their own tradespersons and five percent (5%) on Work performed by others. The cumulative mark-up charged to the Owner from the Trade Contractors and Subcontractors shall not exceed 20.75%. This amount is exclusive of the allowed Construction Manager’s markup.

(a) Labor Rates used to substantiate invoice amounts must match those on the Labor Rate Calculation Sheets (Appendix A provides a view of the sheet and initial instructions) submitted to and approved by the Owner.

(b) The following items will not be accepted by the Owner as elements of the labor rate calculations:

Overhead and profit items including, but not limited to:

- Automobiles, job vehicles, vehicle maintenance, fuel, and other commute expenses;
- Consumables and replacement parts (these are covered by the small tools allowance built into the rate calculation sheet);
- Home office and field estimating;
- Training, except where specifically allowed by labor agreement;
- Safety and safety equipment;
- Project management;
- General conditions items including phones, radios and pagers; uniforms; clean up; office, shop and field equipment; utilities and fuel; trailer and storage expenses;
- Workmanship warranty;
Bond costs, general liability and other insurances (Bonds and GL are covered by the allowances built into the rate calculation sheet, others are considered overhead).

Other items, if approved in writing by Owner in advance, which may be billed separately with supporting documentation, including:

- Cost of parking;
- Freight charges and cartage
- Engineering, drafting and cost of drawings;
- Supervision of labor;
- Travel expenses;
- Equipment rental (for items valued over $1,000 only, others

4. Where an extra or change in the Work results in a reduction in the Construction Cost only, the net decrease in the Guaranteed Maximum Price will be the amount of the deduction only. Where an extra or a change in the Work involves both deductions and additions to the Construction Cost, Construction Management fees will be applied to the net increase, if any, of such extra or changed Work.

5. Actual quantities and classifications of unit price Work shall be submitted by the Construction Manager to the Design Professional and the Owner. All such quantities and classifications shall be subject to review and approval by the Design Professional and the Owner. The Design Professional, or the Owner, may make independent measures of Work completed to verify the Construction Manager’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 Construction Cost. Each unit price will be deemed to include an amount, in addition to the Actual Cost of the Changes, adequate to cover all overhead and profit.

(a) Unit prices, if any, shall be established through the bidding process and strictly adhered to thereafter, even if a change in quantity is made. The bidding documents shall provide that any unit prices include all quantities of that commodity. There shall be no adjustment (equitable or otherwise) to unit prices established in Trade Contracts.

6. The Construction Manager shall certify all time and records and invoices and keep and present in such a form as the Design Professional or the Owner may direct, an itemized accounting, together with supporting data and vouchers, of all actual costs associated with the extra or changed Work.

9.3.3. When time for completion is a factor in determining an adjustment pursuant to this Article 9 and the Construction Manager has complied with the provisions of Section 9.2.2, but the Owner and the Construction Manager fail to agree upon an appropriate adjustment to the Construction Time, the Owner shall determine, subject to Section 9.3.5 below, a reasonable time adjustment, taking into account all pertinent factors, such as the critical path of the Work, the duration of any delay caused by the change, the complexity of any extra Work required or of Work abandoned, and the difficulty in procuring additional materials, supplies, equipment or labor or the procurement time that would be saved.
9.3.4. When the Owner and the Construction Manager reach agreement upon any adjustments, their agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

9.3.5. If the Owner and the Construction Manager do not agree upon an adjustment in the Construction Time or the Guaranteed Maximum Price, the matter shall be subject to the applicable dispute resolution procedures set forth in Article 15 below. The parties and the arbitrators shall apply the methodology described in this Section 9.3 to resolve the Dispute.

9.4 Minor Changes in the Work.

The Owner will have authority to order minor changes in the Work provided that such changes will not (i) involve an adjustment in the Construction Cost or extension of the Construction Time, (ii) render the Drawings and Specifications, as so revised, not in material conformity with the Work as set forth in the Drawings and Specifications prior to such change, or (iii) materially affect the quality, utility or general aesthetics of the Work or any component, or result in the use of materials or equipment which are not equivalent to or better than the materials and equipment set forth in the Drawings and Specifications prior to such change. Such changes shall be effected by written order and shall be binding on the Construction Manager. The Construction Manager shall carry out such written orders promptly.

9.5 CM Change Order Requests.

In addition to the Construction Manager's remedies under Article 7 in the case of delays (which shall be governed solely by Article 7 and to which this Section 9.5 shall not apply), if the Construction Manager believes any act, error or omission of the Owner or persons for whom Owner is responsible, including but not limited to the Design Professional and Owner's separate contractors, constitutes a change in the Work entitling it to additional compensation, it shall within twenty-one (21) days after the date the Construction Manager discovers, or should with the exercise of appropriate diligence have discovered, the pertinent act, error or omission of the Owner (provided that the necessity of extra cost and/or time is already determinable, even if such extra cost and/or time has not yet been incurred), submit a CM Change Order Request stating the amount of the additional compensation to which it is entitled and justifying the request. The Construction Manager shall submit such additional information as may reasonably be required by the Owner to evaluate the CM Change Order Request. The Owner shall evaluate the request within ten (10) days and advise the Construction Manager within such ten (10) day period whether to grant, grant in part, or deny the CM Change Order Request. Any additional compensation granted shall be recorded in the form of a Change Order. If the Construction Manager disagrees with the Owner's decision, the Construction Manager shall pursue the remedies it has under Article 15 below. Failure of the Construction Manager to timely submit a CM Change Order Request strictly in accordance with the requirements of this Section 9.5 shall constitute a waiver of and shall forever bar any recovery arising out of the pertinent act, error or omission of the Owner, even if the Owner was not prejudiced thereby.

ARTICLE 10 INSURANCE AND INDEMNIFICATION; BONDS

10.1 Insurance in General.

10.1.1. Each member of the Construction Team shall commence Work only after all of its respective insurance requirements as set forth herein have been fully satisfied. The insurance required under the Agreement shall be maintained without interruption from the date the Work commences until the date of Final Payment, or a later date if required herein.

10.1.2. Insurance coverage required under the Agreement shall be written with insurance carriers authorized to do business in the State of Michigan. Insurance coverage shall be in a form and provided by an insurer acceptable to the Owner with an A.M. Best rating of A, XII or better and shall name
the applicable member of the Construction Team as a “named insured”, as opposed to an “additional insured”.

10.1.3. At the written request of the Owner to the Construction Manager, the Construction Manager shall provide to the Owner a copy of any insurance policy required herein within five (5) calendar days of such written request (or a binder if a policy is not yet available). If the Construction Manager fails to submit a copy of any insurance policy within five (5) calendar days of such written request or if the insurance is in form or insurer unacceptable to the Owner, Owner shall have the right, but not the obligation, to purchase insurance ("Replacement Insurance") in the name of the applicable member of the Construction Team. Upon purchase of Replacement Insurance the Owner shall issue and the Construction Manager shall execute a Change Order reducing the Construction Cost by the cost of the Replacement Insurance. The Construction Manager shall furnish all necessary information to incept and maintain such Replacement Insurance.

10.1.4. The Construction Manager’s liability and indemnification obligations to the Owner under the Agreement shall not be relieved or diminished by securing insurance coverage in accordance with the Owner’s requirements or by the Owner’s acceptance of certificates of insurance or policies. Any acceptance of insurance coverage by the Owner shall not be construed as accepting in any way deficiencies in the insurance.

10.1.5. The limits of insurance required herein are the minimum limits to be provided and maintained by each member of the Construction Team. In the event any member of the Construction Team has in force any insurance coverage in limits higher than the minimum required herein or broader than the insurance terms required herein, such insurance shall insure and be available to all “Additional Insured’s” (defined in Section 10.3.1.2.).

10.1.6. That portion of the Schedule of Project Details entitled “MINIMUM INSURANCE REQUIREMENTS” specifies the minimum insurance requirements for each member of the Construction Team.

10.2 Certificate of Insurance.

10.2.1. Prior to commencing the Work, and within three (3) business days of any renewal, change or replacement of coverage, or any request from the Owner, the Construction Manager shall submit to the Owner or the Owner’s designee a certificate of insurance evidencing the limits and coverage as required herein for itself and each Trade Contractor and each Subcontractor and Supplier providing labor or materials having a value in the aggregate of more than $250,000. The Construction Manager shall, upon request, promptly provide certificates of insurance for other members of the Construction Team. Each certificate of insurance shall provide for written notice by certified mail to the following party no less than thirty (30) calendar days prior to any cancellation or material change in coverage and not be qualified by the words “endeavor to” or similar words:

The Regents of the University of Michigan,  
a Michigan Constitutional Corporation  
c/o ___________________________  
400 S. 4th Street  
Ann Arbor, MI  48103

10.2.2. All certificates of insurance shall be in form and content acceptable to Owner and shall list all insurance policies carried by the member of the Construction Team for the coverage required herein. The certificate of insurance shall state the full policy limits of each policy, even if the limits exceed the minimum amounts required.

10.3 Insurance Policy Requirements.
10.3.1. Each policy of insurance provided by a member of the Construction Team, unless otherwise noted, shall contain the following provisions:

1. Waiver of Subrogation—Each policy shall contain a waiver of subrogation in favor of (and all members of the Construction Team hereby waive all rights of recovery against) the following parties:

   “The Regents of the University of Michigan, a Michigan Constitutional Corporation, including its board members, officers, employees and agents.”

This waiver shall not prohibit subrogation or recovery by or on behalf of a member of the Construction Team against available proceeds of insurance that the Owner is required to maintain under the Agreement for the benefit of that member of the Construction Team.

2. Additional Insured’s—Other than policies of insurance for worker’s compensation and automobile liability, each policy shall be endorsed to name the following parties as “Additional Insured’s” using Insurance Services Office (“ISO”) form CG 2026 or an alternative form acceptable to the Owner:

   “The Regents of the University of Michigan, a Michigan Constitutional Corporation, including its board members, officers, employees and agents.”

3. Primary Insurance—All policies shall contain language that such insurance coverage shall be primary and non-contributory to any insurance which may be procured, maintained by or on behalf of the Owner.

4. Separation of Insured’s—Each policy shall contain wording such that the insurance afforded by the policy shall apply separately to each insured against whom claim is made or suit is brought.

5. Cancellation—Each policy shall be endorsed to provide for written notice by certified mail to the following party no less than thirty (30) calendar days prior to any cancellation or material change in coverage:

   The Regents of the University of Michigan,
   a Michigan Constitutional Corporation
   c/o __________________________
   400 S. 4th Street
   Ann Arbor, MI  48103

10.4 The Owner’s Insurance.

10.4.1. The Owner may purchase and maintain insurance for self-protection against claims which may arise from operations under the Contract Documents. The Construction Manager shall not be responsible for purchasing and maintaining this optional Owner’s liability insurance unless specifically required by the Contract Documents. It is also expressly agreed that Owner may provide any insurance coverage required under the Contract Documents by self-insurance, but only if the Owner provides satisfactory evidence that the terms and conditions of the self-insurance program provide reasonably equivalent protection to the Construction Team as would be available under a conventional insurance policy.

