

**City of Bay City**  
**General Conditions**



## ARTICLE 1 - GENERAL PROVISIONS

### SECTION A BASIC DEFINITIONS

- 1.A.1. CHANGE ORDER. A Change Order is a written instrument prepared by the CITY ENGINEER and signed by the OWNER and CONTRACTOR, issued after the date of the Agreement, stating their agreement upon all of the following:
- A. An addition, deletion or revision in the Work;
  - B. The amount of the adjustment in the Contract Price, if any; and
  - C. The extent of the adjustment in the Contract Time, if any.
- 1.A.2. CLAIM. A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the OWNER and CONTRACTOR arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.
- 1.A.3. CONTRACT FOR CONSTRUCTION. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the OWNER and a Subcontractor or (2) between any persons or entities other than the OWNER and CONTRACTOR.
- 1.A.4. CONTRACT DOCUMENTS. The Contract Documents consist of the Contract between OWNER and CONTRACTOR (hereinafter the Contract or Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Contractor's Bid (including documentation accompanying the Bid and any post-Bid documentation submitted prior to the Notice of Award), the Bid, Performance, Payment, Maintenance Guarantee and any other Bonds, BAY CITY STANDARD SPECIFICATIONS FOR CONSTRUCTION, Drawings, Plans, Specifications, the Advertisement or Invitation to Bid, Instructions to Bidders, Proposal Form, sample forms, addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a field order for a minor change in the Work issued by the CITY ENGINEER.

- 1.A.5. CONTRACTOR. The CONTRACTOR is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “CONTRACTOR” means the CONTRACTOR or the CONTRACTOR's authorized representative.
- 1.A.6. CONTRACT PRICE. The Contract Price is stated in the Agreement and, including authorized adjustments, is the total amount payable by the OWNER to the CONTRACTOR for performance of the Work under the Contract Documents.
- 1.A.7. CONTRACT TIME. Contract Time is the period of time, including authorized adjustment, allotted in the Contract Documents for completion of the Work. Substantial completion of part or all of the Work shall precede the Contract Time.
- 1.A.8. CONSTRUCTION CHANGE DIRECTIVE. A Construction Change Directive is a written directive to the CONTRACT, issued after the date of the Agreement and signed by the CITY ENGINEER, ordering an addition, deletion or revision in the Work, or responding to differing or unforeseen physical conditions under which the Work is to be performed or to emergencies. The Construction Directive may not change the Contract Price or the Contract Time, but is evidence that the parties expect that the change directed or documented by a Construction Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Time.
- 1.A.9. DATE OF COMMENCEMENT. The date of commencement of the Work is the date established in the Notice to Proceed. The date shall not be postponed by the failure to act of the CONTRACTOR or of persons or entities for whom the CONTRACTOR is responsible.
- 1.A.10. DATE OF SUBSTANTIAL COMPLETION. The date of Substantial Completion is the date certified by the CITY ENGINEER in accordance with Article 10.
- 1.A.11. DAY. The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.
- 1.A.12. FIELD ORDER. A written order issued by CITY ENGINEER which orders minor changes in the Work but which does not involve a change in the Contract Price or the Contract Time.

- 1.A.13. NOTICE OF TENTATIVE AWARD. The written notice by CITY ENGINEER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, with the time specified and upon the approval of the OWNER's Commission, OWNER will sign and deliver the Agreement.
- 1.A.14. NOTICE TO PROCEED. A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR's obligations under the Contract Documents.
- 1.A.15. OWNER. The OWNER is the City of Bay City, Michigan, with whom CONTRACTOR has entered into the Agreement and for whom the Work is to be provided. The term "OWNER" means the OWNER or the OWNER's authorized representative, and shall include OWNER's Commission, officers, departments and employees.
- 1.A.16. PLANS. The Plans are the graphic and pictorial portions of the contract Documents, wherever located and whenever issued, showing the design, character, scope, location and dimension of the Work, generally including plans, elevations, sections, details, schedules and diagrams.
- 1.A.17. PROJECT. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the OWNER or by separate contractors.
- 1.A.18. SAMPLES. Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 1.A.19. SHOP DRAWINGS. Shop Drawings are the drawings, diagrams, schedules and other data specially prepared for the Work by or for the CONTRACTOR or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work, and includes all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a manufacturer, supplier or distributor.
- 1.A.20. SPECIFICATIONS. The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards and workmanship for the Work, and performance of related services.
- 1.A.21. SUBCONTRACTOR. A Subcontractor is a person or entity who has direct contract with the CONTRACTOR to perform all or a portion of the Work at the

site which the CONTRACTOR has agreed to perform. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a separate contractor or subcontractors of a separate contractor.

- 1.A.22. SUB-SUBCONTRACTOR. A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.
- 1.A.23. SUBSTANTIAL COMPLETION. When the Work (or a specified part thereof) has progressed to the point where, in the opinion of CITY ENGINEER, it is sufficiently complete, in accordance with the Contract Documents, so that the Work (or specified part) can be utilized for the purpose or use for which it is intended. The terms “substantially complete” and “substantially completed” as applied to any Work refer to Substantial Completion thereof.
- 1.A.24. SUPPLEMENTARY CONDITIONS. The part of the Contract Documents which amends or supplements these General Conditions.
- 1.A.25. SUPPLIER. A manufacturer, fabricator, supplier, distributor, materialman or vendor.
- 1.A.26. UNDERGROUND FACILITIES. All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems, or water.
- 1.A.27. WORK. The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the CONTRACTOR to fulfill the CONTRACTOR's obligations. The Work may constitute the whole or a part of the Project.

## SECTION B INTENT & CORRELATION

- 1.B.1. INTENT & CORRELATION OF CONTRACT DOCUMENTS. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the CONTRACTOR. The Contract Documents are complementary, and what is required by one shall be as binding as if

required by all; performance by the CONTRACTOR shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results. Any Work, labor, tools, light, power, materials, equipment, transportation and other facilities that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied by the CONTRACTOR whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the Laws or Regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or Laws or Regulations in effect at the time of the Effective Date of the Agreement, except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER or CONTRACTOR, or any of their consultants, agents, subcontractors or employees from those set forth in the Contract Documents, nor shall it be effective to assign to CITY ENGINEER, or any of OWNER's consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of Article 2, Section A. Clarifications and interpretations of the Contract Documents shall be issued by CITY ENGINEER as provided in Article 2, Section A, or as otherwise set forth in the Contract Documents.

## ARTICLE 2 – OWNER'S RESPONSIBILITIES

### SECTION A CITY ENGINEER

- 2.A.1. OWNER'S REPRESENTATIVE. The CITY ENGINEER will be OWNER's representative during the construction period. The duties and responsibilities and the limitations of authority of CITY ENGINEER as OWNER's representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER.

- 2.A.2. VISITS TO SITE. The CITY ENGINEER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. The CITY ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work. On the basis of such visits and on-site observations, CITY ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.
- 2.A.3. CLARIFICATIONS AND INTERPRETATIONS. The CITY ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) on written request of CONTRACTOR or as CITY ENGINEER may determine as necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents. If CONTRACTOR believes that a written clarification or interpretation justifies an increase in the Contract Price or an extension of the Contract Time and the parties are unable to agree to the amount or extent thereof, CONTRACTOR may make a claim therefore as provided in Articles 8 and 10. The CITY ENGINEER's decision will be final if consistent with the intent expressed in the Contract Documents.
- 2.A.4. LIMITATIONS ON CITY ENGINEER'S RESPONSIBILITIES.
- 2.A.4.1. Neither CITY ENGINEER's authority to act under this Article nor elsewhere in the Contract Documents nor any decision made by CITY ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of CITY ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.
- 2.A.4.2. Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved", or terms of the like or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper" or "satisfactory" or adjectives of like effect or import are used to describe a requirement, direction, review or judgment of CITY ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign to CITY ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 2.A.4.3.

- 2.A.4.3. The CITY ENGINEER will not have control over or charge of and will not be responsible for construction means, methods, modes, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the CONTRACTOR's responsibility. The CITY ENGINEER will not be responsible for the CONTRACTOR's failure to carry out the Work in accordance with the Contract Documents. The CITY ENGINEER will not have control over or charge of and will not be responsible for acts or omissions of the CONTRACTOR, Subcontractors, Suppliers or their agents or employees, or of any other persons or entities performing or furnishing any portion of the Work.
- 2.A.5. AUTHORIZED VARIATIONS IN WORK. The CITY ENGINEER may authorize minor variations in the Work from the requirements of the contract Documents which do not involve an adjustment in the Contract Price or the contract Sum and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order and will be binding on CONTRACTOR who shall perform the Work involved promptly. If CONTRACTOR believes that a Field Order justifies an increase in the Contract Price or an extension of the Contract Time, CONTRACTOR may make a claim therefore as provided in Articles 8 and 10.
- 2.A.6. REVIEW CONTRACTOR'S SUBMITTALS. The CITY ENGINEER will review and approve to take other appropriate action upon the CONTRACTOR's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The CITY ENGINEER's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the OWNER, CONTRACTOR or separate contractors, while allowing sufficient time in the CITY ENGINEER's professional judgment to permit adequate review. Review of such 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 CONTRACTOR as required by the Contract Documents. The CITY ENGINEER's review of the CONTRACTOR's submittals shall not relieve the CONTRACTOR of the obligations under Articles 3 and 9. The CITY ENGINEER'S review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the CITY ENGINEER, of any construction means, methods, modes, techniques, sequences or procedures. The CITY ENGINEER's approval of a specific item shall not indicate approval of any assembly of which the item is a component.
- 2.A.7. DECISIONS ON DISPUTES. The CITY ENGINEER will be the interpreter of the requirements of the contract Documents and judge of the acceptability of the

Work thereunder. Claims, disputes and other matters relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 8 and 10 in respect of changes in the Contract Price or Contract Time will be referred to CITY ENGINEER in writing with a request for a formal decision in accordance with Article 10.

