



REQUEST FOR PROPOSALS

DOWNTOWN SKATE, SCOOT & BIKE PARK

Develop Bike, Skate and Scooter Park with organized programming Downtown Grand Rapids, Michigan

Deadline: **May 25**, 2020 by 5pm EST

ITEMS DENOTED IN RED ARE AMENDED/ADDED

Deliver to:

Downtown Grand Rapids Inc.

Attn: Kimberly Van Driel

kvandriel@downtowngr.org

29 Pearl St. Suite 1

Grand Rapids, MI 49504



DOWNTOWN
GRAND RAPIDS INC.

DOWNTOWN GRAND RAPIDS INC. (DGRI) BACKGROUND

DGRI is the organization responsible for city building and place-management in the urban core of Grand Rapids, Michigan, the state's second largest city. Established in 2013, DGRI serves as the singular management entity for the combined operations of the Downtown Development Authority (DDA), the Downtown Improvement District (DID), and the Monroe North Tax Increment Finance Authority. More details can be found at www.downtowngr.org.

PROJECT SUMMARY

Downtown Grand Rapids Inc. (DGRI) is seeking proposals to build a temporary skate, scooter and bike park in Downtown Grand Rapids that will open during early summer of 2020 to help activate the Monroe North pop-up park. Proposals must cover the design, build out and construction, maintenance, events and programming.

The successful bidder will work in partnership with DGRI, the City of Grand Rapids, and community partners to complete the project build out by July 31 and events by the end of November 30, 2020. The contract awarded will be between the successful bidder and the DDA.

PROJECT BACKGROUND

Since 2013, when DGRI first opened its doors, the community has asked for a skate park. Through the GR Forward Master Plan and River for All guidelines, we have heard through countless focus groups that Downtown Grand Rapids is in need of a skate park. In 2018, the City of Grand Rapids acquired the 555 Monroe North land through a grant by the state. In order to receive the grant, the Parks Department had to activate it within so many days of procuring the land. For the past two years, DGRI has helped to activate this area with events and programming including artwork, an ice-skating rink, and outdoor movie series and more. Now, we are shifting gears seeking to activate this space as a temporary skate, scoot, and bike park for Grand Rapidsians to utilize. In the River for All guidelines, it showcases a potential skate park located within the 555 footprint. Before this space is used as a staging site for the Grand River restoration project, we are able to test out the site to see how it works for a skate park in order to show what this site could potentially be in the future for a more permanent infrastructure. We are given 1-3 years in this site in order to test out the area, gain feedback, and address the need for a sanctioned skate facility within our Downtown.

SCOPE

DGRI seeks a professional entity to develop a temporary skate, scooter and bike park plan complete with design, timeline, community outreach, events and programming, construction, development and implementation of a park.

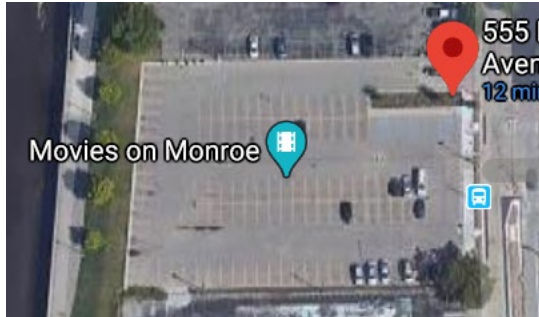
The skate, scooter and bike park goals include:

1. Create a sanctioned safe park for the skate, scoot and bike community
2. Increase visitors to the space and to Downtown
3. Design and install a temporary park within the given footprint
4. Construction and park opening no later than the end of July 2020
5. Create new partnerships through community outreach about the project
6. Maintain the skate park infrastructure and equipment in safe, working order.
7. Help identify new partners to help activate the site with events and programming

8. Host a ribbon cutting ceremony and event with programming, partners, and skate, scoot, bike competitions
9. Host a grand opening event with a full day of programming with partners, and skate, scoot, bike competitions

PROJECT AREA

The skate, scoot, and bike park will be located at the 555 Monroe NW lot in Downtown Grand Rapids, MI within the 40,765 sq. ft location in the middle surfaced lot that now houses a shipping container, art installation entrance and locally painted fish murals.



BUDGET

Applicants should prepare the budget based on implementing the scope of services; cost is one of the items that will be used to evaluate the proposals. The successful applicant will be paid in accordance with performance milestones and after meeting cost documentation requirements.

SERVICES REQUESTED

The selected consultant will work with a committee of individuals from DGRI, the City of Grand Rapids, and other potential stakeholders. DGRI staff will be the primary point of contact and will manage the project. The contract will be facilitated through DGRI. Services should include, but are not limited to, the following:

1. Design: Create a concept rendering and design for the 555 Monroe NW, Grand Rapids, MI location outlined within the project area. Complete with ramps, rails, jumps, etc. equipped for skaters, scooters, and bikes. Design should show concept to scale.
2. Timeline: Create a proposed timeline of how you would be able to accomplish the desired timeline outlined. The timeline should contain project milestones.
3. Site Preparation: Cleanup the area and footprint. Plans to resurface the current asphalt site with a minimum footprint of 14,000 square ft.
4. Community Connection: Plans of how to connect with the community for community outreach about the installation and project plans. Additional outreach within the community for additional future partnerships within the skate, scoot and bike community.

5. Build Out and Construction: Off-site build out plans with construction plans. Must obtain any City building permits needed for the installation and obtain insurance naming DGRI, the DDA, and the City of Grand Rapids as additional insureds.
6. Soft Opening Event: Program plan for a ribbon cutting ceremony that the consultant would be able to execute. Would be able to create marketing materials, work with the City of Grand Rapids Office of Special events to obtain any permits and file appropriate applications in order to host the event. Organize partners, programming, and activities. Must obtain event insurance for the day of the event for a one million general liability insurance naming the City of Grand Rapids, DGRI, and the DDA as additional insureds.
7. Grand Opening Event: Program plan for a ribbon cutting ceremony that the consultant would be able to execute. Would be able to create marketing materials, work with the City of Grand Rapids Office of Special events to obtain any permits and file appropriate applications in order to host the event. Organize partners, programming, and activities. Must obtain event insurance for the day of the event for a one million general liability insurance naming the City of Grand Rapids, DGRI, and the DDA as additional insureds.
8. Maintenance Plan and Operations: Specific year-round on-going maintenance plan and fee schedule for the park that includes a schedule and safety elements commensurate with industry standards.

PERMITS, INSURANCE, BONDS AND RELATED CONTRACT REQUIREMENTS

1. Building Permit: The company selected will need to work with the City of Grand Rapids Engineering Department and obtain a standard commercial building permit for the construction of the project. Structural design calculations will need to be provided for the framing and the anchorage of the structures for the permit. The design will need to bear a seal from a licensed engineer.
2. Insurance Requirements: The selected contractor shall acquire, continuously maintain during the period in which the contractor is performing services, and provide the City with acceptable proof of the proper types and amounts of insurance coverage:
 - a. Comprehensive General Liability in an amount not less than One Million Dollars (\$1,000,000) Combined Single Limits (CSL) per occurrence; Two Million Dollars (\$2,000,000) General Aggregate; Two Million Dollars (\$2,000,000) Products Completed Operations Aggregate, for both bodily injury and property damage The City of Grand Rapids and Downtown Development Authority (DDA) shall be named as additional insured by endorsement to the Comprehensive General Liability policy.
 - b. Coverage shall include extensions:
 - i. Contractual Liability,
 - ii. Products Completed Operations Hazard,
 - iii. Independent Consultant Coverage, and
 - iv. Broad Form General Liability