10.4.2. The Owner shall effect and maintain insurance against loss or damage arising from fire or other perils normally insured against by standard “All Risk,” including flood and earthquake coverage,
property insurance policies in the amount of the full replacement cost of the Project. Such insurance shall
insure, as their interests may appear, each applicable member of the Construction Team. Owner’s
property insurance applies only to Work performed at the Project Site and materials and equipment
located on the Project Site which are to be included in and remain a part of the permanent construction.
Owner’s property insurance shall not apply to property, material and equipment while in transit or while
stored away from the Project Site. Each respective member of the Construction Team shall secure “All
Risk” insurance on such property, material and equipment destined to be part of the permanent
construction at one hundred percent (100%) values on a replacement cost basis.

1. Other than acts of the Owner or God (fire, lightning, hail, rainstorm, etc.), each
member of the Construction Team shall be responsible for the first Two Thousand Five Hundred Dollars
($2,500) of any loss of or damage to property to the extent of any damage caused by its negligence or
intentional acts. If more than one member of the Construction Team causes a loss or damage to property
in the same occurrence, each member of the Construction Team shall pay a proportion of the Two
Thousand Five Hundred Dollars ($2,500), determined in the discretion of the Construction Manager and
the Owner.

2. Losses, if any, under such insurance shall be adjusted with the Owner and made
payable to the Owner, subject to the requirements for any applicable mortgagee clause. The
Construction Manager shall pay the Trade Contractors their just shares of insurance proceeds received
by the Owner and shall require the Trade Contractors to make payments to their Subcontractors in a
similar manner.

3. Each member of the Construction Team shall be solely responsible for insuring
against any loss or damage to all owned, borrowed or rented property, including but not limited to tools,
materials, supplies, equipment, forms, scaffolding, towers, staging, bunkhouses and other temporary
structures including their contents, which do not form a permanent part of the Project. 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 Construction Manager or the Design Professional, or employees, agents or servants of same, which
is not to be included in and remain a permanent part of the Project.

4. The Owner’s property insurance policy excludes losses based on, among other
things, errors in design, faulty workmanship, faulty materials, wear and tear, gradual deterioration,
mysterious disappearance and fraudulent or dishonest acts. The property insurance policy also excludes
losses due to settling, cracking, shrinking, bulging or expansion of pavements, foundations, walls, floors,
and ceilings.

5. The Construction Manager shall report to the Owner each claim immediately
after an occurrence of a loss. The Owner grants, and shall cause its insurer to grant, reciprocal waivers
of subrogation in favor of the Construction Manager and all other members of the Construction Team.

Partial occupancy or use shall not commence until the insurance company providing
property insurance has consented to such partial occupancy or use by endorsement or otherwise. The
Owner shall take reasonable steps to obtain consent of the insurance company and shall, without mutual
written consent, take no action with respect to partial occupancy or use that would cause cancellation,
lapse or reduction of insurance.

Each member of the Construction Team waives rights of recovery against the Owner and
every other member of the Construction Team for any loss to, or of, tools, equipment, supplies and all
other property which is owned, rented or borrowed and does not become a permanent part of the Project.
Every member of the Construction Team shall cause its insurance carrier (if any) to recognize and agree
to the waivers set forth in this paragraph by including waiver of subrogation clauses or endorsements on
their policies.
Compliance by the Construction Manager with the foregoing requirements shall not relieve the Construction Manager of the Construction Manager’s liabilities or obligations under this Article or any other portion of the Agreement.

10.5 Indemnification.

10.5.1. To the fullest extent permitted by law, the Construction Manager agrees to defend and indemnify the Indemnitees against and hold them harmless from any and all losses, claims, liabilities, injuries, damages, and expenses whatsoever, including attorneys’ fees and costs, that the Indemnitees may incur by reason of (i) the breach of the Agreement or the Contract Documents by the Construction Manager or any member of the Construction Team; (ii) any injury or damage sustained to any person or property (including, but not limited to, any one or more of the Indemnitees) to the extent arising out of, or occurring in connection with, (a) the Construction Manager’s errors, omissions, or intentional misconduct or negligent acts or those of any of the Construction Team, or (b) the performance or lack of performance by the Construction Manager or any member of the Construction Team of their duties and obligations under or pursuant to the Agreement or the Contract Documents; or (iii) the assertion of any claim or Lien whatsoever against the Owner by any member of the Construction Team, except only claims or liens caused by the Owner’s failure to pay the Construction Manager funds to which it is entitled under the Agreement. This obligation shall not be construed to negate, abridge or otherwise reduce other rights or obligations of indemnity which would otherwise exist as to any party or person.

1. Without limiting the generality of Section 10.5.1, the Owner shall not be liable or responsible for any bodily injury, sickness, disease, death, or damage to tangible property arising out of the Work resulting from errors, omissions, or intentional misconduct or negligent acts by the Construction Team, and the Construction Manager shall fully indemnify and protect the Owner from and against the same. In addition to the liability imposed by law upon the Construction Manager for damage or injury (including death) to persons or property by reason of the negligence of the Construction Manager, its officers, agents, employees or Trade Contractors, which liability is not impaired or otherwise affected hereby, the Construction Manager shall defend, indemnify, hold harmless, release and forever discharge the Owner, its officers, employees, and agents from and against and waive any and all responsibility of same for every expense, liability, or payment by reason of any damage or injury (including death) to persons or property suffered or claimed to have been suffered through any negligent or intentional act or omission of the Construction Manager, its officers, agents, employees, or any of its Trade Contractors, or anyone directly or indirectly employed by either of them or from the condition of the Project Site (except for Hazardous Materials for which the Owner is responsible under Article 5 above) brought to the site by persons other than the Construction Team and which the Construction Team has not exacerbated after it recognized or should have recognized the presence and general location of such Hazardous Materials or any part of the Project Site while in control of the Construction Manager, its officers, agents, employees, or any of its Trade Contractors or any member of the Construction Team, arising out of the performance of the Work called for by the Agreement.

2. Without limiting the generality of Section 10.5.1, the Construction Manager 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 except to the extent caused by the Owner, 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 Documents or in connection with the Work. The Construction Manager shall secure, protect, defend, hold harmless and indemnify the Owner and the Design Professional and any of their respective agents, servants and employees, against any liability whatsoever, including all claims, suits, actions, costs, counsel fees, attorneys’ 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 Documents, except to the extent caused by the Owner, or based upon any wrongful act, error or omission, negligent or otherwise, of any member of the Construction Team.
3. The indemnification obligations under this Section 10.5 shall not apply to damage to the Work itself to the extent recovery is made under the Owner’s builders’ risk insurance coverage.

4. The indemnification obligations under this Section 10.5 shall not be limited by any assertion or finding that the person or entity indemnified is liable by reason of a non-delegable duty.

10.5.2. In the cases of claims against any Indemnitee by an employee of the Construction Manager or any of the Construction Team, the Construction Manager’s indemnification obligation shall not be reduced by a limitation on amount or type of damages, compensation or benefits payable by insurance or for the Construction Manager or one of the Construction Team under workers’ compensation acts, disability benefit acts or other employee benefit acts.

10.5.3. If any claim of Lien or stop-notice or any other demand for payment or security therefor, including claims or demands upon performance and payment bond sureties, is made or filed with the Owner or the Work by any person claiming that the Construction Manager or any of the Construction Team has failed to perform its contractual obligations or to make payment for any labor, services, trust fund contribution, materials, equipment, taxes, or other item furnished or obligation incurred for, or in connection with, the Work, or if at any time there shall be reasonable evidence of such nonperformance or nonpayment of any claim or Lien or stop-notice or other demand for which, if established, the Owner or the Work might become liable (and in either case so long as the Owner has discharged its payment obligations to the Construction Manager in connection with the matter which is the subject of the Lien), then the Owner shall have the right to retain from any payment then or thereafter due under the Contract or to be reimbursed by the Construction Manager an amount sufficient to satisfy or discharge any such claim of Lien or stop-notice or other demand.

10.5.4. If the Construction Manager or a Trade Contractor, Subcontractor, Supplier or other member of the Construction Team makes, records, or files, or maintains any action on or respecting a claim of construction or mechanics’ lien, stop-notice, equitable lien, payment, or performance bond, or a lis pendens, relating to the Work, the Construction Manager shall promptly and without increase in the Guaranteed Maximum Price, procure, furnish, and record appropriate statutory release bonds, in order to extinguish or expunge said claim, stop-notice, Lien, or lis pendens, except to the extent caused by the Owner’s failure to pay the Construction Manager amounts to which it is entitled under the Agreement.

10.5.5. If the Construction Manager fails to honor its obligation to defend and indemnify the Owner, as required herein, the Owner may defend itself with counsel of its choosing, but at the Construction Manager’s expense, without recovery from the Owner, under the Guaranteed Maximum Price, any contingency or otherwise. The Owner may also under such circumstances settle any claim upon whatever terms as it in its reasonable judgment deems appropriate, and the Construction Manager shall be bound by any defense asserted by the Owner, any settlement reached, or any judgment or award entered.

10.6 “Wrap-Up” Insurance.

10.6.1. The parties anticipate the possibility of implementing a “wrap up” insurance program for the Work, either in the form of an Owner Controlled Insurance Program or a Contractor Controlled Insurance Program, all as described in the Schedule of Project Details. They agree to cooperate with one another in this respect and to participate in any such program in whatever manner may be appropriate to their role under the Agreement. Any such program shall be incorporated into these General Conditions by Modification.

10.7 Performance Bond and Payment Bonds.

10.7.1. Each Trade Contractor shall furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of Michigan and complying with the following specific requirements:
1. Except as otherwise required by statute, the form and substance of such bonds shall be reasonably satisfactory to the Owner;

2. Bonds shall be executed by a responsible surety licensed in the state where the Work is located with a Best’s rating of no less than A/Xl I and shall remain in effect for a period not less than three (3) years following the later of (i) the date of Substantial Completion or (ii) the time required to resolve any items of incomplete Work and the payment of any disputed amounts;

3. The Performance Bond and the Labor and Material Payment Bond shall each be in an amount sufficient to comply with all statutory requirements and shall be “dual obligee” type bonds naming both the Owner and the Construction Manager as obligees;

4. Each Trade Contractor shall cause the attorney-in-fact who executes the required bonds on behalf of its surety to affix thereto a certified and current copy of his or her power of attorney indicating the monetary limit of such power; and

5. Every bond under this Section 10.7 must display the surety’s bond number. A rider including substantially the following provisions shall be attached to each bond:

   (1) Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other Modification of the Contract Documents, the Trade Contracts and the Subcontracts. Any addition, alteration, change, extension of time, or other Modification of the Contract Documents, the Trade Contracts or the Subcontracts, or a forbearance on the part of either the Owner, the Construction Manager or one or more Trade Contractors to one or more of the others, shall not release the Surety of its obligations and notice to the Surety of such matters is hereby waived. Capitalized words and terms shall have the meanings given them in the Contract Documents.