- 2.A.8. AUTHORITY TO REJECT WORK. The CITY ENGINEER will have authority to disapprove and/or reject Work which does not conform to the Contract Documents. Whenever the CITY ENGINEER considers it necessary or advisable for implementation of the intent of the Contract Documents, the CITY ENGINEER will have authority to require additional and/or special inspections or testing of the work, whether or not such Work is fabricated, installed or completed. However, neither this authority of the CITY ENGINEER nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the CITY ENGINEER to the CONTRACTOR, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing portions of the Work.
- 2.A.9. PREPARATION OF CHANGE ORDERS. The CITY ENGINEER will prepare Change Orders and construction Change Directives, and may authorize minor changes in Work.
- 2.A.10. LIMITED AUTHORITY OF CITY ENGINEER. Unless specifically otherwise set forth in the Contract Documents the CITY ENGINEER shall not and does not have the authority to promise or grant any increase in the Contract Price or a material change in the Contract, including an increase in the Contract Time, unless made pursuant to formal action by the City Commission of the OWNER, and in the absence of such formal action any such promise or grant shall not be binding upon OWNER.

SECTION B  
FURNISHING OF CONTRACT  
DOCUMENTS AND SITE FOR THE WORK

- 2.B.1. COPIES OF DOCUMENTS. OWNER shall furnish to CONTRACTOR copies of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction. The OWNER shall also furnish CONTRACTOR with reasonable promptness, additional instructions, drawings or plans necessary for the proper execution of the Work.

- 2.B.2. SURVEYS, REFERENCE POINTS, INSTRUCTIONS. The OWNER will furnish surveys, lines and grades describing physical characteristics, legal limitations and utility locations which are known to OWNER for the site of the Project, and a legal description of the site. OWNER shall also provide engineering surveys to establish reference points for construction which in CITY ENGINEER's judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified in the Contract Documents), make its own careful and accurate measurements, shall construct the Work accurately to the lines furnished by the CITY ENGINEER, shall protect and preserve the established benchmarks, reference points and stakes and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to CITY ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by professionally qualified personnel.
- 2.B.3. AVAILABILITY OF LANDS; PHYSICAL CONDITIONS; REFERENCE POINTS. OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the work is to be performed rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures and permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in OWNER's furnishing these lands, rights-of-way or easements entitles CONTRACTOR to an extension of Contract Time, CONTRACTOR may make a claim therefore as provided in Article 8. CONTRACTOR shall provide at its expense all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment, or for use as disposal or borrow areas. The CONTRACTOR shall obtain any permits (including NPDES or other permits required under any applicable environmental law, rule or regulation), licenses or easements relating to all addition lands. OWNER will not be required nor expected to furnish any lands for the disposal of soils, spoils, excavations, debris or other materials, including those which contain or may contain contaminants or hazardous wastes or materials.
- 2.B.4. SUBSURFACE & LATENT PHYSICAL CONDITIONS. The CONTRACTOR shall immediately notify the CITY ENGINEER in writing, of any subsurface and/or latent physical conditions on the site, or in existing structures that differ materially from those indicated and/or referred to in these Contract Documents. The CITY ENGINEER shall promptly investigate condition and order any additional investigation and/or test. If the CITY ENGINEER finds that the results of such additional investigations and/or test indicates that there are subsurface or latent physical conditions that differ materially from those set forth in the Contract Documents, and which could not have been reasonably anticipated by

the CONTRACTOR, a Change Order shall be issued to incorporate the necessary revisions. Failure of the CONTRACTOR to immediately notify the CITY ENGINEER, in writing, of the subsurface and/or latent physical conditions shall be deemed acceptance of these conditions and shall not constitute grounds for a Change Order.

SECTION C  
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

- 2.C.1. OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS. OWNER may perform other work related to the Project at the site by OWNER's own forces, have other work performed by utility owners or let other direct contracts therefore which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if CONTRACTOR believes that such performance will involve additional expense to CONTRACTOR or requires additional time and the parties are unable to agree as to the extent thereof, CONTRACTOR may make a claim therefore as provided in Articles 8 and 10.
- 2.C.2. ACCESS TO SITE. CONTRACTOR shall afford each utility owner and other contractor who is a party to such a direct contract (or OWNER, if OWNER is performing the additional work with OWNER's employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of CITY ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contrasts between OWNER and such utility owners and other contractors.
- 2.C.3. REPORT OF DELAYS, DEFECTS, OR DEFICIENCIES. If any part of CONTRACTOR's Work depends for proper execution or results upon construction or operations by any such other contractor or utility owner (or OWNER), CONTRACTOR shall, prior to proceeding with that portion of the Work, inspect and promptly report to CITY ENGINEER in writing any delays, defects or deficiencies in such other construction that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR's failure to report will constitute an acceptance of the other work as fit and proper for

integration with CONTRACTOR's Work, except for latent or nonapparent defects and deficiencies in the other work.

- 2.C.4. COORDINATION. The CITY ENGINEER shall provide for coordination of the activities of the OWNER's own forces and of each separate contractor with the Work of the CONTRACTOR, who shall cooperate with them. The CONTRACTOR shall participate with other separate contractors and the OWNER in reviewing their construction schedules when directed to do so. The CONTRACTOR shall make any revisions to the construction scheduled and Contract Price deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the CONTRACTOR, separate contractors and the OWNER until subsequently revised.
- 2.C.5. COSTS FOR DELAYS. Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefore.
- 2.C.6. REMEDYING DAMAGE. The CONTRACTOR shall promptly remedy damage wrongfully caused by the CONTRACTOR to completed or partially completed construction or to property of the OWNER or separate contractors.
- 2.C.7. OWNER'S RIGHT TO CLEANUP. If a dispute arises among the CONTRACTOR, separate contractors and the OWNER as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the OWNER may clean up and allocate the cost among those responsible as the CITY ENGINEER determines to be just.

## ARTICLE 3 – CONTRACTOR'S RESPONSIBILITIES

### SECTION A PRELIMINARY MATTERS

- 3.A.1. EXAMINATION OF WORK SITE. The CONTRACTOR shall, by personal and careful examination of the site of the Work, satisfy himself as to all local conditions affecting its performance of the Contract, including but not limited to, the nature and location of the Work, the conformation of the ground, the character, quality and quantity of the materials to be encountered, subsurface conditions, the character and quantity of equipment and facilities needed preliminarily to and during the prosecution of the Work, and all other matters which can in any way affect the Work under this Contract. Professions of ignorance regarding the requirements of the Work shall not serve in any manner whatsoever to modify the provisions of the contract or provide any basis in an increase in the Contract Price or in the Contract Time.

3.A.2. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR. Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents with each other and check and verify pertinent figures shown therein. CONTRACTOR shall promptly report in writing to CITY ENGINEER any conflict, error, inconsistency, omission or discrepancy which CONTRACTOR may or should have in the exercise of reasonable diligence discovered and shall obtain a written interpretation or clarification from CITY ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER for failure to report any conflict, error, inconsistency, omission, or discrepancy in the Contract Documents, unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof. The CONTRACTOR shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the CONTRACTOR with the Contract Documents before commencing activities. Conflicts, errors, inconsistencies, omissions or discrepancies discovered shall be reported to the CITY ENGINEER at once. If the CONTRACTOR performs any construction activity knowing it involves a recognized conflict, error, inconsistency, omission or discrepancy in the Contract Documents or in the field measurements or conditions without such notice to the CITY ENGINEER, the CONTRACTOR shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the attributable costs for correction.

3.A.3. DELIVERY OF BONDS AND INSURANCE CERTIFICATES/POLICIES. CONTRACTOR shall deliver to OWNER such bonds and certificates or policies of insurance as CONTRACTOR, or any subcontractor, may be required to furnish in accordance with Article 6, or in any other contract Document within ten (10 ) days of the Owner's Commission's approval of the Contract unless a shorter period is set forth in a Notice to Proceed. In no event shall CONTRACTOR commence any of the Work until such bonds and certificates of insurance have been provided to and approval by the OWNER. CONTRACTOR's failure, refusal or neglect to provide the required bonds and insurances within this time frame shall give OWNER, at its sole discretion, the right to immediately terminate the Contract without recourse by CONTRACTOR. CONTRACTOR waives and releases OWNER from all legal and equitable remedies it may have against OWNER if it fails, refuses or neglects to provide the required bonds and insurances.

3.A.4. PERFORMANCE OF THE WORK

3.A.4.1. The CONTRACTOR shall perform the Work in accordance with the Contract Documents.

3.A.4.2. Continuing the Work. CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with the OWNER. No

Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as CONTRACTOR and OWNER may otherwise agree in writing.

3.A.5. ERRORS AND PHYSICAL CONDITIONS.

3.A.5.1. Errors. If the CONTRACTOR, in the performance of the Work, finds any error, conflict, omission, inconsistency or discrepancy in the Contract Documents or between the Contract Documents and the physical conditions of the locality, it shall be his duty to immediately inform the CITY ENGINEER in writing at once and before proceeding with the Work affected thereby and shall obtain a written interpretation or clarification from the CITY ENGINEER; however, CONTRACTOR shall not be liable to OWNER for failure to report any error, conflict, omission, inconsistency or discrepancy in the Contract Documents unless CONTRACTOR HAD ACTUAL KNOWLEDGE THEREOF OR SHOULD REASONABLY HAVE KNOWN THEREOF. Any work done after such discovery, until authorized, will be done at the CONTRACTOR'S risk.

3.A.5.2. Physical Conditions.

(1) Explorations and Reports. Reference is made to the Instructions to Bidders and Supplementary conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by CITY ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon nontechnical data, interpretations or opinions contained therein or for the completeness thereof for CONTRACTOR's purposes. Except as indicated in the immediately preceding sentence and in paragraphs 3.A.5.2.(1) and 3.B.4.3, CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site.

(2) Existing Structures. Reference is made to the Instructions to Bidders and Supplementary Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to Paragraph 3.A.5.3) which are at or contiguous to the site that have been utilized by CITY ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR's purposes. Except as indicated in the immediately preceding sentence and in Paragraph 3.A.5.2.(1), CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

(3) Report of Differing Conditions. If CONTRACTOR believes that any technical data on which CONTRACTOR is entitled to rely is inaccurate, or any physical condition uncovered or revealed at the site differs materially from that indicated,

reflected or referred to in the Contract Documents, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work in connection therewith (except in an emergency as permitted by Paragraph 3.B.2.9.), notify the CITY ENGINEER in writing about the inaccuracy or difference.