- c. Automobile Liability with required Michigan endorsements covering vehicles owned, and non-owned vehicles used, by the contractor with policy limits of not less than One Million Dollars (\$1,000,000) CSL.
 - d. Worker's Compensation: minimum one hundred thousand/five hundred thousand (\$100,000/\$500,000) limits as required by State of Michigan statutes.
 - e. Professional Liability Insurance: One Million Dollars (\$1,000,000) each occurrence / Two Million Dollars (\$2,000,000) annual aggregate (life of the contract).
 - f. Owner's & Contractor's Protective Liability Insurance (OCP): One Million Dollars (\$1,000,000) CSL per occurrence for bodily injury and property damage, with the City, the City's Consultant, and Grand Rapids Downtown Development Authority (DDA) listed as insured.
 - g. Include "City of Grand Rapids and the Grand Rapids Downtown Development Authority (DDA), all elected and appointed officials, employees and volunteers, all board, commissions and/or authorities and board members, including employees and volunteers thereof are additional insured as respects to general liability and auto liability as required under written contract"
 - h. Include specific Subrogation Statement: Waive all rights of subrogation against Grand Rapids Downtown Development Authority (DDA), City of Grand Rapids, Engineer, Engineer's Consultant, Subconsultant and their respective officers, directors, partners, employees, and agents.
 - i. Include Project title and project number on all certificates/binders.
 - j. Insurance must have effective date on/before award date and not expire prior to the completion date.
 - k. Certificate Holder Address - City of Grand Rapids Engineer Office 300 Monroe Avenue NW 5th Floor Grand Rapids, MI 49503.
 - l. Certificates of insurance evidencing that the contractor has secured all of the foregoing insurance must be provided to the City. A minimum of thirty (30) days' notice to the City prior to the cancellation of, or change in, any such insurance shall be endorsed on each policy and noted on each certificate.
3. Bond Requirements: The contractor shall provide the following bonds once construction cost is determined.
- a. Performance Bond: Guarantees the work is completed and covers cost of award to another firm if needs-be. Provided equal to 100 percent of the contract sum.
 - b. Payment/Lien Bond: Guarantees payment of any subs and suppliers for the project in the event the firm does not pay. Provided equal to 100 percent of the contract sum.
 - c. Performance Bond and Payment/Lien Bond shall be provided to the City of Grand Rapids by mail or personal delivery. Date effective on or within seven (7) days of establishment of the construction cost. Bond Requirements: The contractor shall provide the following bonds once construction cost is determined.

4. **Contract Form:** The selected contractor shall enter into an agreement with the City of Grand Rapids via a contract similar to the sample CM Agreement (Attachment A at end of RFP). This agreement will also be required to include General Conditions (Attachment B at end of RFP).

PROJECT SCHEDULE

Below is a proposed project schedule. All dates are subject to change.

- **May 25, 2020** by 5pm EST – Proposals are due
- **June 10, 2020** - Recommendation of selected RFP to the Downtown Development Authority (DDA) Board for approval followed by the City Commission
- End of **June**– Contract with successful applicant signed
- **July**– Off-site build out and asphalt area resurfaced
- **August** – Construction, implementation and installation of park amenities
- **September**– Ribbon cutting ceremony event and Grand Opening
- Year-round continued maintenance in accordance with proposed schedule

PROPOSAL REQUIREMENTS

Proposals submitted shall be limited to 8 pages (front and back allowed). The proposal should include the following information:

1. **Description of Approach** -- A summary of your firm's project understanding, intended approach and methods. This should include detailed concept design drawings to scale and descriptions of installation and maintenance.
2. **Project Experience** -- A description of your firm's experience in designing, constructing, and maintaining skate, scoot, and bike parks within an urban setting. Must provide no less than 3 professional references relating to this specific type of project.
3. **Team** -- description of the team assigned to this project. Staff listed must be the same working on the project.
4. **Schedule** -- Overview of timeline and important project milestones to ensure project delivery on time.
5. **Project Costs** -- An outline of your professional fees for completing the work as described. Provide an estimate of projected hours and itemized costs for each task. The bid prices shall cover the costs of any nature, incident to and growing out of the work. In explanation but not in limitation thereof, the prices stated by the bidder shall include the cost of everything necessary for the performance and completion of this Project in the manner and time prescribed including: the furnishing of all material, tools, equipment, transportation, labor, and supervision; all costs on account of loss by damage or destruction of the work; unforeseen difficulties encountered; for settlement of damages; for replacement of defective work and materials; and for all else necessary, therefore, and incidental thereto.
6. **Submission** – Firms may submit elements of the proposal such as events, asphalt, design, build out that they are most qualified for. Firms responding to all elements of the proposal will score higher during the review process.

REGISTRATION

All interested consultants are encouraged to send an email to DGRI's Director of Public Space Management, Kimberly Van Driel (kvandriel@downtowngr.org) registering their intent to respond to this proposal. All firms expressing interest will be added to an email distribution list and will be notified if additional information related to the proposal becomes available. Firms failing to register in this manner may not receive all information relevant to the preparation of their proposals.

QUESTION PERIOD

Any questions regarding the proposal may be submitted by email to DGRI's Director of Public Space Management, Kimberly Van Driel (kvandriel@downtowngr.org). Questions must be submitted by **May 11, 2020** by 5pm EST.

SELECTION STANDARDS

Selection will be based on evaluation of the following criteria:

1. Qualifications in design, construction and maintenance of skate, scoot and bike parks and positive references (25%)
2. Effectiveness of proposed work plan and project understanding (15%),
3. Innovative engagement strategy (20%)
4. Strength of team (10%)
5. Professional fee (20%)
6. Clarity and responsiveness of proposal (10%)

ACCEPTANCE OF PROPOSALS

The DDA may waive any informalities or minor defects or reject any and all Proposals.

Refer to attachments that follow

END OF RFP

**AGREEMENT FOR MANAGEMENT AND CONSTRUCTION
SERVICES**

BETWEEN

THE CITY OF GRAND RAPIDS, MICHIGAN

AND

FIRM NAME

Project:

Project Name

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AGREEMENT FOR MANAGEMENT AND CONSTRUCTION SERVICES

THIS AGREEMENT FOR MANAGEMENT AND CONSTRUCTION SERVICES (the "Agreement") has been executed as of **Month DD, YYYY**, between the CITY OF GRAND RAPIDS, MICHIGAN, a Michigan municipal corporation, of 300 Monroe Avenue, N.W., Grand Rapids, Michigan 49503 (the "City"), and **[Firm Name]**, a **State [type of entity]**, of **Street Address, City, State Zip** (the "Construction Manager").

RECITALS:

A. The City has decided to retain the services of a Construction Manager to act on the City's behalf and in the City's best interest, and to assume certain risks, in connection with the development of the Project in accordance with the City's goals.

B. The Construction Manager wishes to serve as construction manager for the Project and has represented that it is experienced in providing construction management services for projects of the size, complexity, and nature of the Project and is willing to accept the risk allocation set forth in this Agreement.

C. The purpose of this Agreement is to establish the terms and conditions under which the City has agreed to purchase management and construction services from Construction Manager.

D. The parties have executed this Agreement based upon the foregoing recitals.

The City and the Construction Manager agree as follows:

ARTICLE 1. INDUCEMENT; BASIC AGREEMENT

1.1. INDUCEMENT

1.1.1. To induce the City to execute this Agreement, the Construction Manager represents and warrants (in addition to any other representations and warranties contained in the Contract Documents) that:

(a) All materials furnished to the City as part of the City's construction manager selection process were, and remain, in all material respects true, correct and complete.

(b) All construction details, construction means, methods, procedures and techniques will, at a minimum, conform strictly with (i) good and sound practices within the construction industry; (ii) generally prevailing and accepted industry standards applicable to the Work; (iii) the requirements of any warranties applicable to the Work, and (iv) the requirements of the Contract Documents.

(c) It (i) and its Subcontractors and Suppliers are and will be financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital

to complete the Work and perform all obligations hereunder; (ii) has the resources, including an adequate labor supply, and it is and will remain properly licensed to fulfill its obligations under this Agreement; (iii) is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder; (iv) is authorized to do business in Michigan; (v) has executed this Agreement and its performance thereof is within its duly authorized powers; (vi) has caused a duly authorized representative to visit the site of the Project, is familiar with the local and special conditions under which the Work is to be performed, and has correlated its site observations with the requirements of the Contract Documents; and (vii) possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of the Project, and that it will perform the Work with the care, skill and diligence of such a contractor.

(d) Its investigation of the Project site and all improvements thereon and the conditions under which the Work is to be performed was performed in detail and was sufficient to disclose (i) the nature, location, condition, layout and accessibility of the Project Site and surrounding areas, (ii) the conditions and difficulties under which the Work is to be performed, including staging, (iii) any continued use and occupancy of the Project Site, (iv) anticipated labor supply and costs, (v) availability and cost of transportation, materials, tools, and equipment, (vi) staging and expected loads and demands on the structural and mechanical systems of the Project during performance of the Work, and (vii) other similar issues, such as the generally prevailing climatic conditions and the need for temporary bracing and structural stability, pertinent to the performance of the Work, below and above grade infrastructure, adjoining properties and buildings, building and facility infrastructure including all right-of-way systems, structural, mechanical, electrical, and plumbing systems; provided, however, that responsibility for unforeseen site conditions shall be governed by Section 3.3 of the General Conditions.