   (2) Surety agrees that it is obligated under the bonds to any successor, grantee or assignee of the Owner or the Construction Manager.

6. Each Trade Contractor’s surety shall also agree, in the form of a rider to each bond or via a separate agreement, that before it may seek exoneration, release, or any kind of relief from its obligations under the bond as a result of any default by the Owner or the Construction Manager in the performance of any obligations to the Trade Contractor under the Trade Contract, the surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner and the Construction Manager, and both of them shall have thirty (30) days from time after receipt of such notice within which to cure such default or cause it to be cured, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured immediately. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to the Owner and the Construction Manager.

   10.7.2. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement or any Trade Contract, the Construction Manager shall promptly furnish a copy of the bonds or shall permit a copy to be made.

   10.7.3. The Construction Manager shall keep the sureties informed of the progress of the Work, and, without limiting the requirements of Section 10.7.1.5(1) above, where necessary, obtain the sureties’ consent to, or waiver of: (1) notice of changes in the Work; (2) request for reduction or release of retainage; (3) request for Final Payment; and (4) any other material required by the surety. The Construction Manager shall promptly give the Owner copies of all communications with the surety requesting or pertaining to consents or waivers. The Owner may, in the Owner’s sole discretion, inform
sureties of the progress of the Work and obtain consents as necessary to protect the Owner’s rights, interest, privileges and benefits under the pursuant to any bond issued in connection with the Work.

10.7.4. The Construction Manager may, in its discretion, determine which other members of the Construction Team will be required to supply bonds. All such bonds shall be (i) purchased solely at the expense of the Construction Manager (or the persons supplying them), without reimbursement under the Guaranteed Maximum Price or otherwise, and (ii) dual obligee bonds, naming the Owner as one of the obligees.

ARTICLE 11  WARRANTY; DEFECTIVE WORK

11.1 Uncovering of Work.

11.1.1. If a portion of the Work is covered contrary to the Owner’s request or to the requirements of the Contract Documents, or prior to any required inspection, test or approval, it must, when required by the Owner, be uncovered for the Owner’s inspection and replaced at Construction Manager’s expense without change in the Construction Time.

11.1.2. If a portion of the Work has been covered as permitted by the Contract Documents and the Owner did not ask to inspect it prior to its being covered, the Owner may request to see such Work, and it shall be uncovered by the Construction Manager. If such Work is in accordance with the Contract Documents, the cost of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work is not in accordance with the Contract Documents, Construction Manager shall take whatever action may be necessary to cause it to conform to the Contract Documents and shall pay the cost of doing so, together with the cost of uncovering and replacement, all without a change in the Construction Time or the Construction Cost.

11.2 Warranties.

11.2.1. The Construction Manager warrants to the Owner that all materials and equipment furnished as part of the Work will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be complete, free from faults and defects not inherent in the quality required or permitted, and that the Work will conform strictly with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered “Defective.” If required by the Owner, the Construction Manager shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

11.2.2. The Construction Manager shall assign to the Owner at the time of Substantial Completion any and all manufacturer’s warranties relating to materials and labor used in the Work. Construction Manager shall perform the Work in a manner that will preserve any and all manufacturer’s warranties.

11.2.3. [Intentionally omitted.]

11.2.4. If the Construction Manager uses any portion of the Work or the Owner’s other property, such items will be restored to the condition they were in immediately prior to such use at or before the time of Substantial Completion, or as otherwise specified in the Contract Documents. The Construction Manager’s warranty and agreement to correct Defective Work includes the Construction Manager’s obligations under this section.

11.3 Correction of Work.

11.3.1. The Owner may reject Defective Work. The Construction Manager shall cause all Work rejected by the Owner, whenever observed prior to Final Completion, to be corrected without extension of the Construction Time or increase in the Guaranteed Maximum Price and without use of any contingency.
If any additional Design Professional’s fees are incurred because of corrective Work, the Construction Manager shall pay them promptly upon demand.

11.3.2. If, within that window of time after the date of (i) Substantial Completion and acceptance of the Work or any designated portion thereof set forth in the Schedule of Project Details or (ii) the completion of Work not finished at Substantial Completion, or within the terms of an applicable special warranty required by the Contract Documents (the “Correction Period”), any of the Work is found by the Owner to be Defective, the Construction Manager shall, without interfering materially with the Owner’s facilities, personnel or operations, promptly cause it to be corrected, unless the Owner has previously specifically accepted such defect in writing. The Construction Manager shall bear all costs of correcting rejected Work, without increase in the Guaranteed Maximum Price, and without use of any contingency, including any additional testing and inspections made necessary thereby. These obligations shall apply regardless of whether such Work has been fabricated, installed, or completed and shall survive acceptance of the Work and termination of the Agreement.

1. The obligations under Section 11.3.2 shall cover all repairs and replacements necessary to correct any part of the Work or other property where damage has been caused by Defective Work.

2. Upon completion of any Work under or pursuant to Section 11.3.2, the one (1) year Correction Period specified by Section 11.3.2 shall begin anew with respect to the Work requiring correction.

3. The Construction Manager shall, after receipt of such notice, cause any Defects in the Work to be corrected promptly after being notified by the Owner of the Defect.

4. The Construction Manager will diligently inspect the Work thirty (30) days prior to the expiration of the Correction Period and shall list Defective Work and shall thereafter promptly correct, repair, or make good any Defects in accordance with the requirements of Section 11.3.2.

5. The requirements of Section 11.3.2 are in addition to and not in limitation of any of the other requirements of the Contract Documents for warranties or conformance of the Work to the requirements of the Contract Documents.

6. Unless the Owner authorizes otherwise, Substantial Completion shall not commence the Correction Period for any equipment or systems that:

   (a) Are not fully operational (equipment or systems shall not be considered fully operational if they are intended to provide service to any portion of the building which the Owner has not accepted as substantially complete); or

   (b) Are not accepted by the Owner.

11.4 Removal of Defective Work.

11.4.1. The Construction Manager shall cause all portions of the Work which are not strictly (rather than substantially) in accordance with the requirements of the Contract Documents, and are neither corrected by the Construction Manager nor accepted by the Owner, to be promptly removed from the Project Site.

11.5 Owner’s Right to Correct or Remove.

11.5.1. If the Construction Manager fails to cause Defective Work to be corrected within a reasonable time after receipt of notice from the Owner, the Owner may correct it and the Construction
Manager shall pay the Owner all costs of correction (including the value of the Owner’s staff time) upon demand. Alternatively, in the event of such failure, the Owner may (without being deemed a bailee) remove the defective Work and store the salvable materials or equipment at the Construction Manager’s expense. If the Construction Manager does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days’ written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting from the sale proceeds all costs, expenses and damages that should have been borne by the Construction Manager (including the value of the Owner’s staff time and reasonable attorneys’ fees). If the proceeds of sale do not cover costs which the Construction Manager should have borne, the Construction Cost shall be reduced by the deficiency, plus Interest. If payments then or thereafter due the Construction Manager are not sufficient to cover the amount owed, the Construction Manager shall pay the difference to the Owner upon demand.

1. The Owner’s right to store and sell such Defective Work shall not give rise to a duty to do so. Instead, the Owner may upon ten (10) days’ prior written notice simply dispose of such Defective Work as it sees fit. All costs of disposal shall be borne by the Construction Manager, without recovery from the Owner, under the Guaranteed Maximum Price, any contingency or otherwise.

11.6 Tests.

If tests or inspections reveal that portions of the Work are Defective, any additional tests or inspections required to assure the Design Professional and the Owner that the Defective Work has been remedied or is in an acceptable condition shall be conducted at the expense of the Construction Manager, without increase in the Guaranteed Maximum Price, and without use of any contingency. The Construction Manager shall pay all additional costs of the Design Professional and the Owner which are associated with such additional tests or inspections.

11.7 Periods of Limitation.

Nothing contained in this Article 11 shall be construed to establish a period of limitation with respect to other obligations which the Construction Manager might have under the Contract Documents or applicable law. Establishment of the Correction Period relates only to the specific obligation of the Construction Manager to correct the Work under this Article 11 and has no relationship to the time within which the obligation to comply with the Agreement may be sought to be enforced by the Owner, nor to the time within which proceedings may be commenced to establish the Construction Manager’s liability with respect to its obligations under the Agreement.

11.8 The Owner’s Right to Stop the Work.

If the Construction Manager fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 11.3.2 or fails to carry out the Work in accordance with the Contract Documents, the Owner may, by written order, direct the Construction Manager to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Construction Manager or any other person or entity.

11.9 Acceptance of Nonconforming Work.

If the Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents or otherwise Defective, the Owner may do so instead of requiring its removal and correction, in which case the Guaranteed Maximum Price will be reduced by an equitable amount which reflects the loss of value to the Owner caused by the Defective Work. Such adjustment shall be effected whether or not Final Payment has been made, and if it occurs after Final Payment is made, the Construction Manager shall pay the Owner whatever sum is owed upon demand.
11.10 Damage.

11.10.1. If prior to the date of Final Completion any member of the Construction Team uses or damages any portion of the Work or other property, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Construction Manager shall, subject to the provisions of, and rights to recover from, any property insurance that the Owner is responsible to provide, cause such item to be restored to “like new” condition at no expense to the Owner, without recovery from the Owner, under the Guaranteed Maximum Price, any contingency or otherwise.

11.10.2. The Construction Manager shall bear the cost of correcting destroyed or damaged construction or other property, whether completed or partially completed, of the Owner or separate contractors caused by the Construction Manager’s correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

11.10.3. Nothing in this Section 11.10 either limits the parties’ rights to obtain recovery from any applicable property insurance or entitles the insurer to pursue a subrogation claim.

ARTICLE 12 PAYMENT

12.1 Applications for Payment.

12.1.1. “Applications for Payment” shall be submitted on AIA Documents G-722 and G-723, or such other form as the Owner may reasonably require. Applications for Payment shall be notarized if required by the Owner, shall be based upon the applicable approved Schedule of Values, and shall be accompanied by whatever supporting data substantiating the Construction Manager’s right to payment that the Owner may reasonably require, such as copies of paid statements from Trade Contractors. Submission of an Application for Payment shall constitute a representation and warranty by the Construction Manager that the Work for which payment is sought has been properly performed to the degree of completion indicated in the Application.

1. The Construction Manager shall prepare an Application for Payment Schedule for Trade Contractors which will require each Trade Contractor to provide a draft “pencil copy” payment request on or before the twenty-fifth (25th) of the month (comprising work from the twenty-fifth (25th) of the last month to the twenty-fifth (25th) of the present month) for Construction Manager approval. On or before the first (1st) day of each succeeding month, the Construction Manager shall submit to the Owner and the Design Professional a “Consolidated Application for Payment” including the Construction Manager’s costs and showing in detail all monies to be disbursed to Trade Contractors from the approved Trade Contractor Applications for Payment, other cost items incurred and the proportionate amount of the Construction Manager’s Fee. The Consolidated Application for Payment shall be complete in every respect, shall be accompanied by such supporting data substantiating the Construction Manager’s right to payment as the Owner may reasonably require, and shall reflect retainage as provided for elsewhere in the Contract Documents.