(4) CITY ENGINEER's Review. The CITY ENGINEER will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise CONTRACTOR of the CITY ENGINEER's findings and conclusions.

(5) Possible Document Change. If the CITY ENGINEER concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change in the Contract Documents is required, a Work Directive Change or a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

(6) Possible Contract Price and Contract Time Adjustments. In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference. If OWNER and CONTRACTOR are unable to agree as to the amount or length thereof, a claim may be made therefore as provided in Articles 8 and 10.

### 3.A.5.3. Physical Conditions - Underground Facilities

(1) Shown or Indicated. The information and data shown or indicated in the contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or the CITY ENGINEER by the owners of such Underground Facilities or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

(a) OWNER shall not be responsible for the accuracy or completeness of any such information or data; and

(b) CONTRACTOR shall have full responsibility for reviewing and checking all such information and data, for locating all Underground Facilities shown or indicated in the Contract Documents, for coordination of the Work with the owners of such Underground Facilities during construction, for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

(2) Not Shown or Indicated. If an Underground Facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract

Documents and which CONTRACTOR could not reasonably have been expected to be aware of or learned thereof through the exercise of reasonable diligence, CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency as permitted by Paragraph 3.B.2.9.), identify the owner of such Underground Facility and give notice thereof to that owner and to the CITY ENGINEER. The CITY ENGINEER will promptly review the Underground Facility to determine the extent to which the contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such Underground Facility. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any Underground Facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of. If the parties are unable to agree as to the amount or length thereof, CONTRACTOR may make a claim therefore as provided in Articles 8 and 10.

3.A.6. SCHEDULING THE WORK.

3.A.6.1 The CONTRACTOR, promptly after being awarded the Contract, shall prepare and submit for the CITY ENGINEER's approval a CONTRACTOR's construction schedule for the Work. The construction schedule shall set forth the starting and completion dates of various elements of the Work, a preliminary schedule of Shop Drawing submittals, an estimated schedule of progress payments and a preliminary schedule of values of the Work. The schedule shall not exceed time limits under the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.A.6.2. PRECONSTRUCTION MEETING(S). Prior to the delivery of any material, or the start of any construction, the CONTRACTOR shall request a Pre-Construction meeting with the CITY ENGINEER. A minimum of five (5) working days shall be required. The purpose of the Pre-Construction Meeting is to review and accept the schedules set forth in Paragraph 3.A.6.1. to establish procedures for handling Shop Drawings and other submittals; a procedure for processing progress payments and to establish a working understanding among the parties.

3.A.6.3. The CONTRACTOR shall prepare and keep current, for the CITY ENGINEER's approval, a schedule of submittals which is coordinated with the CONTRACTOR's construction schedule and allows the CITY ENGINEER reasonable time to review submittals.

3.A.6.4. The CONTRACTOR shall conform to the most recent schedules.

- 3.A.7. ASSIGNMENT. The CONTRACTOR shall not assign the Contract or sublet it as a whole, without the written consent of the OWNER, nor shall the CONTRACTOR assign any monies due or to become due to him hereunder, without the previous written consent of the OWNER. The CONTRACTOR shall not award anyone work in excess of twenty-five (25%) percent of the Contract Price without written approval of the OWNER.

SECTION B  
CONTRACTOR'S RESPONSIBILITIES

3.B.1. SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.B.1.1. The CONTRACTOR shall supervise and direct the Work, using the CONTRACTOR's best skill and attention. The CONTRACTOR shall be solely responsible for and have control over construction means, methods, modes, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters.
- 3.B.1.2. The CONTRACTOR shall be responsible to the OWNER for acts and omissions of the CONTRACTOR's employees, Subcontractors and their agents and employees, and other persons performing portions of the Work under a contract with the CONTRACTOR.
- 3.B.1.3. The CONTRACTOR shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the CITY ENGINEER, or by tests, inspections or approvals required or performed by persons other than the CONTRACTOR.
- 3.B.1.4. The CONTRACTOR shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.
- 3.B.1.5. CONTRACTOR shall be responsible for seeing that the finished Work complies accurately with the Contract Documents.
- 3.B.1.6. Superintendent. The CONTRACTOR shall employ a competent superintendent, who shall not be replaced without the consent of the CITY ENGINEER, and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the CONTRACTOR at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to the CONTRACTOR. Important communications shall be similarly confirmed on written request in each case.

3.B.2. PROTECTION OF PERSONS AND PROPERTY.

3.B.2.1. Safety Precautions and Programs. CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. CONTRACTOR shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

(1) All employees on the Work and other persons and entities who may be affected thereby;

(2) All the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the CONTRACTOR, or the CONTRACTOR's Subcontractors or Sub-subcontractors; and

(3) Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and Underground Facilities not designated for removal, relocation or replacement in the course of construction.

3.B.2.2. The CONTRACTOR shall give notices and comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

3.B.2.3. The CONTRACTOR shall erect and maintain, as required by existing conditions and performance of the contract, required barriers and safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

3.B.2.4. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the CONTRACTOR shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

3.B.2.5. The CONTRACTOR shall not load or permit any part of the construction site to be loaded so as to endanger its safety or the safety of any person thereon.

3.B.2.6. CONTRACTOR shall notify owners of adjacent property and of underground Facilities and utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation and replacement of their property. All damage, injury or loss to any property caused, directly or indirectly, in whole or in part, by CONTRACTOR, nay Subcontractor, Supplier or any other person or organization directly or indirectly employed by any of them to

perform or furnish any of the Work or anyone for whose acts any of the them may be liable, shall be remedied by CONTRACTOR. CONTRACTOR's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and the CITY ENGINEER has issued a notice to CONTRACTOR that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

- 3.B.2.7. In the event that CONTRACTOR encounters on the site material reasonably believe to be asbestos or polychlorinated biphenyl (PCB) or other hazardous contaminants, substances or materials which has not been remediated as required by an applicable law or regulation, the CONTRACTOR shall immediately stop Work in the area affected and report the condition to the CITY ENGINEER in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the OWNER and CONTRACTOR if in fact the material is asbestos or polychlorinated biphenyl (PCB) or other hazardous contaminants, substance or materials, when it has been remediated, by written agreement of the OWNER and CONTRACTOR. The CONTRACTOR shall not be required to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB), or other hazardous contaminants, substance or materials.
- 3.B.2.8. CONTRACTOR shall designate a responsible representative at the site whose duty shall be the prevention of accidents. This person shall be CONTRACTOR's superintendent unless otherwise designated in writing by CONTRACTOR to OWNER.
- 3.B.2.9. Emergencies. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, CONTRACTOR, without special instruction or authorization from CITY ENGINEER or OWNER, is obligated to act to prevent threatened damage, injury or loss. CONTRACTOR shall give CITY ENGINEER prompt written notice if CONTRACTOR believes that any significant changes in the Work or variations from the contract Documents have been caused thereby. If CITY ENGINEER determines that a change in the Contract Documents is required because of the action taken in response to an emergency, a Construction Change Directive or Change Order will be issued to document the consequences of the changes or variations.
- 3.B.3. MATERIALS, EQUIPMENT AND WORKMANSHIP
- 3.B.3.1. Local Procurement. Whenever it is practical and economical to do so, the CONTRACTOR shall purchase all materials, supplies and equipment required on the Work from manufacturers, retailers, or wholesalers located in the City of Bay City and shall hire employees who are residents of the City of Bay City. Nothing contained herein shall be construed as obligating the CONTRACTOR to take any action which shall increase the cost or expense to the OWNER.

### 3.B.3.2. Labor and Materials.

(1) Unless otherwise specified in the Contract Documents, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, utilities, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

(2) All materials and equipment shall be of standard first-grade quality and new, except as otherwise as provided in the Contract Documents. If required by the CITY ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instruction of the applicable Supplier except as otherwise provided in the Contract Documents; however, no provision of any such instructions will be effective to assign to CITY ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility therefore.

(3) Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of particular Supplier the naming of the item is intended to establish the type, function and quality required and no substitution is permitted.

(4) If a specific means, method, mode, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR shall not furnish or utilize a substitute means, methods, mode, sequence, technique or procedure of construction unless CONTRACTOR submits sufficient information to allow CITY ENGINEER to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The CITY ENGINEER will be allowed a reasonable time within which to evaluate each proposed substitute. The CITY ENGINEER will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without CITY ENGINEER's prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish, at CONTRACTOR's expense, a special performance guarantee or other surety with respect to any substitute. The CITY ENGINEER will record the time required by CITY ENGINEER and CITY ENGINEER's consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not CITY ENGINEER accepts a proposed substitute, CONTRACTOR shall reimburse OWNER for the charges incurred by OWNER for evaluating each proposed substitute. CONTRACTOR shall not be granted any extension of time

for the period required by the CITY ENGINEER to evaluate each proposed substitute.

3.B.3.3. Labor

(1) The CONTRACTOR, and its Subcontractors, shall if applicable, comply with the Prevailing Wage and Fringe Benefit provisions set forth in Chapter 2, Article X of the Bay City Code, Michigan law or federal statutory enactment;

(2) The CONTRACTOR shall, throughout its performance of the Contract and the Work, comply with all Equal Employment Opportunity requirements and enactments, whether local, state or federal; and

(3) CONTRACTOR shall at all times provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. The CONTRACTOR shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without CITY ENGINEER's written consent.

3.B.4. LOCATING WORK, TAXES, PERMITS, PATENTS AND COPYRIGHTS

3.B.4.1. Locating Work. The CONTRACTOR shall accurately locate the Work from reference points established by the ENGINEER along the surface of the ground and the line of Work. For sewers, "Cutsheets" will be furnished by the CITY ENGINEER. Reference points shall be protected and preserved by the CONTRACTOR.

3.B.4.2. Survey Monuments. Monuments or other recognized property boundary markers at street intersections, section corners, acreage or lot corners, and right-of-way lines shall be preserved and protected. Where such monuments or markers must be removed during construction, the CITY ENGINEER shall be notified and the CONTRACTOR shall make all necessary arrangements, at his own expense, with a land surveyor registered in the State of Michigan to have these monuments or markers properly witnessed prior to disturbance or removal and later reset by the registered land surveyor.