(e) It (i) has carefully examined and understands this Agreement and all Applicable Laws, and (ii) enters into this Agreement on the basis of its own examination, investigation, and evaluation of all such matters and not in reliance upon any opinions or representations of the City, the Design Professional, or any of their respective officers, agents, servants, independent contractors, or employees, except as specifically set forth in the Contract Documents.

(f) Each schedule it submits will set forth a reasonable time for completing the Work, and it will be able to cause the Work to be completed within that time, subject to extensions of time as may be granted in accordance with the Contract Documents.

(g) As part of the Work, and prior to commencing delivery of its construction services, the Construction Manager will carefully review and evaluate the Drawings and Specifications and advise the City in writing immediately if it believes they or any other part of the Contract Documents are flawed in any way.

1.1.2. The Construction Manager's representations and warranties, wherever given, are in addition to, and not in lieu of, any and all other liability imposed upon Construction Manager under this Agreement or by law.

1.1.3. The Construction Manager's representations and warranties, wherever given, the obligations of the Construction Manager which are of a continuing nature, and the Construction Manager's liability under this Agreement, shall survive the City's final acceptance of and payment for the Work and the termination of this Agreement for any reason whatsoever.

1.2. AGREEMENT TO HIRE AND SERVE

1.2.1. Based upon the foregoing, the City hires the Construction Manager to perform the Services, and the Construction Manager accepts the City's engagement and agrees to perform the Services. The relationship between the City and the Construction Manager shall be governed by this Agreement. The attached "City of Grand Rapids Standard General Conditions" (the "General Conditions") are incorporated herein by reference.

1.2.2. All Services shall be performed strictly in accordance with all Applicable Laws, ordinances and regulations.

(a) The Construction Manager and its Affiliates shall maintain throughout the term of this Agreement all federal, state and local licenses, permits and certificates necessary to perform this Agreement.

(b) The Construction Manager shall not be required to provide services which would require licensure as an architecture professional or engineer, unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Construction Manager has specifically agreed in writing to provide such services. If it does, the Construction Manager shall cause such services to be performed by appropriately licensed professionals who carry adequate professional liability insurance.

(c) The Construction Manager agrees to use the utmost skill and care when performing its duties under this Agreement and to use its best efforts to efficiently and safely administer and supervise the Work, to complete the Project to a high standard of quality, and to perform the Work as expeditiously and economically as possible, always consistent with the best interests, and to the full satisfaction, of the City.

(d) The Construction Manager acknowledges that this Agreement establishes a special relationship of trust and confidence between it and the City, and the Construction Manager accepts this relationship. The Construction Manager acknowledges that the City is relying upon the Construction Manager's skill and expertise in connection with the Work called for hereunder.

(e) If the Construction Manager becomes aware of any discrepancies, omissions, ambiguities, or conflicts in the Contract Documents, it shall promptly describe them in a written notification to the City and the Design Professional.

(f) The City assumes no responsibility or liability for the physical condition of or safety at the Project Site or any improvements thereon. Except in the case of hazardous materials that are not its responsibility under the Contract Documents, the Construction Manager shall be solely responsible for providing a safe place for the performance of the Work.

(g) The Construction Manager hereby acknowledges and agrees that any information (including without limitation geotechnical reports, subaqueous reports, environmental reports, and due diligence reports), materials, and test data furnished to the Construction Manager by the City or the Design Professional, except the Drawings and Specifications, are supplied solely for the convenience of the Construction Manager. The City makes no representation or warranty regarding the accuracy, completeness, or adequacy of such information, materials, and data, and the Construction Manager must verify independently that such items are sufficient to be relied upon in connection with the Work.

(h) If the Construction Manager becomes aware of any defects or failure in the Work or harm that may be caused by the Work to surrounding areas, it shall immediately notify the City.

1.3. DEFINITIONS

Terms defined in this Agreement shall bear the same meaning whenever they appear in the General Conditions and terms used in this Agreement that are defined in the General Conditions shall have the meanings ascribed to them in the General Conditions, in both cases unless the context clearly requires to the contrary.

1.4. COMPENSATION

The Construction Manager shall be compensated for its services in the manner and with the frequency described in Article 9 and the General Conditions.

1.5. DRAWINGS AND SPECIFICATIONS

1.5.1. The Drawings, Specifications, and other documents prepared for or in connection with the Project, regardless of whether they were prepared by the City, the Construction Manager, or a third party, belong to the City. The Construction Manager may retain one record set. All copies of them, except the Construction Manager's record set, shall be returned or suitably accounted for upon completion of the Work. They are for use solely with respect to the Project. The Construction Manager shall not, without the prior written consent of the City, use or permit anyone to use any Drawings, Specifications, or other documents prepared for or in connection with the Project, or any concepts or ideas developed in connection with the Project, for any purpose other than

the Project. The City shall at all times have access to and control over the disposition of any Drawings, Specifications, and other documents pertaining to the Project.

1.5.2. The Construction Manager and its Affiliates are each granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project shall not be construed as publication in derogation of anyone's reserved rights.

1.5.3. If there are inconsistencies within, among or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Construction Manager shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement—either or both in accordance with the City's interpretation. The terms and conditions of this Section, however, shall not relieve the Construction Manager of any of its other obligations under the Contract Documents. Other conflicts between or among the Contract Documents shall be resolved under the following rules of construction:

- (a) Specified dimensions shown on the Drawings shall govern, even though they may differ from dimensions scaled on the Drawings;
- (b) Drawings of larger scale shall govern over those of smaller scale of the same date;
- (c) Specifications shall govern over Drawings;
- (d) Documents of later date shall always govern; and
- (e) This Agreement shall govern over all other documents.

1.5.4. The Construction Manager and each Subcontractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference which may be found shall be submitted in writing to the City for resolution prior to seven (7) calendar days before proceeding with the Work. Notification shall be provided to the City Engineer or the Engineer's designee, who will provide direction.

1.5.5. If a minor change in the Work is found necessary due to actual field conditions, the Construction Manager shall submit detailed drawings of such departure for approval by the City before making the change.

1.6. SCHEDULE OF VALUES

1.6.1. As soon as possible after execution of this Agreement, the Construction Manager shall furnish the City with (i) a "Schedule of Values" allocating the Construction Cost over the various portions of the Work, and (ii) the Project Schedule and Construction Schedule required under this Agreement and the General Conditions.

(a) Both the Schedule of Values and the Project and Construction Schedules shall be in form and substance satisfactory to the City and its Design Professional and include such data and documents as the City and its Design Professional may reasonably require. The Schedule of Values and Project and Construction Schedules shall each include a written narrative which sets forth any clarifications, assumptions, conditions, and qualifications to the information they contain, such as any line-items in the Schedule of Values or Milestone Dates in the Project and Construction Schedules.

(b) By executing this Agreement and furnishing the City with a Schedule of Values and Project and Construction Schedules, the Construction Manager represents and warrants that the Contract Documents, materials, and information furnished to the Construction Manager as of the date of this Agreement and the ongoing discussions and meetings between the Construction Manager and both the City and the Design Professional have described the scope, construction requirements, and design and intent of the Work in detail sufficient to enable the Construction Manager to establish firmly the Project and Construction Schedules. The Construction Manager shall not be permitted to claim any adjustment in the Construction Manager's compensation or the Construction Time, except as specifically provided in the Contract Documents.

ARTICLE 2. THE DUTIES OF THE CONSTRUCTION MANAGER

2.1. BASIC DUTY

2.1.1. Construction Manager shall for an amount equal to the Construction Cost plus the Construction Manager's Fee (but in no case more than the Guaranteed Maximum Price), and without additional cost to the City, provide the Services and cause the Work to be performed on a timely basis in accordance with the Contract Documents.

(a) The Construction Cost means, and is limited to, the net amount of those actual out-of-pocket costs necessarily and in good faith incurred by the Construction Manager in the proper performance of the Work and listed in Sections below. Under no circumstances shall any of the costs of the Project exceed those commonly charged for similar work or materials in the community where the Project is located.