2. Within seven (7) days after the Owner’s receipt of the Consolidated Application for Payment, the Owner and the Construction Manager (and if requested by the Owner, the Design Professional) will meet, and the Owner will act in accordance with the provisions of Sections 12.2 and 12.3 below.

3. If a Consolidated Application for Payment is submitted on a timely basis, payment by the Owner to the Construction Manager of the amounts included in the Consolidated Application for Payment and approved for payment shall be made within twenty-two (22) days after it is submitted.
4. Consolidated Applications for Payment may not include requests for payment of amounts the Construction Manager does not intend to pay to a Trade Contractor because of a dispute or other reason.

5. Where a submission is required by this Section 12.1.1 to be made by a particular date and that date falls on a weekend or holiday, submission shall be required by the next preceding business day.

12.1.2. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work. If such storage has been approved in writing in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Project Site. Payment for materials and equipment stored on or off the Project Site shall be conditioned upon compliance by the Construction Manager with procedures satisfactory to the Owner to establish Owner’s title to such materials and equipment free and clear of all Liens, charges, security interests and other encumbrances, or otherwise protect the Owner’s interest, and shall include applicable insurance, storage and transportation to the Project Site for such materials and equipment stored elsewhere. The Owner will not make payment for stored materials of a commodity nature which are readily available through distribution channels.

1. The Owner shall not be required to pay for unassembled materials, such as mill steel, extrusions for windows, and incomplete assemblies.

12.1.3. The Construction Manager warrants that title to all Work covered by a Consolidated Application for Payment shall be free and clear of all Liens, charges, security interests and other encumbrances and will pass to the Owner no later than the time of payment. Bills of sale will be provided when appropriate. The Construction Manager further warrants that, upon submittal of a Consolidated Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Construction Manager’s knowledge, information and belief, be free and clear of Liens, claims, security interests or encumbrances in favor of the Construction Manager, Trade Contractors, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work unless incurred as a result of the nonpayment by the Owner of sums due the Construction Manager. All materials necessary to construct this Work, upon delivery to the Project Site, shall not be removed from the Project Site without the prior written consent of the Owner.

1. The Guaranteed Maximum Price includes all applicable taxes and shall not be changed as the result of the Construction Manager’s failure to include any applicable tax, or as a result of any change in the Construction Manager’s tax liabilities.

12.1.4. Each Consolidated Application for Payment shall be accompanied by the following, all in form and substance reasonably satisfactory to the Owner:

1. a duly executed and acknowledged sworn statement in the form contemplated by the Michigan Construction Lien Act and under oath (even though the Project is not subject to the Act) with all information provided, together with sworn statements, current through the previous draw, from the Construction Manager and all of the Trade Contractors; and

2. except as otherwise provided, duly executed unconditional releases in the form required by the Owner establishing payment or satisfaction of all obligations as reflected on the sworn statements referred to in (1), provided, however, that the Construction Manager may furnish with each Application for Payment applicable waivers of lien or releases and sworn statements covering the immediately preceding Application for Payment, as opposed to the current Application for Payment, provided Final Payment shall not be forthcoming until final construction lien waivers or releases from all members of the Construction Team have been delivered.
12.2 **Certificates for Payment.**

12.2.1. The Owner, in consultation with the Design Professional, will, within seven (7) days after receipt of the Construction Manager's Consolidated Application for Payment, either issue a "Certificate for Payment," for such amount as the Owner determines is properly due, or notify the Construction Manager in writing of the Owner's reasons for withholding certification in whole or in part, as provided in Section 12.3 below. The Owner shall notify the Construction Manager in writing within seven (7) days of receipt of the Consolidated Application of Payment as to the amount and cause for not approving payment.

12.2.2. The issuance of a Certificate for Payment will not be a representation that the Owner has (1) made inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Trade Contractors and other data requested by the Owner to substantiate the Construction Manager's right to payment; or (4) made examination to ascertain how or for what purpose the Construction Manager has used money previously paid on account of the Construction Cost.

12.3 **Decisions to Withhold Certification.**

12.3.1. The Owner need not certify payment and may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if (i) the Work has not progressed to the point indicated on the Consolidated Application for Payment, or (ii) the quality of the Work is not in accordance with the Contract Documents. If the Owner is unable to certify payment in the amount of the Consolidated Application for Payment, the Owner will notify the Construction Manager as provided in Section 12.2.1 above. If the Construction Manager and the Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner determines is justified based upon the progress and quality of the Work. The Owner may also refuse to certify payment, or because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary, and the Owner shall be entitled to withhold payment to the same extent, to protect the Owner from loss because of:

1. **Defective Work not remedied;**
2. claims filed or reasonable evidence indicating probable filing of claims;
3. failure of the Construction Manager to make payments properly to Trade Contractors;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;
5. damage that is the fault of any member of the Construction Team to the property of the Owner or another contractor;
6. evidence that the Work will not be completed within the Construction Time, and that the unpaid balance of the Guaranteed Maximum Price would not be adequate to cover damages which the Owner is entitled to recover for the anticipated delay;
7. failure to carry out the Work in accordance with the Contract Documents; or
8. failure to have supplied operations and maintenance manuals, Record Documents, schedules, cost projections, and/or other information that may be required by other sections of the Contract Documents on a timely basis.
9. any other failure of the Construction Manager to perform its obligations under the Agreement.

10. stop notices.

12.3.2. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld, without interest. The Owner shall not be deemed in default by reason of withholding payment to the extent appropriate for the above grounds while they remain uncured.

12.4 Progress Payments.

12.4.1. The Owner may retain out of each progress payment a “Retainage” equal to ten percent (10%) of that payment, excluding any portion paid for the CM Personnel Costs and General Conditions costs. Retainage on all individual Trade Contractors which include both labor and material shall be ten percent (10%) until the Work under the Trade Contract is fifty percent (50%) completed. If the Work is progressing pursuant to the terms of the Agreement and subject to the Owner’s and the Construction Manager’s approval, no additional sums shall be retained. Retainage will be paid upon Final Completion and acceptance of the Work in accordance with Section 12.5 below. Upon mutual agreement of the Owner, the Design Professional and the Construction Manager, payment in full may be made to Trade Contractors whose Work is fully completed during early stages of the Project. The Construction Manager acknowledges and agrees that payments by the Owner shall only be made in respect of Applications for Payments, or portions thereof, reasonably approved by the Owner. If the Construction Manager disputes any good faith determination by the Owner with regard to any Certificate of Payment, or amount paid by the Owner in respect thereof, the Construction Manager shall nevertheless expeditiously continue to prosecute the Work while such dispute is being resolved in accordance with the provisions of Article 15 below.

1. Should the Owner fail, except when permitted by the Agreement, to pay the sum named in any Certificate for Payment within twenty (20) calendar days from the date due, the Contract Manager shall receive, in addition to the sum named in the Certificate, Interest, beginning from the date the payment was due.

12.4.2. The Construction Manager shall hold all payments in trust and shall promptly pay each Trade Contractor and laborer upon receipt of payment from the Owner, out of the amount paid to the Construction Manager on account of their portion of the Work, the amount to which each is entitled, reflecting percentages actually retained from payments to the Construction Manager on account of such Trade Contractor’s or laborer’s portion of the Work. The Construction Manager shall require each Trade Contractor to make payments in a similar manner. The Construction Manager shall notify the Owner of any money it knows any Trade Contractor to be holding for back charges against any member of the Construction Team.

1. Whenever the Owner reasonably determines, after notice to the Construction Manager, that there is a basis for concern that payments properly owing to any Trade Contractor or laborer are not being made on a timely basis, the Owner may elect, but shall not be obligated, to make payments to the joint order of the Construction Manager and such Trade Contractor or laborer with any such payments satisfying any payment obligation otherwise owing by the Owner to the Construction Manager. The Owner may also elect at any time to require that payments be made through a construction escrow, in which event the Construction Manager shall supply all customary forms and indemnities as may be required to satisfy the conditions to disbursement established by the applicable escrowee. All requirements relating to payments and retainage, and applicable submittals to be made by the Construction Manager, shall be subject to reasonable modification and approval of any lender of the Owner supplying funds to the Project.
12.4.3. The Owner shall, on request, furnish to a Trade Contractor, if practicable, information regarding percentages of completion or amounts applied for by the Construction Manager and any action taken by the Owner on account of portions of the Work done by such Trade Contractor.

12.4.4. The Owner shall not have an obligation to pay or to see to the payment of money to a Trade Contractor or laborer except as may otherwise be required by law.

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

12.5 Final Completion and Final Payment.

12.5.1. Final Payment shall be made by the Owner to the Construction Manager within thirty (30) days after: (1) All Work is fully complete and the Owner, the Design Professional and the Construction Manager have executed a “Final Project Completion and Acceptance Form;” (2) a final Consolidated Application for Payment has been submitted by the Construction Manager and reviewed and approved by the Owner and the Design Professional; (3) the requirements of Section 12.5.2 have been fully met; and (4) a final Certificate for Payment has then been issued by the Owner. If, however, there is any unresolved Claim (as defined in Article 15 below), the Owner may deduct from the Final Payment (or if necessary retain the full amount of the Final Payment) an amount reasonably calculated to cover two times the uninsured exposure to the Owner that it contends may be the responsibility of the Construction Manager resulting from such Claim; the amount so withheld, less any sums properly recoverable by the Owner from the Construction Manager under the Contract Documents, shall be paid to the Construction Manager within thirty (30) days after final resolution of the Claim.

12.5.2. Neither Final Payment nor any remaining Retainage shall become due until the Construction Manager submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner’s property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be cancelled or allowed to expire until at least thirty (30) days’ prior written notice has been given to the Owner; (3) a written statement that the Construction Manager knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of all sureties to Final Payment; (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of Liens, claims, security interests or encumbrances, to the extent and in such form as may be designated by the Owner; (6) final Record Drawings, including Record Drawings marked by the Construction Manager with record information set forth in the Contract Documents and Construction Manager coordination drawings; (7) the final versions of all manufacturers’ warranties, operations and maintenance manuals, Record Documents, and/or other information that may be required by the Contract Documents, embodying such corrections and modifications from initial versions as the Owner shall reasonably request; and (8) a final contractor’s sworn statement from the Construction Manager duly executed and acknowledged showing all Trade Contractors and laborers to be fully paid, and similar final sworn statements from the Construction Team. If any of the Construction Team refuse to furnish a release or waiver required by the Owner, the Construction Manager may furnish a bond satisfactory to the Owner to indemnify the Owner against such Lien. If such Lien remains unsatisfied after payments are made, the Construction Manager shall refund to the Owner, upon demand, all money that the Owner may be compelled to pay in discharging such Lien, including all costs and reasonable attorneys’ fees.