3.B.4.3. Taxes. CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the

performance of the Work.

- 3.B.4.4. Permits/Licenses. Unless otherwise provided in the Contract Documents, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees. CONTRACTOR shall be responsible for all damages, fines, costs, expenses and other charges imposed upon or levied against the OWNER as a result of the CONTRACTOR'S or any of its subcontractor's violations of or failure to comply with any permit or license.
- 3.B.4.5. Laws and Regulations. The CONTRACTOR shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor the CITY ENGINEER shall be responsible for monitoring CONTRACTOR's compliance with any Laws or Regulations. CONTRACTOR shall be responsible for all damages, fines, costs, expenses and other charges imposed upon or levied against the OWNER as a result of the CONTRACTOR'S or any of its subcontractor's violations of or failure to comply with any Laws or Regulations.
- 3.B.4.6. CONTRACTOR's Observations. If the CONTRACTOR observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, the CONTRACTOR shall promptly notify the CITY ENGINEER, in writing, and necessary changes shall be accomplished by appropriate Modification. If the CONTRACTOR performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the CITY ENGINEER, the CONTRACTOR shall assume full responsibility for such Work and shall bear the attributable costs.
- 3.B.4.7. Royalties and Patents. CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any inventions, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of OWNER its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by OWNER in the Contract Documents. CONTRACTOR shall indemnify and hold harmless OWNER and anyone directly or indirectly employed

by it from and against all claims, damages, losses and expenses (including attorneys' fees and court and arbitration costs) arising out of any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product or device not specified in the Contract Documents, and shall defend all such claims in connection with any alleged infringement of such rights. The CONTRACTOR shall not 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. However, if the CONTRACTOR has reason to believe that the required design process or product is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless such information is promptly furnished to the CITY ENGINEER.

3.B.5. MAINTENANCE OF SITE OF WORK.

3.B.5.1. Work Space/Use of Premises.

(1) Work Space. In its operations, the CONTRACTOR shall interfere as little as possible with traffic and in all cases shall confine its operations to the minimum space possible. Each CONTRACTOR is responsible for the delivery of its materials and equipment, and the unloading, protection, and proper storage of same. Stockpiling of construction material and equipment will be permitted as necessary, but in no case shall traveled ways, driveways or entrances be unduly obstructed. Should the CONTRACTOR desire space on private property, it may obtain such space on privately owned property at its own expense, by agreement with the property owner thereof.

(2) Use of Premises. CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the Project site and land and areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from performance of the Work. Should any claim be made against OWNER by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER harmless from and against all claims, damages, losses and expenses arising directly, indirectly, or consequentially out of any proceeding or action, legal or equitable, brought by any such other party against OWNER to the extent based on a claim arising out of CONTRACTOR's

performance of the Work.

(3) Cleaning Up. During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by the OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents. If the CONTRACTOR fails to clean up as provided in the Contract Documents, the OWNER may do so and the cost thereof shall be charged to the CONTRACTOR.

3.B.5.2. Work Within Public Streets or Land.

(1) Where the centerline of any drain, sewer, waterline or main, electrical service or any other utility service is within the public street or land, the CONTRACTOR shall confine his operations to within the public street or land unless easements have been acquired. It shall be the CONTRACTOR's responsibility to use such methods and/or materials, including sheeting, so as to prevent the bank top of the excavation from encroaching on private property. This shall not preclude the CONTRACTOR from obtaining the right to encroach on private land in accord with the foregoing article "Work Space".

(2) Maintenance and Restoration of Pavements, Road Surface, Structures and Trench Backfill

- (a) Where trenches cross existing improved roadways or drives or where the trench parallels an existing improved roadway which is disturbed by the CONTRACTOR's operations, the CONTRACTOR shall consolidate the trench backfill and shall place a temporary gravel fill (complying with Michigan Department of Transportation Specifications) at least 8" thick; and shall, during the life of the Contract, maintain the same in good condition with additional gravel as settling takes place. All structures and surfaces including curbing, walks, paving, gravel, or street road surfaces, that may be damaged or destroyed by the CONTRACTOR's operations, shall be repaired and replaced by him at his own expense. In restoring pavement, a saw shall be used and a 3/4" deep cut made on each side of the part to be restored. Concrete shall be 3500 p.s.i., using six (6) sacks of cement per cubic yard of concrete.
- (b) If the pavement removed had an asphaltic concrete surface, the surface shall be removed to a distance one (1) foot beyond the limits of the removed concrete pavement. The butt joint in asphaltic

concrete removal shall be prepared by sawing through the total depth of asphaltic concrete. The surfaces shall be replaced with a nominal two (2) inches of asphaltic concrete meeting the requirements of the Michigan Department of Transportation as to materials and method of replacement at no extra cost to the OWNER.

- (c) Backfill of trenches, except where special backfill is called for and except as noted above or elsewhere herein, shall be rounded up uniformly over the trenches, to allow for settlement; and the CONTRACTOR shall regrade all backfill as required by the Contract Documents.

(3) Cutting, Connections and Patching

- (a) The CONTRACTOR shall be responsible for cutting, fitting, connecting or patching required to complete the Work or to make its parts fit together properly.
- (b) The CONTRACTOR shall not damage or endanger any portion of the Work or fully or partially completed construction of the OWNER or separate contractors by cutting, patching, or otherwise altering such construction, or by excavation. The CONTRACTOR shall not cut or otherwise alter such construction by the OWNER or a separate contractor except with written consent of the OWNER and of such separate contractor; such consent shall not be unreasonably withheld. The CONTRACTOR shall not unreasonably withhold from the OWNER or a separate contractor the CONTRACTOR's consent to cutting or otherwise altering the Work.

3.B.5.3. Water Supply. The CONTRACTOR shall at all times provide a safe and abundant supply of drinking water conveniently accessible to the workmen. Water supply for construction and for drinking water for employees may be obtained from the municipal water supply by making application to the Superintendent of the Water Department.

3.B.5.4. Sanitary Regulations. All necessary sanitary conveniences for the use of the workmen on the Project must be constructed and maintained in a sanitary condition by the CONTRACTOR and their use shall be strictly enforced. The number, location and details of these conveniences shall meet the approval of the CITY ENGINEER.

3.B.5.4. Signage. The CONTRACTOR, at his own expense, if specified by the CITY ENGINEER, shall have placed on the ground and in a conspicuous location, so the public can readily see it, a sign not less than four (4) feet in width and three (3) feet in height and properly mounted, describing the Project.

3.B.5.6. Inconveniences. The CONTRACTOR shall at all times be aware of inconveniences caused to the abutting property owners and general public. Where undue inconveniences are not remedied by the CONTRACTOR, the OWNER, upon four (4) hours notice, reserves the right to perform the necessary Work and to have the City deduct the cost thereof from the money due the CONTRACTOR.

3.B.5.7. Dust Control. The CONTRACTOR shall provide adequate measures to control dust caused by his operation. The methods employed, and frequency of application shall be as approved and directed by the CITY ENGINEER.

3.B.5.8. Maintenance of Traffic.

(1) During the construction the CONTRACTOR shall furnish and maintain traffic control devices in accordance with the Michigan Manual of Uniform Traffic Control Devices (current edition) by the Michigan Department of Transportation.

(2) During the progress of the Work, the CONTRACTOR shall accommodate both vehicular and pedestrian traffic as provided in these specifications and as indicated on the drawings. In the absence of specific requirements, he shall maintain such traffic. Access to fire hydrants and water valves shall always be maintained. The CONTRACTOR's truck and equipment operations on public streets shall be governed by County regulations, all local traffic ordinances, and regulations of the Fire and Police Departments. The CONTRACTOR shall provide access for emergency equipment and operations to the work site during non-working hours and shall provide any assistance required by police, fire or other officials during working hours.

(3) Small street openings necessary for manholes, alignment holes, sewer connection, or any other matter, will be permitted. Such holes shall not be open longer than necessary and shall be done to the satisfaction of the CITY ENGINEER. Small openings shall be covered with steel plates at pavement level secured in place at the time that Work is not being performed.

(4) Where streets are partially obstructed, the CONTRACTOR shall place and maintain temporary driveways, ramps, bridges and crossing which in the opinion of the CITY ENGINEER are necessary to accommodate the public. In the event of the CONTRACTOR's failure to comply with the foregoing provisions, the OWNER may, with or without notice, cause the same to be done and deduct the cost of such Work from any monies due or to become due the CONTRACTOR under the Contract, but the performance of such Work by the OWNER, or at its insistence, shall not serve to release the CONTRACTOR from his liability for the safety of the traveling public.

(5) The CONTRACTOR shall provide flagmen, warning lights, signs and barricades necessary to direct and protect vehicular and pedestrian traffic

(6) The CONTRACTOR shall inform the local Fire Department in advance of his program of street obstruction and detours, so that the Fire Department can set up plans for servicing the area in case of an emergency. He shall also notify the governing Police Department and the CITY ENGINEER at least one (1) week prior to obstructing any street.

(7) Road Detours. The CONTRACTOR shall provide and maintain all temporary roadways as required due to his operations or as required under "Road Permits" or otherwise specified or shown on the plans.

3.B.5.9. Protection of the Public.

(1) The CONTRACTOR shall provide sufficient signs, barricades, guard railings, coverings or other appropriate protective means and mechanisms necessary around the Construction area to protect its employees and all others who may be on the work site, including the public, from injury due to his Work or operations, including completed or uncompleted Work, at all times until acceptance of the Work by the OWNER.

(2) Barricades to be left in place at night shall be provided with adequate and appropriate lights, signals and signs, and be maintained by the CONTRACTOR in an operable condition. Open excavations shall be guarded during non-working periods with guardrails, perimeter cables or similar protection which shall at a minimum comply with standards for such safety devices established by the Michigan Department of Labor Construction Standards Safety Commission's Safety Standards, Part 21 thereof, or other applicable law, rule or regulation concerning the guarding of openings in floors, platforms or in the ground.

(3) The CONTRACTOR shall furnish such other signing and barricading as determined by the CITY ENGINEER. The OWNER may provide signing or barricading in an emergency situation or if the CONTRACTOR fails to provide adequate signing and barricading, the cost of this Work will be charged to the CONTRACTOR.