(1) An hourly rate for persons directly employed by the Construction Manager performing, managing or administrating the construction of the Work at the Project Site, or stationed offsite with the City's approval, calculated in accordance with the Schedule of Project Details, which rate shall be billed in increments of not more than one-quarter (1/4) hour, and subject to the cap on such costs included in the Schedule of Project Details.

(2) Costs, including transportation, of materials and equipment incorporated or to be incorporated into the completed construction.

(3) Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

(4) Cost of all materials, temporary facilities, equipment and hand tools not customarily owned by the construction workers (where the cost of any tool exceeds \$300, the Construction Manager must inventory it and turn it over to the City at Final Completion), which are provided by the Construction Manager at the Project Site and either fully consumed in the performance of the Work or left at the Project Site.

(5) Reasonable rental costs for necessary temporary facilities, machinery, equipment, and hand tools used at the Project Site, whether rented from the Construction Manager or others. Rates and quantities of equipment rented shall be subject to the City's prior approval.

(6) Premiums for insurance and bonds devoted exclusively to the Project at the "insurance rate" set forth in the Schedule of Project Details.

(7) Reasonable costs of removal of debris from the Project Site.

(8) Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property to the extent not (i) caused by the Construction Manager, a Subcontractor, or anyone for whom either is responsible; or (ii) capable of being prevented through timely notice of an unsafe condition to the City.

(9) Unit prices, if any, in the amounts set forth in the Schedule of Project Details.

(10) Expenses of reasonable non-commuting traveling by representatives of the Construction Manager required by union contracts or incurred in obtaining or inspecting materials, recruiting labor, or for other purposes applying to the Work, and by mechanics or laborers and the Construction Manager's staff employees if it is necessary to secure them at a distance from the Project Site.

(11) Sales, use, gross receipts or similar taxes related to the Project imposed by any governmental authority, and for which the Construction Manager is liable. Construction Manager is responsible for paying all state sales and use taxes unless City provides a Tax Exempt number. On all invoices to the City, the Construction Manager shall break out and separately state all such taxes paid whether by Construction Manager, or any other member of the Construction Team. If any such taxes are subsequently determined to have been erroneously paid, Construction Manager shall promptly seek (or cause to be sought) a refund from the appropriate governmental authorities and promptly remit to the City any such refund obtained.

(12) Other costs incurred in the performance of the Work, which may include use of contingency, but only if and to the extent approved in advance in writing by the City.

Examples of items the Construction Cost do not include are:

(A) Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the Project Site, except as approved otherwise by the City.

(B) Expenses of any Construction Manager's office other than the Project Site office.

(C) Overhead and general expenses.

(D) The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.

(E) Rental costs of machinery and equipment, except as specifically provided in Section 2.1.1(a)(5).

(F) Costs due to the fault or negligence of the Construction Manager or anyone directly or indirectly employed by it, or for whose acts it may be liable, including, but not limited to, fines, costs for the correction of damaged or Defective Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.

(G) Any cost which under the terms of this Agreement is to be borne by the Construction Manager.

(H) Any cost for which Construction Manager is entitled to be reimbursed.

(I) Any cost, such as overtime charges, labor premium, excess manpower or the like, incurred as a result of the Construction Manager's inability to complete the Work on a timely basis using normal working hours and patterns and an ordinary supply of labor.

(J) Losses and expenses sustained by the Construction Manager or anyone for whom it is responsible if such losses or expenses arise out of the infidelity or dishonesty on the part of one of their employees.

(K) Losses and expenses not covered by insurance, if the Construction Manager or anyone for whom it is responsible shall fail to obtain and/or maintain in effect the insurance required by the Contract Documents, and the insurance deductibles on any insurance they maintain.

(L) Any cost not specifically and expressly described in Sections 2.1.1(a)-1-12 above.

Costs of any kind, whether or not described in Section 2.1.1 above, which would cause the Guaranteed Maximum Price to be exceeded.

(b) The Construction Manager's fee is specified in the Schedule of Project Details.

(c) Prior to the establishment of the Guaranteed Maximum Price, if a "Fixed Limit of Construction Cost" is identified in the Schedule of Project Details, it will set forth the maximum Construction Cost the City is willing to pay, except in the case of Changes in the Work pursuant to Article 6 of the General Conditions. Neither any estimated nor the final Construction Cost may exceed the Fixed Limit of Construction Cost without the prior written approval of the City. The Construction Manager shall collaborate with the Design Professional during the design and bidding of the Project to achieve the objective of completing construction of the Project for a Construction Cost that does not exceed the Fixed Limit of Construction Cost. If, during the collaboration process, there is any indication the Construction Cost may exceed the Fixed Limit of Construction Cost, the Construction Manager shall consult and cooperate with the Design Professional in making recommendations to the City for corrective action toward meeting the City's requirement of having the Construction Cost be no greater than the Fixed Limit of Construction Cost.

2.1.2. Without limiting the generality of the foregoing, the Construction Manager shall be responsible for the performance and administration of all general conditions required for the Work, except as specifically allocated to the City under this Agreement.

2.2. STANDARD OF CARE

2.2.1. The Construction Manager agrees that it will (i) perform all Work and Services strictly in accordance with the requirements of the Contract Documents, and (ii) in other respects always act with that degree of care, skill and diligence usually exercised by and expected of first-rate, nationally-recognized construction managers experienced in projects similar to the Project in scope, size, complexity and nature.

2.2.2. The Construction Manager shall cooperate reasonably with the City, the Design Professional and the City's other consultants and contractors in furthering the best interests of the City throughout the duration of this Agreement.

2.2.3. The Construction Manager shall perform all of its Services and shall cause all Work to be performed strictly in accordance with Applicable Laws to the satisfaction of all units of government having jurisdiction.

2.2.4. The Services and the Work shall be performed only by qualified, competent personnel so as to provide the best value for the City.

2.2.5. The Construction Manager shall be as responsible to the City under this Agreement for the acts and omissions of other members of the Construction Team as it is for its own. This provision shall not create any responsibility on the Construction

Manager's part for the City's separate contractors or others for which the Construction Manager is not responsible.

2.3. DOCUMENTS; MEETINGS

2.3.1. COPIES OF DOCUMENTS.

The Construction Manager shall, upon request, furnish the City with copies of any documents in the possession of or available to the Construction Manager in any way pertaining to the Project, except privileged communications and documents with incidental references to the Work or documents which discuss multiple projects. The Construction Manager shall take appropriate action to ensure that all Subcontracts and Supply Contracts contain the same requirement.

2.3.2. MEETINGS AND PRESENTATIONS.

At any time during the duration of this Agreement, upon the City's request, the Construction Manager shall assist and support the City, at no additional charge to the City, in preparing for and attending meetings and presentations related to the Work except where stated in the scope of services proposal as exceeding a pre-determined number of meetings with a scheduled per diem cost for additional meetings.

2.3.3. FILING OF DOCUMENTS.

In addition to its obligation to secure permits, the Construction Manager shall assist the City and the Design Professional in connection with the filing of documents required to receive approvals from governmental authorities having jurisdiction over the Work.

2.3.4. MEETINGS AND MINUTES.

(a) The Construction Manager shall keep minutes of all pre-bid and construction progress meetings and shall deliver them to all participants promptly after each such meeting. The Construction Manager shall promptly respond in writing to comments or suggestions it receives from others.

(b) The Construction Manager shall schedule and conduct with the Subcontractors pre-construction and construction progress meetings and any other meetings deemed necessary to discuss such matters as procedures, progress, problems, safety, inspections, sequencing, and scheduling, and shall prepare and promptly distribute minutes. Construction progress meetings will be conducted by the Construction Manager biweekly or more frequently if required by the City, and unless otherwise directed by the City attended by all Subcontractors whose Work has not been completed. Executive level progress meetings will be held on a monthly basis. All progress meeting minutes shall be provided to the City by the Construction Manager within five (5) days after the meeting and distributed to all attendees promptly after they have been approved by the City. The City will act promptly in providing its approval.

(c) Under no circumstances shall meeting minutes establish a new precedence or alter or modify the Contract Documents.

(d) Representatives of the City and the Design Professional will be given notice of and an opportunity to attend all meetings.