12.5.3. The amount of the Final Payment shall be the Construction Cost, not to exceed the Guaranteed Maximum Price, less the amount paid to date. If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall immediately reimburse the difference to the Owner.
12.5.4. Acceptance of Final Payment by the Construction Manager or any of the Construction Team shall constitute a waiver of all claims by that payee (which shall be a permanent bar to them) except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

12.5.5. If, after Substantial Completion of the Work, Final Completion is materially delayed through no fault of the Construction Manager or any member of the Construction Team or by issuance of Change Orders affecting Final Completion, the Owner shall, upon application by the Construction Manager, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Construction Manager to the Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing Final Payment.

12.6 Audits by the Owner.

12.6.1. The Construction Manager agrees that the Owner or any of its duly authorized representatives shall, until the expiration of the record retention period (as defined in Section 12.6.2 below), have access to and the right to examine where pertinent to verifying the Cost of the Work or other items reimbursed to Construction Manager under the Agreement on the basis of costs, books, documents, records, contracts, correspondence, instructions, receipts, vouchers, purchase orders, memoranda, papers, and all other records of the Construction Manager related to the Agreement for any reason.

12.6.2. The Construction Manager shall maintain in accordance with generally accepted accounting principles separate records and accounts of its Services and transactions on behalf of the Owner in connection with the Work and shall make such records and accounts available to the Owner for inspection and audit during normal business hours and upon reasonable prior notice. Records shall be kept in such form and detail as the Owner may reasonably request. Such records shall include time sheets, invoices from the Construction Manager and its Trade Contractors memoranda and analyses in support of management decisions, and such other primary records as necessary to support and justify all business conducted in connection with the Work, but shall not include internal memoranda or reports, communications or discussions with incidental references to the Work or documents which discuss multiple projects. Such records shall be kept by the Construction Manager for at least six (6) years following Final Completion of the Work.

12.6.3. The Construction Manager shall include in all its Trade Contracts under the Agreement a provision to the effect that the Trade Contractors agree that the Owner or any of its duly authorized representatives shall, until expiration of three (3) years after Final Payment under the Trade Contracts and Supply Agreements, have access to and the right to examine where directly pertinent to verifying the cost of Change Orders or other items reimbursed to such Trade Contractor on the basis of cost, books, documents, papers, and records of such consultants, involving transactions related to the Work.

ARTICLE 13 CONSTRUCTION BY THE OWNER OR BY SEPARATE CONTRACTORS

13.1 Owner’s Right to Perform Construction and to Award Separate Contracts.

13.1.1. The Owner reserves the right, but shall have no obligation, to perform construction or operations related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Site. The Construction Manager shall promptly notify the Owner in writing upon becoming aware that such independent action will in any way compromise the Construction Manager’s ability to meet its responsibilities under the Contract Documents.
13.1.2. The Construction Manager shall coordinate the activities of the Owner’s own forces and of each separate contractor with the Work of members of the Construction Team, who shall cooperate with them. The Construction Manager shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Construction Manager shall make any revisions to the Construction Schedule deemed necessary after a joint review and mutual agreement. The resulting Construction Schedules shall then constitute the schedules to be used by the Construction Manager, separate contractors and the Owner until subsequently revised. The Construction Time and Guaranteed Maximum Price will be adjusted accordingly, if appropriate.

1. When the Construction Manager’s Work is dependent upon the work of the Owner or the Owner’s separate contractors, the Construction Manager shall notify the Owner of such condition in ample time to prevent any delays to the Project’s progress.

13.2 Mutual Responsibility.

13.2.1. The Construction Manager shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Construction Manager’s construction and operations with theirs so as to produce the results indicated by or reasonably inferable from the Contract Documents.

13.2.2. If part of the Construction Manager’s Work depends for proper execution or results upon construction or operations performed by the Owner or a separate contractor, the Construction Manager shall, prior to allowing that portion of the Work to proceed, conduct an inspection and promptly report to the Owner discrepancies or defects in such other construction that would render it unsuitable for the proper execution of the Work to achieve the indicated results. The Construction Manager’s failure to report shall constitute an acknowledgment that the Owner’s or any separate contractors’ completed or partially completed construction to the extent determinable from a reasonable inspection, is fit and proper to receive the Construction Manager’s Work.

13.2.3. Costs caused by delays or by improperly timed activities or Defective construction shall be borne by the party responsible therefor.

13.2.4. Subject to the provisions of, and rights to recover from, any property insurance that the Owner is responsible to provide, the Construction Manager shall at its expense, without recovery from the Owner, under the Guaranteed Maximum Price, any contingency or otherwise, promptly remedy damage caused by any member of the Construction Team to completed or partially completed construction or to property of the Owner or separate contractors.

ARTICLE 14  SUSPENSION OF THE WORK; TERMINATION; BACKCHARGES

14.1 Suspension of the Work.

14.1.1. The Owner may, for any reason, order the Construction Manager in writing to suspend, postpone, delay or interrupt the Work in whole or in part for such period of time as Owner may determine (a “Suspension”). In the event of any Suspension, the Owner shall have the right, in its discretion, upon written notice to the Construction Manager, to keep the Agreement in effect during the period of such Suspension; provided, however, that if the Suspension equals a period of seven (7) days, the Construction Manager shall be reimbursed for the actual out-of-pocket costs incurred by the Construction Manager or its Trade Contractors directly as a result of such Suspension (such as reasonable demobilization and remobilization costs), and an appropriate extension of the Construction Time shall also be granted. If the Work is suspended for a period of more than ninety (90) days, the Construction Manager may terminate the Agreement in accordance with Section 14.4 below.
14.1.2. No reimbursement pursuant to Section 14.1.1 shall be made to the extent:

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Construction Manager is responsible; or

2. that an equitable adjustment for any particular cost item is made or denied under another provision of the Agreement.

14.1.3. In the case of a termination of the Agreement by the Construction Manager pursuant to Section 14.1.1 above, the Construction Manager’s Fee through the date of termination shall be calculated as if the termination were by the Owner for convenience pursuant to Section 14.3 below.

14.1.4. Except as specifically set forth above, no Suspension shall give rise to any cause of action or claim against the Owner for damages, loss of profits, expenses or other remuneration of any kind.

14.1.5. Notwithstanding any other provisions of the Agreement, if, such Suspension arose on account of the Construction Manager’s failure to fulfill the Construction Manager’s obligations under the Agreement or on account of any other fault of any member of the Construction Team, the Owner may withhold payment of so much of any monies which otherwise may be payable to the Construction Manager under the Contract Documents as will be sufficient to pay for the costs or damage that the Owner will suffer, and the Construction Manager shall not be entitled to any recovery on account of the Suspension. Such monies may be applied toward any damages or expenses sustained by the Owner as a result of such failure including, without limitation, any excess costs incurred by the Owner in completing the Work by the use or employment of other licensed professionals or otherwise. The Construction Manager shall remain liable to the Owner for all such damages and expenses in excess of any such monies being withheld by the Owner. The failure of the Owner to withhold monies from the Construction Manager shall not be construed as an acknowledgment by the Owner that no such damages or expenses exist and shall not prevent the Owner from thereafter making any claim against the Construction Manager therefor.

14.2 Termination by the Owner for Cause.

14.2.1. The Agreement may be terminated by Owner for cause without prejudice to any right or remedy available to Owner under the Contract Documents or at law or in equity after giving the Construction Manager and any surety seven (7) days’ prior written notice unless Construction Manager takes appropriate steps within such seven-day period to cure, or if the default is of a nature that it cannot be cured immediately, fails to commence a cure within such seven-day period and diligently pursue it to completion. However, no notice of default shall be required if the Owner has for any reason at any time previously given three (3) such notices, whether or not the Construction Manager cured the default identified in the previous notices. Reasons for termination for cause include:

1. the Construction Manager institutes proceedings or consents to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or any similar or applicable federal or state law;

2. a petition under any federal or state bankruptcy or insolvency law is filed against the Construction Manager and such petition is not dismissed within sixty (60) days from the date of said filing;

3. the Construction Manager admits in writing its inability to pay its debts generally as they become due;

4. the Construction Manager makes a general assignment for the benefit of its creditors;
5. a receiver, liquidator, trustee or assignee is appointed because of the Construction Manager’s bankruptcy or insolvency;

6. a receiver is appointed for all or any substantial portion of the Construction Manager’s properties;

7. the Construction Manager abandons the Work;

8. the Construction Manager fails to promptly and diligently perform the Services, or the Work is not prosecuted diligently in accordance with the requirements of the Contract Documents, or enough properly skilled workers or proper materials are not supplied for the Work;

9. the Construction Manager submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is untrue in any material respect;

10. the Construction Manager fails to make prompt payment of amounts properly owing to Trade Contractors, or otherwise breaches its obligations under any Trade Contract or the Agreement;

11. a Lien is claimed against any part of the Work or the Project Site by a member of the Construction Team, other than by reason of Owner’s failure to pay Construction Manager amounts to which it is entitled under the Agreement, and not promptly bonded or insured over by the Construction Manager;

12. the Construction Manager disregards or violates any Applicable Laws; or

13. any representation made by the Construction Manager in the Agreement proves untrue, or the Construction Manager otherwise violates any provision of the Agreement.

14.2.2. Upon termination of the employment of the Construction Manager, the Owner may, subject to any prior rights of the surety:

1. take possession of the Project Site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Construction Manager;

2. accept assignment of Trade Contracts pursuant to the provisions of Article 6 above; and

3. finish the Work by whatever reasonable method Owner may deem expedient.

14.2.3. When the Owner terminates the Agreement for one of the reasons stated in Section 14.2.1 above, the Construction Manager shall perform the duties described in Section 14.3.2 below and shall not be entitled to receive further payment until Final Completion of the Work and determination of the sums due pursuant to Section 14.2.5 below.

14.2.4. If requested by the Owner following a termination for cause, the Construction Manager shall remove any part or all of its equipment, machinery and supplies from the Project Site within seven (7) days from the date of such request, and in the event of the Construction Manager’s failure to do so, Owner shall have the right to remove or store such equipment, machinery and supplies at the Construction Manager’s expense.

14.2.5. If the unpaid balance of the Construction Cost exceeds all costs to the Owner of completing the Work, including increased costs resulting from Construction Manager’s default for the Owner’s staff time, then the Construction Manager shall be paid for all Work performed by the Construction Manager to the date of termination, but in no case shall the amount paid to the Construction
Manager cause the Guaranteed Maximum Price to be exceeded. If the costs to the Owner of completing the Work exceed such unpaid balance, the Construction Manager shall pay the difference, plus Interest, to the Owner within thirty (30) days after the Owner’s demand. The costs to Owner of completing the Work shall include (but only to the extent caused or exacerbated by the Construction Manager’s default) the cost of any additional architectural, legal, managerial and administrative services required, any costs incurred in retaining another construction manager or other Trade Contractors, any additional interest or fees which Owner incurs or must pay by reason of a delay in completion of the Work, attorneys’ fees and expenses, and any other damages, costs and expenses Owner may incur by reason of completing the Work.