3.B.6. DOCUMENTS AND SAMPLES AT THE SITE.

3.B.6.1. The CONTRACTOR shall maintain in a safe place at the site for the OWNER one (1) record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and, in addition, approved Shop Drawings, Product Data, Samples and similar required submittals. These shall

be available to the CITY ENGINEER and shall be delivered to the CITY ENGINEER upon completion of the Work.

3.B.6.2. Shop Drawings, Product Data and Samples.

(1) The CONTRACTOR shall review, approve and submit to the CITY ENGINEER Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the OWNER or of separate contractors. Submittals made by the CONTRACTOR which are not required by the Contract Documents may be returned without action.

(2) The CONTRACTOR shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the CITY ENGINEER. Such Work shall be in accordance with approved submittals.

(3) By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the CONTRACTOR represents that the CONTRACTOR has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

(4) The CONTRACTOR shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the CITY ENGINEER's approval of Shop Drawings, Product Data, Samples or similar submittals unless the CONTRACTOR has specifically informed the CITY ENGINEER in writing of such deviation at the time of submittal and the CITY ENGINEER has given written approval to the specific deviation. The CONTRACTOR shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the CITY ENGINEER's approval thereof.

(5) The CONTRACTOR shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the CITY ENGINEER on previous submittals.

(6) Informational submittals upon which the CITY ENGINEER is not expected to take responsive action may be so identified in the Contract Documents

(7) When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the CITY ENGINEER shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

## ARTICLE 4 - SUBCONTRACTORS

### SECTION A

#### AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 4.A.1. CONTRACTOR shall not employ any Subcontractor, Supplier or other person or entity, whether initially or as a substitute, against whom OWNER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or entity to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.
- 4.A.2. The identity of Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) shall be submitted to OWNER in writing within ten (10) days after notification of selection for the award of a Contract. The procedure and adjustments set forth in Article 6 "Post-Bid Information" of the Instructions to Bidders shall control the OWNER or CONTRACTOR's use of any Subcontractor, Supplier or other person or entity furnishing labor, material or equipment. No acceptance by OWNER of any such Subcontractor, Supplier or other person or entity shall constitute a waiver of any right of OWNER to reject Work which does not conform to the Contract Documents.
- 4.A.3. CONTRACTOR shall be fully responsible to OWNER for all acts and omissions of the Subcontractors, Suppliers and other persons and entities performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR's own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER and any such Subcontractor, Supplier or other person or entity, nor shall it create any obligation on the part of OWNER to pay or to see to the payment of any monies due any such Subcontractor, Supplier or other person or entity except as may otherwise be required by Laws and Regulations.
- 4.A.4. The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- 4.A.5. By appropriate agreement, written where legally required for validity, the CONTRACTOR shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CONTRACTOR by terms of the Contract Documents, and to assume toward the CONTRACTOR all the obligations and responsibilities which the CONTRACTOR, by these Documents,

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

#### ARTICLE 5 - INDEMNIFICATION

- 5.A.1. The CONTRACTOR shall defend, safe, keep, hold harmless and indemnify the OWNER [City of Bay City], its City Commission and their officers, agents and employees from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of, resulting from or caused by the performance of the Work, provided that such claim, damage, loss or expense: (1) is attributable to bodily injury, sickness, disease or death, or to injury or damage to or destruction of tangible property (other than the Work itself), including the loss of use resulting there from; and (2) is caused in whole or in part by any act or omission of the CONTRACTOR, any Subcontractor, anyone directly or indirectly retained, consulted or employed by any of them or in privity with them, or anyone for whose acts any of them may be liable., regardless of whether or not it is caused in part by a party indemnified hereunder.
- 5.A.2. In any and all claims against the OWNER or any of its agents or employees by any employees of the CONTRACTOR, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any Subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts.
- 5.A.3. If either party to the Contract 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 or may be legally liable, written notice of such injury or damage, whether or not insured, shall be

given to the other party within a reasonable time not exceeding ten (10) days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Articles 8 and 10.

## ARTICLE 6 - BONDS AND INSURANCE

### SECTION A PERFORMANCE, PAYMENT AND OTHER BONDS

- 6.A.1. Within ten (10) days after OWNER's Commission's approval of the Agreement, unless a shorter time is set forth in a Notice to Proceed, CONTRACTOR shall furnish a Performance and a Payment Bond, each in an amount at least equal to the Contract Price, as security for the faithful performance and payment of all CONTRACTOR's obligations under the Contract Documents. These Bonds shall remain in effect until one (1) year after the date of final payment, except as otherwise provided by the Contract Documents. CONTRACTOR shall also furnish such other Bonds as are required by the Contract Documents. All Bonds shall be in the forms prescribed by the Contract Documents and be executed by such Sureties as are licensed and authorized to conduct business in Michigan. All Bonds signed by an agent must be accompanied by a certified copy of the authority to act.
- 6.A.2. If the Surety on any Bond furnished by CONTRACTOR is declared bankrupt or becomes insolvent or its right to do business in Michigan is terminated, CONTRACTOR shall within five (5) days thereafter substitute another Bond and Surety, both of which shall be acceptable to OWNER.
- 6.A.3. It is understood and agreed that in case any alterations are made in the Work to be done under this contract, the said changes shall not affect nor discharge these Bonds. The CONTRACTOR shall notify his Surety of any changes affecting the general scope of the Work or change in the Contract Price and amount of the applicable Bonds shall be adjusted accordingly. The CONTRACTOR will furnish proof of such adjustment to the City of Bay City.
- 6.A.4. Attention of Sureties is particularly directed to the following conditions: final inspection and acceptance of Work shall not be binding or conclusive upon OWNER if it subsequently appears that CONTRACTOR has willfully or fraudulently or through collusion with any person or persons supplied inferior materials or workmanship, or has departed from terms of his Contract. In any such case the OWNER shall have the right, notwithstanding such final acceptance and payment, to cause Work to be properly performed and satisfactory material supplied to such extent as in the opinion of the CITY ENGINEER may be necessary to finish Work in accordance with the Contract Documents, at cost or expense of the CONTRACTOR and Sureties on his

Bonds, and shall have the Work, together with such other damages as OWNER may suffer, and cost of default of CONTRACTOR in premises, as though such final acceptance and final payment has not been made.

## SECTION B INSURANCE

6.B.1 CONTRACTOR shall purchase and maintain such insurance as is appropriate for the Work being performed and furnished and as will provide protection from claims set forth below and in Article 5 which may arise out of, result from or is caused by CONTRACTOR's performance and furnishing of the Work and CONTRACTOR's other obligations under the Contract Documents, whether it is to be performed or furnished by CONTRACTOR, by any Subcontractor, by anyone directly or indirectly retained, consulted or employed by any of them to perform or furnish any of the Work, or by anyone for whose acts any of them may be liable. The insurance required by this paragraph shall include the specific coverages and be written for not less than the limits of liability and coverages provided below or in the Supplementary Conditions.

All of the policies of insurance so required to be purchased and maintained (or the certificates or other evidence thereof) shall contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least thirty (30) days prior written notice has been given to OWNER. All such insurance shall remain in effect until final payment and at all times thereafter when CONTRACTOR may be correcting, removing or replacing defective Work. In addition, CONTRACTOR shall maintain such completed operations insurance for at least one (1) year after final payment and furnish OWNER with evidence of continuation of such insurance at final payment. All insurances shall be obtained from companies licensed and admitted to do business in the State of Michigan.

6.B.2. The insurance required hereunder shall consist of:

6.B.2.1. Workers' Compensation Insurance. Worker's Compensation insurance including Employee's Liability to cover employee injuries or disease compensable under the Workers Compensation Statutes of Michigan disability benefit laws, if any, or Federal compensation acts, if applicable. Self-insurance plans approved by the regulatory authorities in Michigan are acceptable.

6.B.2.2. Comprehensive General Liability. A Comprehensive General Liability policy to cover bodily injury, including death, to persons, other than employees, and for damage to tangible property, including loss of use thereof, including the following exposures:  
(1) All premises and operations;  
(2) Explosion, collapse and underground damage;

- (3) Contractor's Protective coverage for independent contractors or subcontractors employed by it;
- (4) Contractual Liability for the obligations assumed in the Indemnification or Hold Harmless agreement found in the Contract Documents;
- (5) Personal Injury Liability endorsement with no exclusions pertaining to employment; and
- (6) Products and Completed Operations coverage. This coverage shall extend through the contract guarantee period.

The minimum limits required are: \$1,000,000.00 for injuries including accidental death to any one person, and \$1,000,000.00 for injuries including accidental death resulting from one accident; property damage in the amount of not less than \$500,000.00 per accident and the same amount in the aggregate.

The OWNER shall be named as an additional insured as follows:

IT IS UNDERSTOOD AND AGREED THAT THE CITY OF BAY CITY, MICHIGAN IS AN ADDITIONAL INSURED AND THAT THIS COVERAGE SHALL BE PRIMARY TO THE CITY AND NOT CONTRIBUTING, PRO RATA OR EXCESS WITH ANY INSURANCE OR SIMILAR COVERAGE CARRIED BY THE CITY.

- 6.B.2.3. Comprehensive Automobile Liability. A Comprehensive Automobile Liability policy to protect the OWNER, its consultants, agents, employees and such public corporations in whose jurisdiction the Work is located for their liability for Work performed by the CONTRACTOR, the Subcontractor(s) or the Sub-subcontractor(s) under this Contract. The required minimum limits of liability shall be \$1,000,000.00 for injuries including death to any one person and \$1,000,000.00 for injuries including death resulting from any one accident. This coverage shall extend through the contract guarantee period. This policy must also provide \$500,000.00 property damage coverage. This coverage shall extend through the contract guarantee period.
- 6.B.2.4. Builder's Risk-Installation Floater. The CONTRACTOR shall purchase a Builder's Risk-Installation Floater in a form acceptable to the OWNER covering property of the Project for the full cost of replacement as of the time of any loss which shall include, as named insureds: (a) the CONTRACTOR; (b) all Subcontractors' (c) all Sub-subcontractors; and (d) the OWNER, as their respective interests may prove to be at the time of loss, covering insurable property which is the subject of this Contract, whether in place, stored at the job site, stored elsewhere, or in transit at the risk of the insured(s). Coverage shall be effected on an "All Risk" form including, but not limited to, the perils of fire, wind, vandalism, collapse, theft and earthquake, with exclusions normal to the coverage. The CONTRACTOR may arrange for such deductibles as he deems

to be within his ability to self-assume, but he will be held solely responsible for the amount of such deductible and for any coinsurance penalties. Any insured loss shall be adjusted with the OWNER and the CONTRACTOR and paid to the OWNER and CONTRACTOR as Trustee for the other insureds.