2.4. CLAIMS AGAINST CONSTRUCTION MANAGER

The Construction Manager shall promptly notify the City of any claims threatened or asserted against the Construction Manager or any member of the Construction Team arising out of or in connection with the Project, the Work or the Contract Documents except those, if any, asserted by the City. The notification shall include as much specific information as is available about the claim, including without limitation, whether the claim involves, or may involve, the City. The Construction Manager shall keep the City fully apprised of the status of any such claims. To the extent such claims are its responsibility under the Contract Documents, the Construction Manager shall without undue delay resolve all such claims in good faith at its sole expense and without additional recovery from the City by increase in the Guaranteed Maximum Price or otherwise, provided however, that any claims that are not the result of the acts or omissions of the Construction Manager shall be eligible for reimbursement out of the Construction Manager's contingency, if available, and in accordance with the provisions of Section 8.1.2(a).

2.5. TIME IS OF THE ESSENCE

2.5.1. The Construction Manager will promptly perform its duties under the Contract Documents and will give the Work as much priority as is necessary to cause the Work to be completed on a timely basis strictly in accordance with the Contract Documents. Time is of the essence of this Agreement. All Services and Work shall be performed strictly within the time limitations necessary to maintain the critical path and all deadlines established in the Project Schedule and the Construction Schedule, and no task shall be permitted to consume more time than is necessary to accomplish it.

2.5.2. All dates and periods of time set forth in the Contract Documents, including those for the commencement, prosecution, interim milestones, milestones, and completion of the Work, and for the delivery and installation of materials and equipment, were included because of their importance to the City.

2.5.3. The Construction Manager acknowledges and recognizes that (i) the City is entitled to full and beneficial occupancy and use of the completed Work following expiration of the Contract Time, (ii) the City is relying upon the Construction Manager's achieving of certain Work for Beneficial Occupancy, which may be prior to Substantial Completion of the entire Project, in order to meet the City's operational, functional, performance and maintenance demands, and (iii) the City is relying upon the Construction Manager's achieving Substantial Completion of the Work at the time for Substantial Completion set forth in the Construction Schedule.

2.5.4. Except and only to the extent provided otherwise in Section 7.3 of the General Conditions, by signing this Agreement, the Construction Manager agrees:

1. to bear the risk of delays to completion of the Work; and
2. that its compensation was established and this responsibility was accepted with full knowledge of this risk.

2.5.5. In agreeing to bear the risk of delays to completion of the Work, the Construction Manager understands that, except and only to the extent provided otherwise in Article 7 of the General Conditions, the occurrence of events that delay the Work shall not excuse the Construction Manager from its obligation to achieve full completion of the Work within the Contract Time and shall not entitle the Construction Manager to an adjustment of the Guaranteed Maximum Price.

2.5.6. The Construction Manager acknowledges that, unless indicated otherwise in writing, the City is purchasing the right to have the Construction Manager at the Project Site for the full duration of the Contract Time, even if the Work could be completed in less than the Contract Time.

2.6. DESIGN REVIEW RESPONSIBILITIES

The Construction Manager shall bear an appropriate portion of the responsibility for any materially adverse impact on the Work resulting from its failure to notify the City and Design Professional in writing of construction issues or other flaws in or conflicts among the Drawings, Specifications, submittals and any Applicable Laws that it discovers or should have discovered with the exercise of appropriate diligence.

2.7. PRELIMINARY COST PROJECTIONS

2.7.1. When the City has sufficiently identified its requirements and the Design Professional has prepared sufficient basic design criteria, the Construction Manager shall promptly prepare, for the Design Professional's review and the City's approval, a preliminary projection (detailed insofar as reasonably possible) of construction costs.

2.7.2. When the Design Professional has prepared and the City has approved schematic design documents, the Construction Manager shall promptly prepare, for the Design Professional's review and the City's approval, a more fully comprehensive cost projection, which shall include supporting data. During the preparation of the design development documents, the Construction Manager shall update and refine this projection at appropriate intervals.

2.7.3. When design development documents have been completed and approved by the City, the Construction Manager shall promptly prepare a detailed cost projection, again including supporting data, for review by the Design Professional and approval by the City. During the preparation of the construction documents, the Construction Manager shall update and refine this projection at appropriate intervals.

2.7.4. If any projection submitted to the City exceeds previously approved projections or the City's budget or any Fixed Limit of Construction Costs, the Construction Manager shall promptly make recommendations to the City and the Design Professional as to how the Project can be completed within the City's budget.

2.7.5. All cost projections shall be made in good faith and shall have a reasonable basis.

2.8. SELECTION OF SUBCONTRACTORS AND SUPPLIERS; BIDDING; REVIEW AND AWARD

2.8.1. The Construction Manager shall select Subcontractors and Suppliers for the Project. Except to the extent otherwise set forth in the Schedule of Project Details, promptly after execution of this Agreement, the Construction Manager shall solicit Subcontractor and Supplier interest in the Work and identify to the City qualified Subcontractors and Suppliers (i) by name and, (ii) respectively, by trade or material, equipment or supplies to be provided. The City will promptly notify the Construction Manager of any objections it has to any proposed Subcontractor or Supplier. The Construction Manager shall not contract with any proposed Subcontractor or Supplier to whom the City has made reasonable objection. The identification of possible Subcontractors and Suppliers shall not require the City to investigate their qualifications, nor shall it preclude later objection to or rejection of any of them.

2.8.2. If the City has reasonable objection to a person proposed by the Construction Manager, the Construction Manager shall propose another to whom the City has no reasonable objection.

2.8.3. The Construction Manager shall not change a Subcontractor or Supplier previously selected without prior written notice to the City or thereafter if the City makes reasonable objection to such change.

2.8.4. The Construction Manager shall utilize the City's policy for Micro-Local Business Enterprise companies on all subcontracts bid.

2.8.5. The Construction Manager shall verify that all proposed Subcontractors are properly licensed and sufficiently staffed to carry out their duties.

2.8.6. The following provisions shall apply to so much of the Work as is to be put out for bids:

(a) The Construction Manager shall, in selecting Subcontractors, utilize the City's prequalification list and procedures.

(b) Whenever possible, local business enterprises shall be used as Subcontractors and Suppliers.

(c) Utilizing the City's prequalification list and procedures, the Construction Manager shall establish a bidding schedule and conduct pre-bid

conferences to familiarize qualified bidders with bid documents and with any special systems, materials or methods.

(d) The Construction Manager shall receive bids, and after bid opening with a representative of the City present, prepare a trade-by-trade, product-by-product bid analysis, and make recommendations. This shall include a detailed review of each bid to determine whether it is complete, reasonable and consistent. The Construction Manager shall include a report of summarizing the Micro-Local Business Enterprise firms participating awarded any portion of the Project on the City's form as provided. The City shall be given five (5) business days to review and comment on this analysis.

(e) It is the City's intention to have each bid package awarded to the lowest responsive bidder. The Construction Manager shall submit to the City an award recommendation for each bid package that shall include detailed reasoning for its recommendations.

(f) With the Design Professional's assistance, the Construction Manager shall conduct a scope review meeting with the apparent lowest qualified bidder in each category (or the apparent two or more lowest qualified bidders if deemed appropriate by the Construction Manager or the City) to determine and verify that each bidder has satisfied the bidding requirements, and that each bidder understands the required scope and Contract Documents. The City shall be invited to attend all such scope review meetings conducted by the Construction Manager.

(g) The Construction Manager shall notify both successful and unsuccessful bidders.

2.8.7. The Construction Manager shall assist the City, in the manner and to the extent requested by the City, with scope development and negotiations for subcontracts and supply contracts for those portions of the Work that will not be put out for bids.

2.9. LONG LEAD TIME ITEMS

2.9.1. The Construction Manager shall expedite and coordinate the purchase and delivery of long lead time items.

(a) The Construction Manager shall identify qualified manufacturers for long lead time items and bid out materials to approved manufacturers (or if requested by the City, negotiate with manufacturers) in order to meet the requirements of the Project Schedule. The Construction Manager shall monitor manufacturers for production timetables, quality control and performance testing to insure complete compliance with the requirements of the Contract Documents.

(b) The Construction Manager shall review site conditions to determine if field assembly of the equipment is required and notify the manufacturer accordingly if units are to be shipped in sections.

(c) The Construction Manager shall cause pre-purchased equipment and material to be delivered to the job site or temporarily stored. Delivered equipment will be checked by the Construction Manager to verify that quality, quantity and stated capacities meet the criteria of the Specifications therefor. The Construction Manager shall confirm in writing to the City prior to its installation that the pre-purchased equipment fully meets the requirements of the Contract Documents, and the Construction Manager will follow up this procedure with proper field tests prior to occupancy.