If the Agreement is terminated by Owner, Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of Owner, for any equipment owned by the Construction Manager which Owner elects to retain and which is not otherwise included in the Construction Cost. To the extent that Owner elects to take legal assignment of Trade Contracts (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Section 14.2.5, execute and deliver all such papers and take all such steps, including the legal assignment of such Trade Contracts, as Owner may require for the purpose of fully vesting in Owner the rights and benefits of the Construction Manager under such Trade Contracts.

14.2.6. If the Owner erroneously or improperly terminates the employment of the Construction Manager for cause, then the Owner’s action shall be deemed to be a termination for convenience, subject to the provisions of Section 14.3 below.

14.3 Termination by the Owner for Convenience.

14.3.1. The Owner may, at any time, terminate the Contract in whole or in part for the Owner’s convenience and without cause. Termination by the Owner under this Section shall be by a notice of termination delivered to the Construction Manager specifying the extent of termination and the effective date.

14.3.2. Upon receipt of a notice of termination for convenience, the Construction Manager shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Section:

1. cease operations as specified in the notice and deliver to the Owner the originals or legible copies of all Drawings, Specifications, reports and other data, records and materials in the Construction’s Manager’s custody and control pertaining to the portion of the Work for which the employment of the Construction Manager was terminated;

2. enter into no additional Trade Contracts, except as necessary to complete continuing portions of the Contract;

3. terminate, on the most favorable terms possible, all Trade Contracts to the extent they relate to the Work terminated;

4. complete the performance of Work not terminated; and

5. take actions that may be necessary or that the Owner may direct, for the protection and preservation of the terminated Work and of materials, plant and equipment in transit or stored.

14.3.3. Upon such termination, the Owner shall pay, and the Construction Manager, as its sole remedy, may recover payment, including a reasonable allowance for overhead and profit, for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination, for items theretofore properly and timely fabricated off the Project Site, delivered and stored
in accordance with the Owner’s instructions, and for any actual out-of-pocket costs it incurs in complying
with Section 14.3.2 above, such as reasonable demobilization costs. The Construction Manager hereby
waives all other claims whatsoever against Owner based on the termination.

14.4 Termination by the Construction Manager.

14.4.1. The Construction Manager shall have the right to terminate the Agreement only upon the
occurrence of one of the following:

1. The Work is stopped for one hundred twenty (120) consecutive days, through no
act or fault of the Construction Manager or any of the Construction Team, due to an issuance of an order
of a court or other public authority having jurisdiction or due to an act of government, such as a
declaration of a national emergency making material unavailable.

2. The Owner fails to perform any material obligation under the Agreement and fails
to cure such default within sixty (60) days after receipt of notice from the Construction Manager stating
the nature of such default (thirty [30] days in the case of a payment default), or if the default cannot be
immediately cured, then if the Owner begins to cure within the sixty (60) day period and diligently pursues
it to completion.

3. Repeated suspensions by the Owner, other than such suspensions as are
agreed to by the Construction Manager, which constitute in the aggregate more than one hundred eighty
(180) days.

14.4.2. Upon the occurrence of one of the events listed in Section 14.4.1, the Construction
Manager may, upon ten (10) days’ additional notice to the Owner, and provided that the condition giving
rise to the Construction Manager’s right to terminate is continuing, terminate the Agreement.

14.4.3. Upon termination by the Construction Manager, the Owner will pay to the Construction
Manager the sum determined by Section 14.3.3.

1. Such payment will be the sole and exclusive remedy to which the Construction
Manager is entitled in the event of termination of the Agreement by the Construction Manager pursuant to
Section 14.4; and the Construction Manager will be entitled to no other compensation or damages
whatsoever as a result of the termination of the Agreement and expressly waives any right to claim them.

14.5 Credits to Owner.

14.5.1. In any recovery by the Construction Manager, the Owner shall be credited for (i)
payments previously made to the Construction Manager for the terminated portion of the Work, (ii) claims
which the Owner has against the Construction Manager under the Agreement and (iii) the value of the
materials, supplies, equipment or other items that are to be disposed of by the Construction Manager.

14.6 Backcharges.

14.6.1. The Owner may, in addition to any other amounts to be retained under the Contract
Documents, retain from any sums otherwise owing to the Construction Manager amounts sufficient to
cover the full costs of the Construction Manager’s failure to comply with any provision of the Contract
Documents or the Construction Manager’s negligent or intentional acts or omissions in the performance
of the Contract Documents, including, but not limited to, violation of any Applicable Law for which it is
responsible under the Agreement, including those regarding safety, hazardous materials or environmental
requirements.

14.6.2. The Owner may also backcharge against the Construction Manager for work done or
costs incurred by the Owner to remedy these or any other Construction Manager defaults, errors,
omissions or failures to perform or observe any part of the Agreement. Except in the case of an emergency, the Owner shall give the Construction Manager seven (7) days’ prior written notice before performing such actions or work or incurring such costs.

14.6.3. The cost of backcharge work shall include:

1. Incurred labor costs including all payroll additives;
2. Incurred net delivered material costs;
3. Incurred architectural, consultant, supplier and subcontractor costs directly related to performing the corrective action;
4. Equipment and tool rentals at prevailing rates in the vicinity of the Project Site; and
5. A factor of two percent (2%) applied to the total of Items 1 through 4 for the Owner’s overhead, supervision and administrative costs.
6. Interest accruing from the date of the Owner’s invoice to the Construction Manager for such costs.
7. Any fines and penalties assessed against the Owner as a result of the Construction Manager’s failure to comply with any Applicable Laws.

The Owner shall separately invoice or deduct from payments otherwise due to the Construction Manager the costs as provided herein. The Owner’s right to backcharge is in addition to any and all other rights and remedies provided in the Agreement or by law. The performance of backcharge work by the Owner shall not relieve the Construction Manager of any of its responsibilities under the Contract Documents, including express or implied warranties, specified standards for quality, and contractual liabilities and indemnifications.

ARTICLE 15 DISPUTES

15.1 Claims.

A “Claim” is (i) a demand or assertion by one of the parties seeking adjustment or interpretation of contract terms, payment of money, extension of time or other relief with respect to the terms of the Agreement or any of the Contract Documents that (ii) the parties’ respective project managers have been unable to resolve. The term “Claim” also includes all other disputes, controversies and matters in question between or among the Owner and the Construction Manager or any member of the Construction Team arising out of or in any way relating to the Agreement, the Project or the Work. Claims must be made by written notice to the other party containing as much detail as reasonably possible. The responsibility to substantiate claims shall rest with the party making the Claim.

15.2 Time Limits on Claims.

Except as otherwise specifically provided in the Agreement, Claims by either party must be made promptly and strictly within twenty-one (21) days, unless a longer period is granted in writing, after the claimant first recognizes the condition giving rise to the Claim, whether or not any impact in money or time has been determined.
15.3 Continuing Contract Performance.

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

15.4 Claims for Concealed or Unknown Conditions.

15.4.1. Subject to the provisions of Sections 3.1.5 and 4.2, if the Construction Manager discovers one (1) or both of the following physical conditions of the surface or subsurface at the Project Site, before disturbing the physical condition, the Construction Manager shall promptly notify the Owner of the physical condition in writing:

1. A subsurface or a latent physical condition at the site is differing materially from those indicated in the Contract Documents.

2. An unknown physical condition at the site is of an unusual nature differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract Documents.

If the Owner receives such a notice from the Construction Manager, the Owner shall promptly investigate the physical condition.

15.4.2. If the Owner determines that the physical conditions do materially differ and will cause an increase or decrease in costs or additional time needed to perform the Contract Documents, the Owner’s determination shall be made in writing and an equitable adjustment shall be made and the Contract Documents modified in writing accordingly.

15.4.3. The Construction Manager cannot make a claim for additional costs or time because of a physical condition unless the Construction Manager has complied with the notice requirements of this section. The Owner may extend the time required for notice under this section.

The Construction Manager cannot make a claim for an adjustment under the Contract Documents after the Construction Manager has received the final payment under the Contract Documents.

15.4.4. If the Construction Manager does not agree with the Owner’s determination, with the Owner’s consent the Construction Manager may complete performance on the Contract Documents. The Owner shall arbitrate the Construction Manager’s entitlement to recover the actual increase in the Construction Time and costs incurred because of the physical condition of the Project Site. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association and judgment rendered may be entered in any court having jurisdiction, all as provided below.

15.5 Claims for Additional Cost.

Subject to the limitations contained in Section 7.4, if the Construction Manager wishes to make a Claim for an increase in the Guaranteed Maximum Price, to the extent the Claim is reasonably discoverable, written notice of it shall be given to the Owner before the Construction Manager proceeds to execute the Work for which the Claim is made. Prior notice is not required for Claims relating to a bona fide emergency endangering life or property.

15.6 Claims for Additional Time on Account of Weather.

If adverse weather conditions falling within the definition of Force Majeure Events are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and
shall be valid only to the extent that such adverse weather conditions caused an adverse effect on the Construction Schedule.

15.7 Injury or Damage to Person or Property.

If either party suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, prompt notice of such injury or damage, whether or not insured, shall be given to all on-site representatives of the parties, and written notice shall thereafter be given within a reasonable time and not exceeding twenty-four (24) hours in the case of serious personal injury or damage or seventy-two (72) hours in all other cases after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter.

15.8 Negotiated Resolution.

15.8.1. All Claims shall initially, prior to arbitration, be submitted first to the Owner's Director of Architecture, Engineering and Construction and the Construction Manager's Project Executive for resolution by mutual agreement. Any mutual agreement reached shall be final and binding upon the parties.

15.8.2. Should such personnel fail, after at least one (1) face-to-face meeting, to arrive at a mutual agreement as to the Claim within thirty (30) business days after notice to both individuals of the Claim, prior to arbitration, such Dispute shall then be submitted to a Senior Officer from each party for resolution by mutual agreement. Any mutual agreement reached by the Senior Officers shall be binding upon the parties.

15.8.3. For purposes of this section, the term "Senior Officer" shall mean, with respect to the Construction Manager, the Construction Manager's president or chief executive officer, and with respect to the Owner, the Associate Vice President of Facilities and Operations.

15.8.4. If the Senior Officers fail, after at least one (1) face-to-face meeting, to come to a resolution by mutual agreement within thirty (30) business days, after notice to both Senior Officers of the Claim, the Claim shall be submitted to binding arbitration.

15.8.5. All applicable periods of limitation shall be tolled during the pendency of negotiations under this Section 15.8. If the parties mutually agree to defer resolution of any Claim until completion of the Work or another mutually acceptable date, all applicable limitations periods shall remain tolled until the agreed date.

15.9 Arbitration.

15.9.1. A Claim that has not been resolved in accordance with the terms and provisions of Section 15.8 hereof is a “Dispute” that shall be settled by arbitration in accordance with the terms and provisions set forth in Sections 15.9.2 through 15.10.