- 6.B.2.5. Umbrella or Excess Liability. The CONTRACTOR shall provide an Excess or Umbrella Liability policy in the amount of One Million (\$1,000,000.00) Dollars. Umbrella or Excess policy wording shall be at least as broad as the primary or underlying policy(ies) and shall apply both to the CONTRACTOR's general liability and to his automobile liability insurance. The OWNER shall be named as an additional insured and this coverage shall also be primary as to the OWNER.

## ARTICLE 7 - CHANGES IN THE WORK

- 7.A.1. Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order changes, additions, deletions or revisions in the Work; these will be authorized by a Change Order, or a Construction Change Directive, or an order for a minor change in the Work. Upon receipt of any such document, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable provisions of the Contract Documents (except as otherwise specifically provided).
- 7.A.2. A Change Order shall be based upon agreement between the OWNER and CONTRACTOR; a Construction Change Directive shall be produced by the OWNER and may or may not be agreed to by the CONTRACTOR; an order for a minor change in the Work may be issued by the CITY ENGINEER alone.
- 7.A.3. If OWNER and CONTRACTOR are unable to agree as to the extent, if any, of an increase or decrease in the Contract Price or an extension or shortening of the Contract Time that should be allowed as a result of a Work Directive Change, a claim may be made therefore as provided in Articles 8 and 10.
- 7.A.4. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the OWNER or CONTRACTOR, the applicable unit prices shall be equitably adjusted.
- 7.A.5. CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented, except in the case of an emergency and except in the case of uncovering Work as provided in Article 9, Section C.
- 7.A.6. If notice of any change affecting the general scope of the Work or the provisions

of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR's responsibility, and the amount of each applicable Bond will be adjusted accordingly.

- 7.A.7. A Construction Change Directive shall also be used in the absence of total agreement on the terms of a Change Order. If the Construction Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:
  - 7.A.7.1. Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
  - 7.A.7.2. Unit prices stated in the Contract Documents or subsequently agreed upon;
  - 7.A.7.3. Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
  - 7.A.7.4. As provided in Paragraph 7.A.10.
- 7.A.8. Upon receipt of a Construction Change Directive, the CONTRACTOR shall promptly proceed with the Change in the Work involved and advise the CITY ENGINEER of the CONTRACTOR's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Price or Contract Time.
- 7.A.9. A Construction Change Directive signed by the CONTRACTOR indicates the agreement of the CONTRACTOR therewith, including adjustment in Contract Price and Contract Time or the method for determining them.
- 7.A.10. If the CONTRACTOR does not respond promptly or disagrees with the method for adjustment in the Contract Price, the method and the adjustment shall be determined by the CITY ENGINEER on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Price, a reasonable allowance for overhead and profit, but not to exceed fifteen (15%) percent. In such case, and also under Paragraph 7.A.7.3., the CONTRACTOR shall keep and present, such form as the CITY ENGINEER may prescribe, an itemized accounting together with appropriate supporting data, which shall include an accurate account of the hours of operation of all equipment. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph (10) shall be limited to the following:
  - 7.A.10.1. Actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers or

workman's compensation insurance as shown by the payrolls of CONTRACTOR;

- 7.A.10.2. Actual costs to the CONTRACTOR of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- 7.A.10.3. Actual rental costs of machinery and equipment, exclusive of hand tools, whether rented from the CONTRACTOR or others but not to exceed prevailing rental rates;
- 7.A.10.4. Actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- 7.A.10.5. Actual additional costs of supervision and field office personnel directly attributable to the change.
- 7.A.11. Pending final determination of cost to the OWNER, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the CONTRACTOR to the OWNER for a deletion or change which results in a net decrease in the Contract Price shall be actual net cost as confirmed by the CITY ENGINEER. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.
- 7.A.12. If the OWNER and CONTRACTOR do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be as set forth in Article 8.
- 7.A.13. When the OWNER and CONTRACTOR agree concerning the adjustments in the Contract Price and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.
- 7.A.14. MINOR CHANGES IN THE WORK. The CITY ENGINEER will have authority to order minor changes in the Work not involving adjustment in the Contract Price or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the OWNER and CONTRACTOR. The CONTRACTOR shall carry out such written orders promptly.

## ARTICLE 8 - DELAYS AND EXTENSION OF TIME

### SECTION A TIME IS OF THE ESSENCE

- 8.A.1. Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the CONTRACTOR confirms that the Contract Time is a reasonable period for performing the Work.

### SECTION B CHANGE OF CONTRACT TIME

- 8.B.1. The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an extension or shortening of the contract Time shall be based on written notice delivered by the party making the claim to the other party promptly (but in no event later than ten (10) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within twenty (20) days after such occurrence (unless CITY ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be evaluated by CITY ENGINEER who shall, in the absence of agreement, determine the extent of any adjustment in the Contract Time. No claim for an adjustment in the contract Time will be valid if not submitted with the requirements of this paragraph.

### SECTION C DELAYS AND EXTENSIONS OF TIME

- 8.C.1. If the CONTRACTOR is delayed at any time in progress of the Work by an act or neglect of the OWNER, or its employees, or of a separate contractor employed by the OWNER, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the CONTRACTOR's reasonable control, or by delay authorized by the OWNER, or by other causes which the CITY ENGINEER determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the CITY ENGINEER may determine.

## ARTICLE 9

### SECTION A WARRANTY

- 9.A.1. The CONTRACTOR warrants to the OWNER that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The CONTRACTOR's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the CONTRACTOR, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by the CITY ENGINEER, the CONTRACTOR shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

### SECTION B OWNER'S ACCESS TO WORK

- 9.B.1. The CITY ENGINEER and other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests shall have access to the Work in preparation and progress wherever located for their observation, inspecting and testing CONTRACTOR shall provide proper and safe conditions for such access.

### SECTION C TESTS AND INSPECTIONS/UNCOVERING WORK

- 9.C.1. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the CONTRACTOR shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the OWNER, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals with an independent testing laboratory or entity acceptable to the OWNER, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. CONTRACTOR shall also be responsible for and shall pay all costs in connection with any inspection or testing required in connection with OWNER's acceptance of a Supplier of materials or equipment submitted for incorporated in Work, or of materials or equipment submitted for approval prior to CONTRACTOR's purchase thereof for incorporation in the Work. The CONTRACTOR shall give the CITY ENGINEER timely notice of when and where

tests and inspections are to be made so the CITY ENGINEER may observe such procedures. The OWNER shall bear the costs of tests, inspections or approvals which do not become requirements until after bids are received.

- 9.C.2. If the CITY ENGINEER, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Paragraph 9.C.1. above, the CITY ENGINEER will instruct the CONTRACTOR to make arrangements for such additional testing, inspection or approval by an entity acceptable to the OWNER, and the CONTRACTOR shall give timely notice to the CITY ENGINEER of when and where tests and inspections are to be made so the CITY ENGINEER may observe such procedures. The OWNER shall bear such costs except as provided in Paragraph 9.C.3. below.
- 9.C.3. If such procedures for testing, inspection or approval under Paragraphs 9.C.1. and 9.C.2. reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the CONTRACTOR shall bear all costs made necessary by such failure, including those of repeated procedures.
- 9.C.4. If any Work (including the work of others) that is to be inspected, tested or approved is uncovered without written concurrence of CITY ENGINEER, it must, if requested by CITY ENGINEER, be covered for observation. Such uncovering shall be at CONTRACTOR's expense unless CONTRACTOR has given CITY ENGINEER timely notice of CONTRACTOR's intention to cover the same and CITY ENGINEER has not acted with reasonable promptness in response to such notice.
- 9.C.5. Neither observations by CITY ENGINEER nor inspections tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR's obligations to perform the Work in accordance with the Contract Documents.
- 9.C.6. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the CONTRACTOR and promptly delivered to the CITY ENGINEER.
- 9.C.7. If the CITY ENGINEER is to observe tests, inspections or approvals required by the Contract Documents, the CITY ENGINEER will do so promptly and, where practicable, at the normal place of testing.
- 9.C.8. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

SECTION D  
CORRECTION OF WORK

- 9.D.1. CORRECTION OR REMOVAL OF WORK. If required by CITY ENGINEER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or if the Work has been rejected by CITY ENGINEER, remove it from the site and replace it with nondefective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal of such rejected Work.
- 9.D.2. ONE YEAR CORRECTION PERIOD.
- 9.D.2.1. If within one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be not in accordance with the requirements of the Contract Documents, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER's written instructions, either correct such Work not in accordance with the requirements of the Contract Documents, or, it has been rejected by OWNER, remove it from the site and replace it with WORK in accordance with the requirements of the Contract Documents. This period of one year shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the corrective Work.
- 9.D.2.2. If the CONTRACTOR fails to correct nonconforming Work within a reasonable time, the OWNER may correct it. If the CONTRACTOR does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the CITY ENGINEER, the OWNER may remove it and store the salvable materials or equipment at the CONTRACTOR's expense. If the CONTRACTOR 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 costs and damages that should have been by the CONTRACTOR. If such proceeds of sale do not cover costs which the CONTRACTOR should have borne, the Contract Price shall be reduced by the deficiency. If payments then or thereafter due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to the OWNER and CONTRACTOR shall pay all direct, indirect and consequential costs of such removal and replacement.
- 9.D.2.3. The CONTRACTOR shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the OWNER or separate contractors caused by the CONTRACTOR's correction or removal of

WORK which is not in accordance with the requirements of the Contract Documents.