(d) The Construction Manager shall carefully coordinate all warranty and guaranty periods. All warranties, implied or expressed, must commence upon the earlier of (i) Beneficial Use (as defined in the General Conditions) or (ii) Final Completion.

ARTICLE 3. PRE-CONSTRUCTION PHASE SERVICES

3.1. OBLIGATIONS OF THE CONSTRUCTION MANAGER WITH RESPECT TO THE DESIGN PROFESSIONAL

3.1.1. The Construction Manager shall:

(a) cooperate with the Design Professional in the preparation of a Project budget and cost estimates, including cost/benefit analysis, for alternative approaches to bring costs in line with the Fixed Limit of Construction Cost;

(b) cooperate fully with each of the consultants retained by the Design Professional and with the Design Professional's Representative and assist in the coordination and interface of all parties involved in the Project;

(c) coordinate with the Design Professional and the City to help it determine which design phase team meetings require the presence of the Construction Manager;

(d) coordinate with the Design Professional during development of the design concerning site use and improvements, costs, scheduling, selection of materials, building systems, equipment and options for Project delivery;

(e) coordinate with the Design Professional and the City if any Subcontractor requests interpretations of the meaning and intent of any of the Contract Documents and reasonably assist in the resolution of questions which may arise;

(f) identify areas of risk associated with the Work, estimate the cost exposure of the risk, and suggest how and by whom the risk should be addressed; and

(g) review, and if appropriate approve, alternative solutions proposed by the Design Professional.

3.2. ADMINISTRATIVE MANAGEMENT PLANS

3.2.1. Within thirty (30) days following the first Pre-Construction meeting, the Construction Manager shall develop, submit to the City for review and comment and maintain on a current basis a set of administrative management plans for the Project, such as a plan to manage and organize testing, quality control, schedule control, general management, progress and final payments, traffic routing and detouring, parking, housekeeping, security, materials procurement, materials handling, diversity and inclusion, Value Engineering, logistics and utilization, emergency management, labor relations, and such other plans as may be necessary or appropriate for the proper administration of the Project.

3.2.2. The Construction Manager shall also submit, as a separate document, a Safety Plan, as required by Section 9.2.2 of the General Conditions.

3.2.3. The Construction Manager shall assist with the development of an "RACI" program.

3.3. REVIEW AND EVALUATION OF DESIGN AND CITY INFORMATION

3.3.1. Taking into account any fixed Limit of Construction Cost, the Construction Manager shall consult with the City and the Design Professional and give advice concerning site use and improvements, cost, scheduling, selection of materials, building systems, equipment and methods of Project delivery. When appropriate, the Construction Manager shall propose and review with the City and the Design Professional alternative approaches to the Design and construction of the Work and shall disclose any potential adverse effects created by the alternatives, including items affecting the budget, quality, schedule, labor or safety of the Project.

3.3.2. The Construction Manager shall review the constructability of the Design following the completion of each set of schematic design documents, design development documents and construction documents to identify areas of conflict, omission and overlap in the Work to be performed by the Members of the Construction Team, and, whenever the Design details adversely affect construction feasibility, budgets or schedules, recommend alternative solutions for approval by the City and the Design Professional. The Construction Manager shall provide recommendations concerning the relative feasibility of construction methods, availability of materials and labor, and time requirements for procurement, installation and construction.

(a) The Construction Manager shall review all Design documents for ambiguity, clarity, adequacy of detail, consistency, accuracy, completeness and constructability, costing and scheduling.

(b) The Construction Manager shall perform Value Engineering and estimates of cost for the current conceptual designs prepared by the Design Professional.

(c) If the Project will be constructed on a phased construction basis, the Construction Manager shall make recommendations to the City and Design Professional regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work.

3.4. BID PACKAGES; LABOR REQUIREMENTS

A "Construction Bid Package List" shall be submitted by the Construction Manager to the City and Design Professional for their review and comment promptly after the execution of this Agreement. This list shall itemize the desired trade bid packages and corresponding divisions of Work in order to allow the Design Professional to organize and manage staffing so as to produce design documents in a timely manner. Any revision to the Construction Bid Package List shall be resubmitted for review and comment.

3.5. SCHEDULES

3.5.1. Project Schedule. Taking into account the City's desired occupancy date, as soon as practical after execution of this Agreement or issuance of a Notice to Proceed, whichever occurs first, the Construction Manager shall use its best efforts, given a sufficient amount of information (the need for which the Construction Manager shall identify in advance), to develop and provide in an electronic format reasonably satisfactory to the City a Project Schedule. The Project Schedule shall coordinate and integrate the Construction Manager's Services, the Design Professional's services, any City Commission action items (such as right-of-way or easement acquisitions), and the City's responsibilities through the Schematic Design, Design Development and Construction Document phases. The Project Schedule shall include a preliminary construction schedule and identify the required construction bid packages. The Project Schedule shall be updated at appropriate intervals. If any Project Schedule update suggests that previously approved schedules may not be met, the Construction Manager shall promptly make appropriate recommendations to the City and the Design Professional.

3.5.2. Promptly after the City's acceptance of the bids and/or negotiated proposals for the Work, the Construction Manager shall convert the Project Schedule into a "Construction Schedule" in the form required by Section 3.12 of the General Conditions, which shall meet the City's occupancy requirements. The Construction Schedule shall indicate, among other things, the:

- Scope of Work for each Subcontractor
- Starting and completion dates
- Progress to date
- Status of long lead time materials and equipment

(a) The Construction Schedule, subject to any Modification granted in accordance with the Agreement, shall establish the Contract Time within which the Construction Manager must achieve Final Completion of the Project. The Construction Schedule shall be the schedule utilized by the Construction Manager for the duration of the Project and upon which the Guaranteed Maximum Price shall be based, as set forth in Section 10.2.

(b) Except with the City's prior written approval, the Construction Schedule shall maintain the critical path and any milestones and deadlines established in

the Project Schedule. The Construction Schedule shall be reviewed monthly or at appropriate intervals as required by the conditions of the Work, and shall provide for expeditious and practicable execution of the Work.

3.6. CONSENTS

The Construction Manager shall at its expense assist the City in obtaining all temporary public and private consents to use or occupy property necessary to completion of the Work. Examples of the ways that assistance may be provided include identifying the best way to arrange for construction staging, workers' parking, and the extension of utilities.

3.7. COST AND QUALITY CONTROL

The Construction Manager shall develop a system of cost and quality control for the Work, including regular testing of installations, monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the City and the Design Professional at regular intervals.

ARTICLE 4. CONSTRUCTION PHASE SERVICES

4.1. COMMENCEMENT OF THE WORK

Construction shall commence on the "Commencement Date," which is the earlier of:

- (1) The date defined as such in the Schedule of Project Details,
- (2) The City's issuance of an order to proceed, or
- (3) The City's first authorization to the Construction Manager to:
 - (a) award a subcontract, or
 - (b) undertake construction Work with the Construction Manager's own forces, or
 - (c) issue a purchase order for materials or equipment required for the Work.

4.2. PERFORMANCE

4.2.1. The Construction Manager shall perform (or cause to be performed) the Work described in the Contract Documents and all Work incidental thereto (i) that is consistent with the Contract Documents and (ii) as to which a reasonable inference may be drawn from the Contract Documents that such Work is necessary to produce the intended results. However, the Construction Manager shall not be required to perform

Work that is specifically indicated in the Contract Documents to be the responsibility of others.

4.2.2. The City and the Construction Manager intend that the Contract Documents shall include all items necessary for proper execution and completion of the Project (or the Construction Manager's portion of the Project, as the case may be). The Contract Documents are complementary, and what is required by any one shall be as binding as if it is required by all of them.

4.2.3. The Construction Manager shall perform the Work strictly in accordance with the Contract Documents. Any features of the Project that are not explicitly described in the Contract Documents shall be determined by the City's instructions, following a request for determination by and a discussion with the Construction Manager. No substitution of materials is permitted except as specifically provided in the General Conditions. The Construction Manager shall not have authority to make changes in the design and construction, even if such changes would be consistent with the intent of this Agreement. However, the Construction Manager shall promptly inform the City, in writing, of the need for any changes in the design and construction of the Project.

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

(b) Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless they have been accepted by the City prior to execution of the Contract or thereafter requested by the City.

(c) No substitutions or alternates are permitted in bids. Alternates are only permitted upon a discussion with the City for certain intentions.