15.9.2. All arbitration proceedings shall be conducted in accordance with the procedure established by the American Arbitration Association for Construction Disputes of similar magnitude. Arbitration shall be commenced within a reasonable time after the parties fail to resolve a Claim in accordance with the provisions of Section 15.8. In no event shall demand for arbitration be made or permitted after the date when the institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations. All arbitration proceedings shall take place in Washtenaw County, Michigan, and shall be conducted in accordance with the “Modified Fast Track” Construction Industry Arbitration Rules set forth below in Section 15.10.
15.10  Modified Fast Track Rules

15.10.1.  Applicability.

The Modified Fast Track Rules ("MFTR") shall apply to all arbitration proceedings under the Agreement, regardless of the amount in controversy. The MFTR shall be applied as described herein, in addition to any other portion of the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") that are not in conflict with the Arbitration provisions of the General Conditions (Part 09.1, et seq.) and the MFTR.

15.10.2.  Limitation on Extensions.

In the absence of extraordinary circumstances, the AAA may grant a party no more than one seven (7) business-day extension of the time in which to respond to a demand for arbitration or counterclaim as provided in Section 15.10.3. In extraordinary instances, the AAA or the arbitrators may grant an additional extension.

15.10.3.  Changes of Claim or Counterclaim.

A party may at any time prior to the close of the hearing increase or decrease the amount of its claim or counterclaim. Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the AAA, and a copy shall be mailed to the other party, who shall have a period of five (5) business days from the date of such mailing within which to file an answer with the AAA. The arbitrators shall determine whether such new or different claims or counterclaims shall be heard together with or separately from a pending claim or counterclaim, toward the goal of assuring a just, speedy, and economical determination of all disputes.

15.10.4.  Communication of Notices.

The parties shall accept all notice from the AAA by mail, overnight delivery, telephone, email or electronic facsimile ("fax"). Such notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any notice hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

15.10.5.  Appointment and Qualification of Arbitrator.

The arbitrators shall be appointed and qualified as provided in Section 15.10.16 of these General Conditions.

15.10.6.  Preliminary Telephone Conferences.

Unless otherwise agreed by the parties and the arbitrators, as promptly as practicable after the submission of a claim, a preliminary telephone conference shall be held among the parties or their attorneys or representatives, and the arbitrators.

15.10.7.  Exchange of Exhibits.

At least five (5) business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrators are authorized to resolve any disputes concerning the exchange of exhibits.
15.10.8. **Discovery.**

Discovery shall be limited and shall be permitted only as agreed by the parties or as ordered by the arbitrators when the demands of justice require it, toward the goal of assuring a just, speedy, and economical determination of all disputes.

15.10.9. **Date, Time, and Place of Hearing.**

Where no party's claim exceeds Ten Thousand Dollars ($10,000), exclusive of claimed interest and arbitration fees and costs, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrators determine that an oral hearing is necessary. The arbitrators shall establish a fair and equitable procedure for the submission of documents.

In all other cases, unless the parties agree otherwise, there shall be a hearing. The arbitrators shall set the date, time, place of the hearing, and number of hearing days, which shall be scheduled to commence within ninety (90) days after submission to the AAA of the initial demand for arbitration as to the claim. The AAA will notify the parties in advance of the hearing date. A formal notice of hearing will also be sent by the AAA to the parties.

15.10.10. **The Hearing.**

Unless the arbitrators determine otherwise, each party shall have equal opportunity to submit its proofs and complete its case. The arbitrators shall determine the order of the hearing, and may require further submission of documents within five (5) business days after the hearing.

There will be a stenographic record. The moving party, or the complainant (as the case may be) shall make arrangements directly with a stenographer, and shall notify the other party of these arrangements in advance of the hearing. A copy shall be made available for inspection by the other party and the arbitrators, at the expense of the ordering party.

15.10.11. **Time of Award.**

Unless otherwise agreed by the parties, the award shall be rendered no later than seven (7) business days from the date of the closing of the hearing.

15.10.12. **Time Standards.**

The arbitration shall be completed by settlement or award within one hundred twenty (120) days after submission of the demand for arbitration, unless all parties and the arbitrators agree otherwise or the arbitrators extend this time in extraordinary cases when the demands of justice require it.

15.10.13. **Arbitrator's Compensation.**

Arbitrators will receive compensation as determined pursuant to Section 15.10.20 of these General Conditions.

15.10.14. All demands for arbitration must contain a statement of the Dispute sufficient for the arbitrators and the other party to understand it.

15.10.15. Discovery shall be limited to the exchange of documents relevant to the Dispute, except as otherwise ordered by the arbitrators pursuant to the MFTR.

15.10.16. The arbitration panel shall consist of three (3) individuals and shall be selected promptly after a Dispute arises in accordance with the procedure established by the American Arbitration Association for Construction Disputes of similar magnitude.
15.10.17. The parties consent to the inclusion, by consolidation or joinder or in any other reasonable manner, of other persons involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration.

1. The Owner and Construction Manager may in their joint sole discretion agree to waive the provisions of this Article 15.

15.10.18. The arbitrators shall liberally allow for the admission of evidence that is helpful in the resolution of the Dispute.

15.10.19. The agreement herein among the parties to arbitrate shall be specifically enforceable in any court having jurisdiction thereof. Any award rendered by the arbitrators pursuant to any arbitration shall be final and binding upon the parties hereto, and judgment may be entered upon it in accordance with Applicable Law in any court of competent jurisdiction. The parties agree that this matter involves interstate commerce and, as such, the Federal Arbitration Act will be applicable to any arbitration arising out of the Agreement, notwithstanding the provisions of Section 15.1.

15.10.20. Each party in any arbitration proceeding shall be responsible for its own costs, expenses and charges, including, without limitation, attorneys’ fees. The fees paid to the arbitrators (which may include “retainers” or “stand-by” fees) shall be shared equally by the Owner and the Construction Manager; provided, however, that the fees for any particular arbitration proceeding shall be divided equally among the parties to the proceeding. The arbitrators shall fix their own compensation on a reasonable basis, together with the time and manner of payment. Any costs paid by the Construction Manager under this Article 15 shall be at the Construction Manager’s sole expense and shall not be subject to recovery through any method whatsoever, including the Guaranteed Maximum Price or any contingency.

15.10.21. Memorialization. The resolution of all Disputes under this Article 15 resulting in a change in the Guaranteed Maximum Price or the Construction Time shall be memorialized by a Change Order.

15.10.22. Waiver. Claims must be asserted and pursued strictly in accordance with the provisions of this Article 15 shall be deemed to have been waived and forever barred, regardless of whether the other party is prejudiced thereby.

15.10.23. Survival. The provisions of this Article 15 shall survive completion of the Work and termination of the Agreement.

ARTICLE 16 MISCELLANEOUS PROVISIONS

16.1 Choice of Law.

The Agreement shall be governed by and construed in accordance with the laws of the State of Michigan that are applied to contracts made and to be performed in that state.

16.2 Binding Effect.

Subject to the limitations of Section 16.3 below, the Agreement shall be binding upon the Owner and the Construction Manager, respectively, and their partners, successors, assigns and legal representatives.

16.3 Assignment.

Because of the unique and personal services offered by the Construction Manager and its ownership and staff, the Construction Manager shall not assign, encumber, pledge, sublet or transfer any
interest in the Agreement without the written consent of the Owner. The Construction Manager shall notify the Owner immediately in writing of any significant changes in its ownership or organization or in the ownership or organization of any of its constituent entities. A change in a majority of the ownership of the Construction Manager shall be deemed an assignment of the Agreement.

16.3.1. The Construction Manager shall not assign the whole or any part of the Agreement, or any monies due or to become due, without the express written consent of the Owner. If the Construction Manager, with the Owner’s consent, assigns all or any part of the Agreement or any monies due or to become due, the instrument of assignment shall contain a clause satisfactory to the Owner and stating that it is agreed that the right of the assignee in and to any monies due or to become due to the Construction Manager shall be subject to the prior claims of all persons, firms and corporations for services rendered or materials supplied for the performance of the Work called for in the Agreement.

16.4 Remedies Not Exclusive.

Except to the extent they are designated as a party’s “sole” or “exclusive” remedy, the remedies provided in the Agreement shall be in addition to, and not in substitution for, the rights and remedies which would otherwise be vested in either party hereto, under law or at equity, all of which rights and remedies are specifically reserved by each party; and the failure to exercise any remedy provided for in the Agreement shall not preclude the resort to any such remedy for future breaches by the other party, nor shall the use of any special remedy hereby provided and not designated as a party’s “sole” or “exclusive” remedy prevent the subsequent or concurrent resort to any other remedy which by law or equity would be vested in either party for the recovery of damages or otherwise in the event of a breach of any of the provisions of the Agreement to be performed by the other party.

16.5 Submission to Proceedings.

If the Owner is a party to any litigation or arbitration with respect to the Project involving a common question of law or fact (whether as plaintiff, defendant or third-party defendant), the Construction Manager consents to being joined in such action and to the jurisdiction of the court in which the action is instituted (if the Construction Manager is named as a defendant or impleaded as a third-party defendant) and to service of process by that court; and the Construction Manager waives any right to contest its joinder in such action on the grounds of improper jurisdiction or venue.

16.6 No Personal Liability.

In carrying out any of the provisions of the Agreement, or in exercising any power or authority granted to them by or within the scope of the Agreement, there shall be no personal liability upon the members of the Owner’s Board of Regents or any officers, employees or representatives of the Owner, either personally or as public officials, it being understood that in all such matters they act solely as agents and representatives of the Owner.

16.7 Integration.

The Contract Documents represent the entire and integrated agreement between the Owner and the Construction Manager and supersede all prior negotiations, representations, or agreements, either written or oral. The Agreement may be amended only by written instrument signed by both the Owner and the Construction Manager. The Agreement shall, if possible, be construed to render each of their provisions valid and enforceable. However, if any part, term or provision of the Agreement is held by the final judgment of any court of competent jurisdiction to be illegal, invalid or unenforceable, the validity of the remaining portions or provisions shall not be impaired or affected, and the rights and obligations of the parties shall be construed as having been written to include terms that are the maximum protection enforceable under law, and shall be enforced as if the Agreement did not contain the particular part, term or provision held to be illegal, invalid or unenforceable.
16.8 Third-Party Beneficiaries.

Nothing contained in the Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or the Construction Manager. There are no third-party beneficiaries to the Agreement. However, it is understood and agreed that the Owner is and shall be designated an intended third-party beneficiary of all contracts for design or engineering services, Trade Contracts, and other agreements between Construction Manager and other members of the Construction Team.