- 9.D.2.4. Nothing contained in the Section D shall be construed to establish a period of limitation with respect to other obligations which the CONTRACTOR might have under the Contract Documents. Establishment of the time period of one (1) year relates only to the specific obligation of the CONTRACTOR to correct the Work, and had no relationship to the time within the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CONTRACTOR's liability with respect to the CONTRACTOR's obligations other than specifically to correct the Work.
- 9.D.3. OWNER'S PRIOR ACCEPTANCE OF WORK. OWNER's prior acceptance of Work shall in no matter, form or nature prevent or otherwise diminish OWNER's rights and remedies hereunder.

#### SECTION E ACCEPTANCE OF NONCONFORMING WORK

- 9.E.1. If the OWNER prefers to accept Work which is not in accordance with the requirements of the Contract Documents, the OWNER may do so instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. If final payment has been made CONTRACTOR shall pay said adjustment to OWNER.

#### SECTION F USE OF COMPLETED PORTION

- 9.F.1. The OWNER may occupy or use any completed or partially completed portion of the Work, at any stage, which has specially been identified in the Contract Documents, or which OWNER and CONTRACTOR agree constitutes a separately functioning and usable part of the Work that can be used by OWNER without significant interference with CONTRACTOR's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work subject to the following:
- 9.F.1.1. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and CONTRACTOR have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the CONTRACTOR considers a portion substantially complete, CONTRACTOR shall

prepare and submit a list to CITY ENGINEER as provided under Article 10, Section F. Consent of CONTRACTOR to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the OWNER and CONTRACTOR, if no agreement is reached, by decision of the CITY ENGINEER.

- 9.F.1.2. Immediately prior to such partial occupancy or use, the OWNER and CONTRACTOR shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- 9.F.1.3. Unless otherwise agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

### SECTION G FINAL INSPECTION

- 9.G.1. Upon written notice from the CONTRACTOR that the Project is complete, the CITY ENGINEER will make a final inspection with the CONTRACTOR and will notify the CONTRACTOR in writing of any particulars in which this inspection reveals that the WORK does not conform to the Contract Documents. The CONTRACTOR shall immediately make sure corrections as are necessary to remedy such defects.

### SECTION H OWNER'S RIGHT TO DO WORK

- 9.H.1. If CONTRACTOR fails within a reasonable time after written notice of CITY ENGINEER to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by CITY ENGINEER, or if CONTRACTOR fails to perform the WORK in accordance with Contract Documents, OWNER, after seven (7) days written notice to CONTRACTOR, may, without prejudice to other remedies the OWNER may have, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all of the Work, and suspend CONTRACTOR's services related thereto, take possession of all or part of the Work, and suspend CONTRACTOR's services related thereto, take possession of CONTRACTOR's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. Contractor shall allow OWNER, OWNER's representative, agents and employees such access to the site as may be necessary to enable OWNER to exercise the rights and remedies under this paragraph. All direct, indirect and

consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount determined by CITY ENGINEER, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the CONTRACTOR and OWNER shall be entitled to an appropriate decrease in the Contract Price, and if the parties are unable to agree as to the amount thereof, OWNER may make a claim thereof as provided in Article 10. If payments then or thereafter due the CONTRACTOR are not sufficient to cover such amount, the CONTRACTOR shall pay the difference to the OWNER. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER's rights and remedies hereunder.

**SECTION I**  
**SUSPENSION, STOPPING OR TERMINATION OF WORK**

- 9.1.1. **CONTRACTOR'S TERMINATION OF THE CONTRACT.** If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than sixty (60) days by OWNER (except as permitted under Paragraph 9.1.2.) Or under an order of court or other public authority, or CITY ENGINEER fails to act on any Application for Payment within thirty (30) days after it is submitted, then CONTRACTOR may, upon ten (10) days written notice to OWNER terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus reasonable termination expenses. The provisions of this paragraph, or of any other part of these General Conditions of the Contract Documents, shall not relieve CONTRACTOR of the obligation on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER. The CONTRACTOR shall not suspend, stop or otherwise delay carrying on the Work.
- 9.1.2. **OWNERS SUSPENSION OF WORK.** OWNER may, at any time and without cause, suspend, delay or interrupt the Work or any portion thereof for a period of not more than sixty (60) days by notice in writing to CONTRACTOR which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall not be allowed an increase in the Contract Price if OWNER directs CONTRACTOR to resume the Work within the sixty (60) day period, but shall be allowed an extension of the Contract Time equal to the period of delay.

- 9.1.3. If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to correct Work which is not in accordance with the Contract Documents, or persistently fails to carry out Work in accordance with the Contract Documents, or fails to finish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may, in writing, order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been estimated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other person or entity.
- 9.1.4. OWNER'S TERMINATION OF CONTRACTOR. The OWNER may terminate the Contract if the CONTRACTOR, upon the occurrence of any one or more of the following events:
- 9.1.4.1. Neglects, refuses or fails to supply enough properly skilled workers or proper materials (including, but not limited to failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under Paragraph 3.A.6. through 3.A.6.3. as revised from time to time);
- 9.1.4.2. Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the CONTRACTOR and the Subcontractors;
- 9.1.4.3. Disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- 9.1.4.4. If CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy insolvency;
- 9.1.4.5. If a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;
- 9.1.4.6. If CONTRACTOR makes a general assignment for the benefit of creditors;
- 9.1.4.7. If a trustee, receiver, custodian or agent or CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge

of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for purpose of general administration of such property for the benefit of CONTRACTOR's creditors;

- 9.1.4.8. If CONTRACTOR admits in writing an inability to pay its debts generally as they become due;
  - 9.1.4.9. If CONTRACTOR disregards the authority of CITY ENGINEER; or
  - 9.1.4.10. If CONTRACTOR otherwise is guilty of a material breach of a provision of the Contract Document.
- 9.1.5. When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the OWNER and after giving the CONTRACTOR and the CONTRACTOR's surety, if any, seven (7) days written notice, terminate employment of the CONTRACTOR and may, subject to any prior rights of the surety:
- 9.1.5.1. Take possession of the site and of all materials equipment, tools, and construction equipment and machinery thereon owned by the CONTRACTOR and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as Owner may deem expedient;
  - 9.1.5.2. Accept assignment of subcontracts; and
  - 9.1.5.3. Finish the Work by whatever reasonable method the OWNER may deem expedient.
- 9.1.6. When the OWNER terminates the Contract for one of the reasons stated on Paragraphs 9.1.4. through 9.1.4.10., the CONTRACTOR shall not be entitled to receive further payment until the Work is finished.
- 9.1.7. If the unpaid balance of the Contract Price exceeds costs of finishing the Work, including the direct, indirect and consequential damages of completing the Work, such excess shall be paid to the CONTRACTOR. If such costs exceed the unpaid balance, the CONTRACTOR shall pay the difference to the OWNER. The amount to be paid to the CONTRACTOR or OWNER, as the case may be, shall be certified by the CITY ENGINEER, upon application, and this obligations for payment shall survive termination of the Contract.
- 9.1.8. Where CONTRACTOR's services have been terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or

payment of monies due CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

- 9.I.9. OWNER'S ABANDONMENT OF WORK. Upon seven (7) days written notice to CONTRACTOR, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus reasonable termination expenses. In the event of any dispute as to the amount to be paid to CONTRACTOR, the amount shall be determined as in Paragraph 10.C.4.

## ARTICLE 10 - CLAIMS AND PAYMENTS

### SECTION A SCHEDULE OF VALUES

- 10.A.1. Within ten (10) days after the Notice of Award otherwise specified in the Contract Documents, CONTRACTOR shall submit to CITY ENGINEER for review a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by CONTRACTOR at the time of submission.
- 10.A.2. The schedule of values established above shall serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to CITY ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

### SECTION B RETAINAGE

- 10.B.1. To assure proper performance of the Contract by CONTRACTOR, the OWNER may retain from each progress payment otherwise due to ten (10%) percent of the dollar value of all work in place until Work is fifty (50%) percent in place. However, after the Work is fifty (50%) percent in place, additional retainage shall not be withheld unless the CITY ENGINEER finds that the CONTRACTOR is not making satisfactory progress, or for other specific cause relating to the CONTRACTOR's performance under the Contract, then the OWNER may retain not more than ten (10%) percent of dollar value of the work more than fifty (50%) percent in place. To the extent applicable the provisions of Public Act 524 of 1980, being MCL 125.1561 et seq. shall apply to this Contract.

SECTION C  
CLAIMS AND DISPUTES

- 10.C.1. The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.
- 10.C.2. The Contract Price may only be changed by a Change Order or by Written Amendment. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the party making the claim to the other party and to CITY ENGINEER promptly (but in no event later than ten (10) days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within twenty (20) days after occurrence (unless CITY ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by claimant's written statement that the amount claimed covers all known amounts (direct, indirect and consequential) to which the claimant is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Price shall be determined by the CITY ENGINEER if OWNER and CONTRACTOR cannot otherwise agree on the amount involved. No claim for an adjustment in the Contract Price will be valid if not submitted in accordance with this paragraph.
- 10.C.3. CONTINUING CONTRACT PERFORMANCE BY CONTRACTOR. Pending final resolution of a claim, unless otherwise agreed in writing, The CONTRACTOR shall proceed diligently with performance of the Contract and the OWNER shall continue to make payments in accordance with the Contract Documents.
- 10.C.4. The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:
- 10.C.4.1. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved;
- 10.C.4.2. By mutual acceptance of a lump sum which may include an allowance for overhead and profit; or
- 10.C.4.3. On the basis of the Cost of the Work determined as provided in Paragraphs 7.A.10. through 7.A.10.5.
- 10.C.5. RESOLUTION OF CLAIMS AND DISPUTES. The CITY ENGINEER will review Claims and take one or more of the following preliminary actions within ten (10) days of receipt of a Claim: (1) request additional supporting data from the

CONTRACTOR; (2) submit a schedule to the parties indicating when the CITY ENGINEER expects to take action; (3) reject the Claim in whole or in part, stating reasons for rejection; (4) recommend approval of the Claim; (5) suggest a compromise. The CITY ENGINEER may also, but is not obligated to, notify the surety, if any of the nature and amount of the Claim.