4.3. ADMINISTRATION

4.3.1. The Construction Manager shall provide monthly reports on the progress (in relation to the Construction Schedule), scope, schedule, budget and quality of the Work. The frequency and level of detail shall be as required by the City by notification to the Construction Manager at the commencement of the Work.

4.3.2. The Construction Manager shall each day work with the City's representative to prepare an Inspector's Daily Report, memorializing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and such other similar relevant data as the City or the Design Professional may reasonably require. The Report shall be available at the end of each construction

day for reading and concurrence or objection. The Construction Manager shall provide a copy to the City and the Design Professional.

4.3.3. The Construction Manager shall schedule and conduct regular meetings at which the City, the Design Professional, the Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

4.3.4. The Construction Manager shall supervise and direct the Work using the Construction Manager's best skill and attention. The Construction Manager shall be solely responsible for and have control over construction means, methods, temporary bracing procedures, techniques, sequences and safety procedures, dust control, and on-site water mitigation, and for coordinating on all portions of the Work.

(a) The Construction Manager shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times during performance of the Work. The superintendent shall represent the Construction Manager, and communications given to the superintendent shall be as binding as if given to the Construction Manager. The Construction Manager's superintendent shall be approved by the City and shall not be reassigned without the City's prior written consent.

(b) The Construction Manager shall (i) maintain a competent and sufficient number of full-time field staff to perform the Services and coordinate, supervise and administer the Work and (ii) enforce strict discipline and good order among the employees of the members of the Construction Team. The Construction Manager shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. To provide the uninterrupted, efficient and timely performance of the Work, the Construction Manager shall use its best efforts to avoid labor disputes of any kind.

(c) If the structure is designed to be self-supporting and stable after it is fully completed. It is solely the Construction Manager's responsibility to determine indirection procedures and sequence; and to ensure the stability of the structure and its component parts, and the adequacy of temporary or incomplete connections, during erection. This includes the addition of whatever temporary bracing, guides, or tie-downs that might be necessary. These items stated are not shown on the drawings. Items added to the structure as noted above shall be removed as conditions permit, and shall remain the Construction Manager's property.

(d) The Construction Manager is responsible for developing and implementing a fugitive dust control plan to prevent particulates from becoming airborne from human, wind, or machinery activity during construction. The Construction Manager shall submit the plan to the engineer at least 30 days prior to the start of construction for review and approval by the City. The plan shall include but not be limited to the implementation of a combination of any or all of the following techniques as determined to be applicable to the Project:

- (1) Wet suppression—how will water be applied? How often?

- (2) Vehicle speed reduction—what will be the posted speed limit?
- (3) Surface cleaning—how will this be done?
- (4) Wind breaks—what types if any will be used?
- (5) Good operating practices—The Construction Manager shall identify and implement good operating practices.

4.3.5. The Construction Manager shall secure all required approvals, permits, certificates of inspection, testing, or approval, and deliver them to the City. The Construction Manager shall supervise and coordinate all inspections and testing to be performed by others, act as a witness on all such tests, and maintain accurate records of each test or inspection and report the findings. The Construction Manager shall also see that necessary qualified testing agencies and on-site manufacturing and product representatives are present on site and perform as required.

4.3.6. The Construction Manager is responsible for coordinating adjacent sites that have outside influence on the City's Project under this Agreement during construction.

4.3.7. If any third party providing services in respect of the Project is terminated in a manner permitted by the Contract Documents, the Construction Manager shall provide the services of another lawfully licensed person against whom the City makes no reasonable objection.

4.4. SUBCONTRACTORS AND SUPPLIERS

4.4.1. The Construction Manager is authorized to enter into contracts with Subcontractors and Suppliers to perform portions of its responsibilities under this Agreement.

4.4.2. The Construction Manager shall closely supervise all Subcontractors throughout the Project. The Construction Manager shall inspect the Work of the Subcontractors and insure that this Work conforms to the provisions of the Contract Documents. The Construction Manager shall pay all Subcontractors. The Construction Manager shall coordinate and monitor the performance of all Subcontractors to insure that the Project remains on schedule. The Construction Manager guarantees the Work of all Subcontractors.

(a) The provisions of this Agreement shall, to the extent they could be applicable to the Work to be performed by any Subcontractor or to any contract for materials, equipment or supplies, be incorporated into any contract to be entered into between the Construction Manager and a Subcontractor or Supplier, and the Subcontractor or Supplier shall be responsible to the Construction Manager and the City for compliance, as if it were the Construction Manager, with the provisions of this Agreement applicable to the Construction Manager.

(b) All subcontracting agreements and agreements with Suppliers shall (a) be in writing signed by the Construction Manager and the Subcontractor or Supplier; (b) require the Subcontractor to comply with the terms of this Agreement when performing services or providing goods; (c) specifically state that this Agreement's terms require compliance with laws and note its confidentiality requirements; and (d) require the Subcontractor to provide insurance covering risks and in the amounts as set forth below in this Agreement.

(c) Each subcontract or supply agreement shall preserve and protect the rights of the City under the Contract Documents with respect to the Work to be performed by the Subcontractor or materials and equipment to be provided by a Supplier so that such rights will not be prejudiced, and shall allow to the Subcontractor and Supplier, unless specifically provided otherwise in the subcontract or supply agreement, the benefit of all rights, remedies and redress against the Construction Manager that the Construction Manager, by the Contract Documents, has against the City, except that Subcontractors (and Sub-subcontractors) and Suppliers shall be required to waive any claims or rights they may have against the City for damage caused by fire or other peril for which a Subcontractor (and Sub-subcontractors) or a Supplier are or, under the terms of the Contract Documents should be, insured by property insurance. The Construction Manager shall require each Subcontractor and Supplier to enter into similar "flow-through" agreements with Sub-subcontractors. The Construction Manager shall make available to each proposed Subcontractor and Supplier, prior to the execution of the subcontract or supply agreement, copies of the Contract Documents to which the Subcontractor or Supplier will be bound, and, upon written request of the Subcontractor or Supplier, identify to the Subcontractor or Supplier terms and conditions of the proposed subcontract or supply agreement which may be at variance with the Contract Documents. Subcontractors and Suppliers shall similarly be required to make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

(d) Neither the Construction Manager's employees nor the Construction Manager's Subcontractors shall be deemed for any purpose to be employees of the City. Accordingly, neither the Construction Manager's employees nor its Subcontractors shall be entitled to any benefits normally accruing to the City employees. The Construction Manager and its Subcontractors shall be solely responsible for payment of all federal and state taxes, local occupational taxes, unemployment benefits and any other payment an employer is normally and customarily obligated to pay on behalf of its employees. The Construction Manager and its Subcontractors have sole authority and responsibility to hire, fire and otherwise control their employees.

4.4.3. In performing its duties under this Agreement, the Construction Manager shall give all required notices and comply with all laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project and all special legal requirements of the Contract Documents, such as the Fair Labor Standards Act, the Federal Occupational Safety and Health Act, environmental laws, and equal employment opportunity and the like.

4.5. COST AND SCHEDULE CONTROL DURING CONSTRUCTION

4.5.1. The Construction Manager shall take appropriate action to maintain the Construction Schedule.

4.5.2. The Construction Manager shall develop and maintain computerized information management systems to monitor costs, schedules, quality, requests for information, Change Order status, submittals and all other information about the Work appropriately adaptable to such systems. Online access to the systems, or the systems' up-to-date contents, shall be provided, if requested by the City and its Design Professional.

4.5.3. The Construction Manager shall monitor the Construction Cost in relation to the Guaranteed Maximum Price, incorporate approved changes as they occur, account for anticipated Change Orders and claims, monitor contingency amounts and develop and submit cash flow reports and forecasts as requested by the City, but not less often than monthly. If authorized Work is performed under unit costs, on the basis of actual costs of labor and materials, or otherwise requires accounting records, the Construction Manager shall maintain cost accounting records.

4.5.4. The Construction Manager shall monitor the schedule of the Work in relation to the approved Construction Schedule, incorporate approved changes as they occur and account for anticipated Change Orders, weather and other conditions which may affect the schedule.

4.6. PAYMENTS TO SUBCONTRACTORS

4.6.1. Upon award of the Subcontract, the Construction Manager shall have each Subcontractor prepare and submit a Schedule of Values allocating that portion of the Construction Cost attributable to its Subcontract to the various portions of the Work.