16.9 Waiver.

No term or provision of the Agreement shall be deemed waived and no breach excused unless either (i) waiver or bar is required by the terms of the Agreement or (ii) such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, nor waiver of, or excuse for any other different or subsequent breach. THE PARTIES WISH TO AVOID CLAIMS AND DISPUTES OF AN ATTENUATED NATURE AND THOSE WHICH ARE NOT PROMPTLY IDENTIFIED. ACCORDINGLY, THE AGREEMENT CONTAINS A NUMBER OF SOMEWHAT UNUSUAL PROVISIONS STATING IN ONE WAY OR ANOTHER THAT POTENTIAL CLAIMS, REQUESTS, DEMANDS, DISPUTES AND THE LIKE WILL BE BARRED OR WAIVED IF THERE IS NOT STRICT COMPLIANCE OR IF A STATED PROCEDURE IS NOT STRICTLY FOLLOWED. THE PARTIES HAVE INCLUDED THESE PROVISIONS TO MAKE CLEAR THEIR ELECTION TO KNOWINGLY AND FREELY CREATE PARAMETERS THAT ARE ABSOLUTELY BINDING UNDER ALL CIRCUMSTANCES WHATSOEVER (UNLESS A WAIVER HAS BEEN REQUESTED IN WRITING AND GRANTED IN WRITING), EVEN IF THE RESULT WOULD SEEM TO A THIRD PARTY TO BE HARSH OR INEQUITABLE. IF EITHER PARTY ATTEMPTS TO RAISE A MATTER IN VIOLATION OF ONE OR MORE OF THESE PARAMETERS, THE OTHER SHALL BE ENTITLED TO IMMEDIATE SUMMARY DISPOSITION AND SHALL BE AWARDED ITS COSTS AND REASONABLE ATTORNEYS’ FEES.

16.10 Construction.

Both parties have had the Agreement reviewed by knowledgeable counsel and have negotiated its terms to the extent they deem necessary. Accordingly, no part of the Agreement shall be strictly construed against either party, regardless of which party drafted it.

16.11 Headings.

The headings and captions of the Articles and Sections in the Agreement are for convenience only, and shall not govern the construction, or alter, vary, or change any of the terms, conditions, or provisions of the Agreement or any Articles or Sections hereof, nor shall they in any way limit the obligations of the Construction Manager to perform the Services.

16.12 Ownership of Documents.

The Drawings, Specifications, and other documents and all data used in compiling, and the results of, any tests, surveys or inspections at the Project Site, as well as all photographs, drawings, specifications, schedules, data processing output, computer-aided design/drafting (CADD) system disks/tapes, computations, studies, audits, reports, models and other items of like kind, and all intellectual property, prepared or created for or in connection with the Project and required to be left at the Project Site, regardless of whether they were prepared by the Owner, the Construction Manager, or a third party, belong to the Owner. The Construction Manager may retain one Contract record set. All copies of them, except Construction Manager’s record set, shall be returned or suitably accounted for upon completion of the Work. They are for use solely with respect to the Project. The Construction Manager shall not, without the prior written consent of the Owner, use or permit anyone to use any Drawings, Specifications, or other documents prepared for or in connection with the Project, or any concepts or ideas developed in
connection with the Project, for any purpose other than the Project. The Owner shall at all times have access to and control over the disposition of any Drawings, Specifications, and other documents pertaining to the Project.

16.13 Confidentiality.

16.13.1. The Construction Manager shall not knowingly or negligently communicate or disclose at any time to any person any information concerning the Work or the Project, except: (i) with prior written consent of the Owner, (ii) information which has become part of the public domain prior to the date of the Agreement, (iii) information which becomes part of the public domain by means other than an unauthorized act or omission of the Construction Manager, or (iv) as may be required to perform the Work or by any Applicable Law or to its professional advisors or lender (all of whom shall be required to maintain such information in confidence).

16.13.2. The Construction Manager shall promptly upon the request of the Owner return and surrender to the Owner the original or legible copies of any materials, records, notices, memoranda, recordings, Drawings, Specifications and mock-ups and any other documents furnished by the Owner to the Construction Manager.

16.13.3. The Construction Manager shall maintain, and shall cause all members of the Construction Team, and its and their directors, officers, employees, and agents, to maintain, during and after the term of the Agreement, the confidentiality of all trade secrets, know-how, confidential data or other proprietary information of the Owner when designated as such and shall not use such information for any purpose whatsoever except for uses permitted by Section 16.13.1.

16.13.4. The Construction Manager shall not identify, either expressly or by implication, the Owner, or its corporate affiliates, or use any of their trademarks, trade names, service marks, other proprietary marks, or reference the Services performed under the Agreement, in any advertising, press releases, publicity matters, or other promotional materials without the Owner’s prior written permission.

16.13.5. The Construction Manager shall not, without the express written consent of the Owner, discuss the Work or any part thereof with persons under circumstances in which such communications can reasonably be expected to be published in newspapers, magazines or trade journals or broadcast on radio or television. This restriction shall not apply to statements consistent with a crisis management plan development and agreed to by both parties with respect to the Work. This restriction also shall not apply to any fair response by the Construction Manager to publicity released by the Owner that is detrimental to the reputation of the Construction Manager. Any such contact shall be referred to the Owner for response. Further, without the Owner’s consent, the Construction Manager shall not participate in professional or trade seminars or publish or submit articles for publication, the subject of which is, in whole or in part, the Work. Any such proposed article or publication shall be submitted to the Owner for review and approval, which shall not be unreasonably withheld.

16.13.6. The Construction Manager shall cause all members of the Construction Team to specifically acknowledge that the provisions of this Section 16.13 are binding upon them.

16.14 Patents and Copyrights.

16.14.1. Whenever any invention or discovery is made or conceived by the Construction Manager in connection with the Project, the Construction Manager shall furnish the Owner with complete information regarding the invention or discovery and the Owner shall have the sole power to determine whether and where a patent application shall be filed and to determine the disposition of title to and all rights under any application or patent that may result. The Construction Manager shall, at the Owner’s expense, execute all documents and do all things necessary or proper with respect to such patent application.
16.14.2. Whenever any copyright is secured in connection with the Project, title and all rights to such copyright will vest in the Owner.

16.14.3. The Construction Manager warrants that the Construction Manager's and/or the Owner's use of products, process, techniques and methodologies recommended by the Construction Manager or developed by the Construction Manager shall not infringe upon the copyright, patent or other proprietary rights of others. The Construction Manager shall pay all royalties and license fees within the Guaranteed Maximum Price. The Construction Manager shall defend all suits or claims for infringement of patent rights and shall save the Owner harmless from loss on account thereof, except for such suits or claims which arise from a product or process required by the Contract Documents and where the Construction Manager had no knowledge of such infringement.

ARTICLE 17 STATUTORY REQUIREMENTS

17.1 Non-Discrimination Provision and Wage and Hour Act.

During the performance of the Work, the Construction Manager agrees as follows:

17.1.1. The Construction Manager 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.

17.1.2. 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 Construction Manager 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.

17.1.3. The Construction Manager will, in all solicitations, or advertisements for employees, placed by or on behalf of the Construction Manager, 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.

17.1.4. The Construction Manager will send to each labor union or representative of worker with which the Construction Manager has a collective bargaining agreement or other contract or understanding, a notice, advising the labor union or workers' representative of the Construction Manager's commitments under Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

17.1.5. The Construction Manager 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.

17.1.6. The Construction Manager 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 Construction Manager shall permit access to the Construction Manager'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.

17.1.7. In the event of the Construction Manager’s noncompliance with the non-discrimination clauses of the Contract Documents, or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part, and the Construction Manager may be declared ineligible for future Owner 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.

17.1.8. The Construction Manager will include the provisions of paragraphs .1 through .7 of this Article in every Trade Contract 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 Trade Contractor. The Construction Manager will take such action with regards to any Trade Contract 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 Construction Manager becomes involved in, or is threatened with litigation with a Trade Contractor as a result of such direction by the administering agency, the Construction Manager may request the United States of America to enter into such litigation to protect the interests of the United States of America.

17.1.9. The Owner may require the Construction Manager and Trade Contractors to provide a written affirmative action program for this project, and if it does, there shall be an equitable adjustment to the Guaranteed Maximum Price.

17.2 Prevailing Wage and Fringe Benefit Rates.

17.2.1. The Construction Manager, Trade Contractors and Subcontractors shall comply with the State of Michigan Prevailing Wage Act, MCL 408.551, et seq., or any successor act.

17.2.2. The rates of wages and fringe benefits to be paid to each class of "construction mechanics" (as that term is defined in the Prevailing Wage Act) by the Construction Manager, Trade Contractors and 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 Occupational Safety and Health Administration Wage & Hour Division of the Department of Licensing and Regulatory Affairs.

17.2.3. The Construction Manager 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 Documents 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 the Work. This record shall be available for reasonable inspection.

17.2.4. Upon request, the Construction Manager, Trade Contractors and Subcontractors shall promptly submit to the Owner their monthly certified payroll records and any other information requested by the Owner to complete a Prevailing Wage Act compliance audit.

17.2.5. The Owner, by written notice to the Construction Manager, and to the surety of the Construction Manager, may terminate the Construction Manager's right to proceed with that part of the Work 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 Construction Manager and the Construction Manager's surety shall be liable to the Owner for any excess costs occasioned thereby, including all Owner audit costs. 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.

17.2.6. 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 Construction Manager, 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.
17.3 Compliance with “Kick-Back” Statute.

All members of the Construction Team 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 Construction Managers and Trade Contractors—The Secretary of Labor shall make reasonable regulations for Construction Managers and Trade Contractors 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 Construction Manager and Trade Contractor shall furnish weekly a sworn affidavit with respect to the wages paid each employee during the preceding week.”

17.4 Medicare and Medicaid Provisions.

If it is determined that section 952 of 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 Work, then until the expiration of four years after the furnishings of services required by the Contract Documents, the Construction Manager 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 Documents, any books, documents, and records of such Construction Manager which are deemed necessary to certify the nature and extent of costs for services furnished under the Contract Documents, and if the Construction Manager carries out any of the duties of the Contract Documents through a Trade Contract with a value or cost of Ten Thousand Dollars ($10,000) or more over a twelve (12) month period, with a related organization, such Trade Contract shall also contain a clause binding the Trade Contractor to the identical provisions contained in this Article.

17.5 Michigan Right to Know.

The Construction Manager shall comply with and be governed by all state and federal acts as they pertain to the safety of its employees while working on the Owner’s property. The acts are set forth in the Federal Occupational Safety and Health Act (OSHA) and the Michigan Occupational Safety and Health Act (MIOSHA). Additionally, Section 14a to 1 of Act 80, Public Act of 1986 as it prescribes and regulates working conditions, duties of employers and employees relative to occupational and construction health and safety apply.

17.5.1. The Construction Manager shall furnish a list of all hazardous or suspected hazardous chemicals that will be used during construction. Hazardous chemicals shall be properly labeled and
have applicable hazard warning attached. Examples of hazardous chemicals/products are welding rods, combustible gases and liquids, etc. All hazardous or suspected hazardous chemicals used during construction shall be handled and stored in compliance with all Applicable Laws.

17.5.2. Material safety and data sheets (MSDS) for all hazardous chemicals and products utilized during the progress of the Work shall be available for inspection upon request and also available for construction employees.

17.5.3. The Owner will in turn upon request provide a list of hazardous chemicals/products and their locations within the construction area to the Construction Manager. Material safety data sheets will be available for review and inspection in a central location upon request.