SECTION D  
APPLICATIONS FOR PAYMENT

- 10.D.1. At least twenty (20) days before each progress payment is scheduled (but not more often than once a month), CONTRACTOR shall submit to CITY ENGINEER for review an itemized Application for Payment filled out and signed by CONTRACTOR covering the Work completed in accordance with the schedule of values as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents or which the OWNER may require, such as copies of payrolls, requisitions from Subcontractors and material suppliers, and reflecting retainage is provided for elsewhere in the Contract Documents. If payment is requested and approved in advance on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER's interest therein, all of which will be satisfactory to OWNER. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.
- 10.D.2. CONTRACTOR'S WARRANTY OF TITLE. The CONTRACTOR warrants that title to all Work, materials and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to the OWNER no later than the time of payment. The CONTRACTOR further warrants that upon submittal of an Application for Payment all Work for which Recommendations for Payment have been previously issued and payments received from the OWNER shall be free and clear of liens, claims, security interests or encumbrances in favor of the CONTRACTOR, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, measures, materials and equipment relating to the Work.
- 10.D.3. REVIEW OF APPLICATIONS FOR PROGRESS PAYMENT. The CITY ENGINEER will, within ten (10) days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing CITY ENGINEER's reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application. The OWNER shall pay or reject the

Application for Payment in part or all, within thirty (30) days after presentation of the Application for Payment with CITY ENGINEER's recommendation by the CITY ENGINEER.

#### 10.D.4. DECISIONS TO WITHHOLD RECOMMENDATION

10.D.4.1. The CITY ENGINEER may refuse to recommend the whole or any part of any payment if, in the CITY ENGINEER's opinion, it would be incorrect to make such representations to OWNER. The CITY ENGINEER may also refuse to recommend any such payment, or if the CONTRACTOR and CITY ENGINEER cannot agree on a revised amount, the CITY ENGINEER will promptly issue a Recommendation for Payment for the amount for which the CITY ENGINEER is able to make such representation to OWNER, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in CITY ENGINEER's opinion to protect OWNER from loss because:

- (1) Defective Work not remedied or completed Work has been damaged requiring correction or replacement.
- (2) Third party claims filed or reasonable evidence indicating probable filing of such claims;
- (3) The Contract Price has been reduced by Written Agreement or Change Order;
- (4) Failure of the CONTRACTOR to make payments properly to Subcontractors or for labor, materials or equipment;
- (5) OWNER has been required to correct defective Work or complete Work;
- (6) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (7) Damage to the OWNER or another contractor;
- (8) Reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual liquidated damages for the anticipated delay; or
- (9) Persistent failure to carry out the Work in accordance with the Contract Documents; or
- (10) Of CITY ENGINEER's actual knowledge of the occurrence of the events of enumerated in Paragraphs 9.I.4. through 9.I.4.10., inclusive.

10.D.4.2. When the above reasons for withholding certifications are removed, recommendation will be made for amounts previously withheld at the next authorized payment. No special payments will be made by the OWNER.

10.D.4.3. OWNER may refuse to make payment of the full amount recommended by CITY ENGINEER because claims have been made against OWNER on account of CONTRACTOR's performance or furnishing of the Work or liens, charges, claims or encumbrances have been filed in connection with the Work or there are other

items entitling OWNER to a set-off against the amount recommended, but OWNER must give CONTRACTOR immediate written notice stating the reasons for such action.

## SECTION E PROGRESS PAYMENTS

- 10.E.1. After the CITY ENGINEER has issued a Recommendation for Payment, the OWNER shall, within the time provided in the Contract Documents, take action to pay or reject, in whole or in part, the amount recommended.
- 10.E.2. The CONTRACTOR shall promptly pay each Subcontractor upon receipt of payment from the OWNER, out of the amount paid to the CONTRACTOR on account of such Subcontractor's portion of the Work, the amount of which said Subcontractor is entitled, reflecting percentages actually retained from payments to the CONTRACTOR on account of such Subcontractor's portion of the Work. The CONTRACTOR shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.
- 10.E.3. The CITY ENGINEER will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the CONTRACTOR and action taken thereon by the OWNER on account of portions of the Work done by such Subcontractor.
- 10.E.4. The Owner shall have no obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law. However, OWNER may require CONTRACTOR to submit evidence of payments made to subcontractors.
- 10.E.5. Payment to material suppliers shall be treated in a manner similar to that provided in Paragraphs 10.E.2., 10.E.3. and 10.E.4.
- 10.E.6. A Recommendation for Payment, a progress payment, or partial or entire use occupancy of the Project by the OWNER shall not constitute acceptance of Work not in accordance with the Contract Documents.

## SECTION F SUBSTANTIAL COMPLETION

- 10.F.1. When CONTRACTOR considers the entire Work ready for its intended use, and the project site is substantially restored to conditions existing prior to the commencement of the Work or as otherwise specified in the Contract Documents, CONTRACTOR shall notify the CITY ENGINEER in writing that the entire Work is substantially complete (except for items specifically listed by

CONTRACTOR as incomplete and as to those items, the CONTRACTOR shall prepare and submit to the CITY ENGINEER a comprehensive list of items to be completed or corrected. The CONTRACTOR shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the CONTRACTOR to complete all Work in accordance with the Contract Documents) and request that the CITY ENGINEER issue a certificate of Substantial Completion. Within a reasonable time thereafter, CONTRACTOR and CITY ENGINEER shall make an inspection of the Work to determine the status of completion. If CITY ENGINEER does not consider the Work substantially complete, CITY ENGINEER will notify CONTRACTOR in writing giving the reasons therefore. If CITY ENGINEER considers the Work substantially complete, CITY ENGINEER will prepare and deliver to OWNER a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. At the time of delivery of the tentative certificate of Substantial Completion, CITY ENGINEER will deliver to CONTRACTOR a written recommendation as to division of responsibilities pending final payment between OWNER and CONTRACTOR with respect to security operation, safety, maintenance, heat, utilities, insurance and warranties. Unless OWNER and CONTRACTOR agree otherwise in writing prior to CITY ENGINEER's issuing the definitive certificate of Substantial Completion, CITY ENGINEER's aforesaid recommendation will be binding until final payment. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the OWNER and CONTRACTOR for their written acceptance of responsibilities assigned to them in such Certificate.

- 10.F.2. Upon Substantial Completion of Work or designated portion thereof and upon application by the CONTRACTOR and recommendation by the CITY ENGINEER, the OWNER shall take action on the recommendation, including reflecting adjustment in retainage, if any, of such Work or portion thereof as provided in the Contract Documents.
- 10.F.3. OWNER shall have the right to exclude CONTRACTOR from the Work after the date of Substantial Completion, but OWNER shall allow CONTRACTOR reasonable access to complete or correct items on the tentative list.

#### SECTION G FINAL INSPECTION

- 10.G.1. Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, CITY ENGINEER will make a final inspection with CONTRACTOR and will notify CONTRACTOR in writing of all particulars in

which this inspection reveals that the Work is incomplete or defective. CONTRACTOR will immediately take such measures as are necessary to remedy such deficiencies.

## SECTION H

### FINAL COMPLETION AND FINAL PAYMENT

- 10.H.1. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the CITY ENGINEER will promptly make such inspection and, when the CITY ENGINEER finds Work acceptable under the Contract Documents and the Contract fully performed, the CITY ENGINEER will promptly issue a recommendation for final payment stating that to the best of the CITY ENGINEER's knowledge, information and belief, and on the basis of the CITY ENGINEER's observation and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the CONTRACTOR and noted in said recommendation for final payment will constitute a further representation that conditions listed in Paragraph 10.H.2, as precedent to the CONTRACTOR's being entitled to final payment, have been fulfilled.
- 10.H.2. Neither final payment nor any remaining retained percentage shall become due until the CONTRACTOR submits to the CITY ENGINEER: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the OWNER or the OWNER's property might be responsible or encumbered (less amounts withheld by OWNER) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the OWNER that the insurance has been renewed to cover the period required by the Contract Documents; (3) consent of surety, if any, to final payment; and (4) if required by the OWNER, other data establishing payment or satisfaction or obligations, such as receipts, release and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor or Supplier refuses to furnish a release or waiver required by the OWNER, the CONTRACTOR may furnish a bond satisfactory to the OWNER to indemnify the OWNER against such lien. If such a lien remains unsatisfied after payments are made, the CONTRACTOR shall refund to the OWNER all money that the OWNER may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

- 10.H.3. If, after Substantial Completion of Work, final completion thereof is materially delayed through no fault of the CONTRACTOR or by issuance of Change Orders affecting final completion, and the CITY ENGINEER so confirms, the OWNER shall, upon application by the CONTRACTOR and recommendation by the CITY ENGINEER, and without terminating the Contract, take action on the Application and recommendation of 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, including liquidated damages, 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 CONTRACTOR to the CITY ENGINEER prior to recommendation of such payment. Such payment shall be acted upon by OWNER under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.
- 10.H.4. Acceptance of final payment by the CONTRACTOR, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

SECTION I  
CONTRACTORS CONTINUING OBLIGATION

- 10.I.1 Contractor's obligation to perform and complete the Work in accordance with Contract Documents shall be absolute. Neither recommendation of any progress nor final payment by CITY ENGINEER, nor the issuance of a certificate of Substantial Completion Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor the issuance of a notice of acceptability by CITY ENGINEER, nor any correction of defective Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR's obligation to perform the Work in accordance with the Contract Documents.

ARTICLE 11 - MISCELLANEOUS PROVISIONS

SECTION A  
GOVERNING LAW

- 11.A.1 The Contract shall be governed by the law of the State of Michigan.

SECTION B

## GIVING NOTICE

- 11.B.1. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the individual or to a member of the entity for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

## SECTION C SUCCESSORS AND ASSIGNS

- 11.C.1. The OWNER and CONTRACTOR respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. CONTRACTOR shall not assign the Contract as a whole without written consent of the OWNER.

## SECTION D RIGHTS AND REMEDIES

- 11.D.1. Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.
- 11.D.2. No action or failure to act by the OWNER or CONTRACTOR shall constitute a waiver of a right or duty afforded them under the Contract, nor shall action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing or as set forth in the Contract Documents.
- 11.D.3. Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph shall not be construed as a substitute for a waiver of the provisions of any applicable statute of limitations or repose.
- 11.D.4. All representations, warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.