(a) Each Schedule of Values shall take the form of the three-line graph (projected budget, earned value, and actual accumulated costs) developed by the Project Management Institute.

4.6.2. The Construction Manager shall provide reports on a monthly basis showing budgets, committed amounts, Change Orders, contingencies, estimated cost to complete, variances between actual and estimated costs, and payments for line items in the account structure.

4.6.3. The Construction Manager shall maintain a log describing all requests for information or interpretation, including the date of the request, the date of its transmission to the Design Professional, the date the Design Professional's response was received, and the date that response was transmitted to the maker of the request. Copies of all requests for information or interpretation shall be sent to the City at the same time they are sent to the Design Professional. The parties wish to avoid unnecessary requests for information or interpretation to the Design Professional. The Construction Manager shall review and evaluate any request for either information or interpretation received from any member of the Construction Team. If the Construction Manager believes it was made unnecessarily, it shall so notify the person submitting the request and notify the City.

ARTICLE 5. POST-CONSTRUCTION PHASE SERVICES

5.1. POST-CONSTRUCTION PHASE

The Post-Construction phase will commence upon Substantial Completion and shall extend to Final Completion and close-out of all contracts (the "Work Close-out").

5.2. FINAL COMPLETION CERTIFICATE

The Construction Manager shall review the Subcontractors' Contract Documents, secure and transmit to the City all required guarantees, warranties, affidavits, releases, bonds, waivers, insurance certificates, consents of sureties, etc., and shall sign off on a Final Completion Certificate ("Final Completion Certificate") in a form acceptable to the City. The Subcontractors' Final Payment applications shall also be included with the close-out documents to the City, after the Design Professional's review.

5.3. CLOSE-OUT OF OUTSTANDING CLAIMS RELATING TO THE CONSTRUCTION TEAM

The Construction Manager shall thoroughly investigate any claim, whenever asserted or received, and provide the City with a detailed explanation of the claim, the circumstances under which it arose, and whether it is meritorious. The Construction Manager shall provide services to resolve any outstanding claims against the City by any member of the Construction Team or by anyone else as a result of any act or omission of any member of the Construction Team and to close-out contracts.

5.4. RECORD DOCUMENTS

The Construction Manager shall for a period of seven (7) years after Final Completion retain and make available to the City upon request and without charge complete, legible and accurate copies of all Record Documents. The Construction Manager may charge a reasonable fee if the City requests reproduction of any such documents. After seven (7) years all Record Documents shall be returned to the City. The Construction Manager may retain a copy of the Contract Documents.

5.5. TRAINING

The Construction Manager shall provide thorough training of all appropriate personnel employed by the City or the City's agents in the installation, maintenance, operation, calibrations, and routine care of all equipment and systems provided and installed as part of the Work. Such training will be provided for multiple shifts, where applicable, and at the conclusion of training, the trained personnel shall be fully competent in the operation for which training is provided. Multiple training sessions may be required.

ARTICLE 6. ADDITIONAL SERVICES

6.1. THE CITY'S WITNESS

6.1.1. The following Additional Services shall be performed upon the written request of the City and shall be paid for as changes to the Work:

(a) Preparing to serve or serving as a witness for the City in connection with any litigation or arbitration proceeding or other hearing after final contract close-out.

ARTICLE 7. CITY

7.1. REPRESENTATIVES

7.1.1. The City shall designate a representative authorized to act on the City's behalf with respect to the Project. The City's representative shall render decisions pertaining to the Work in a manner consistent with the orderly progress of the Work. A successor may be designated by the City in writing.

7.1.2. The City may appoint an on-site Project representative to observe the Work.

7.1.3. Unless the Construction Manager is in default or has given prior consent, the City shall communicate with Subcontractors only through the Construction Manager or at meetings where the Construction Manager is represented.

ARTICLE 8. GUARANTEED MAXIMUM PRICE

8.1. GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

8.1.1. The City may at any time request, and the Construction Manager shall thereafter submit within forty-five (45) days after the City's request, a proposed "Guaranteed Maximum Price" for the full scope of the Work; provided however, that if the City has not requested a Guaranteed Maximum Price, the Construction Manager shall prepare and deliver a Guaranteed Maximum Price proposal not later than when indicated on the Schedule of Project Details. The Guaranteed Maximum Price proposal shall include all of the components identified in Section 10.2. The City may accept or reject the Guaranteed Maximum Price proposal.

(a) If the City approves the Guaranteed Maximum Price proposal on or before the date specified in the proposal for such acceptance, the Guaranteed Maximum Price proposal shall be effective and shall become a part of this Agreement.

(b) If the City rejects any Guaranteed Maximum Price proposal, but the City nevertheless elects to proceed with the Project, a Guaranteed Maximum Price submittal will be required sixty (60) days after the receipt of ninety percent (90%) of the dollar value of the bids.

(c) During the review period of the Guaranteed Maximum Price proposal, the Construction Manager shall continue to work under the Fixed Limit of Construction Cost and work with the City to refine the proposal, if required by the City, until it is either accepted or rejected.

(d) The date on which the Guaranteed Maximum Price is accepted by the City shall not result in an extension of the Contract Time, except to the extent that any unreasonable delay (one of greater than 30 days after submission of the Construction Manager's proposal unless the City has previously notified the Construction manager that it will require a longer review period) on the part of the City inhibits the Construction Manager's ability to commence the Work on a timely basis.

(e) The Guaranteed Maximum Price is defined as the "Contract Sum" in the General Conditions.

8.1.2. The Guaranteed Maximum Price shall include a contingency (the "Construction Manager's Contingency").

(a) The Construction Manager's Contingency shall represent a sum available for the Construction Manager's exclusive use to cover costs which are properly reimbursable as Construction Cost, such as minor work that was not included in a prior bid package or work not indicated on the bid drawings. Construction Manager's Contingency, to the extent available, may also be used to cover the cost of Work which should have reasonably been detected during a review of the design documents, provided however, that the Construction Manager's Contingency will not be increased for use as a result of these items. Any savings in bid packages over the estimate shall accrue to the City's contingency, which shall be available for the City's use in its sole discretion. All bid packages and any savings shall be clearly tracked and reported to the City on a monthly basis. The use of the Construction Manager's Contingency shall require prior written concurrence by the City for any item. In addition, a monthly report summarizing and detailing all of the Construction Manager's Contingency utilization shall be issued to the City.

8.2. BASIS OF GUARANTEED MAXIMUM PRICE

8.2.1. The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

(a) A list of the Drawings and Specifications, including all signed Addenda thereto and the other Contract Documents, which were used in preparation of the Guaranteed Maximum Price proposal.

(b) If allowed by the City, a list of allowances and a statement of their basis, including all assumptions shall be included in the Guaranteed Maximum Price. Any expenditures of allowances shall require the City's prior written approval.

(c) A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.

(d) A statement of the Construction Cost, organized by proposed bid package trade categories, allowances, contingency, change orders, general conditions items and the fee that comprise the Guaranteed Maximum Price.

(e) The Construction Schedule depicting the Work and the Date of Substantial Completion upon which the Guaranteed Maximum Price proposal is based.

(f) The costs for permits, anticipated tests, inspections, temporary barricades and traffic controls, and other similar costs associated with the Work shall not be included in the Guaranteed Maximum Price, but shall instead be carried as the City's set-aside outside of the Guaranteed Maximum Price.

(g) All applicable taxes. The Guaranteed Maximum Price shall not be changed as the result of the Construction Manager's failure to include any applicable tax, or as a result of any change in the Construction Manager's tax liabilities.

(h) Predicted cost of portions of the Work, if any, that were not bid.

8.3. GUARANTEED MAXIMUM PRICE REVIEW AND ACCEPTANCE

8.3.1. The Construction Manager shall meet with the City to review the Guaranteed Maximum Price proposal and the written statement of its basis, including all assumptions. If the City discovers any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis or both; provided however, that the City shall have no duty to make any such discovery.

8.3.2. Upon acceptance by the City of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price shall be set forth in a Modification. The Guaranteed Maximum Price shall be subject to additions and deductions by Change Order or Construction Change Directive, as set forth in Article 6 of the General Conditions, "Changes in the Work."

8.4. UNUSED PORTION OF GUARANTEED MAXIMUM PRICE

Upon Final Completion of the Work, any unused portion of the Guaranteed Maximum Price, other than the Construction Manager's fee and personnel charges, shall revert back to the City through reduction of the Guaranteed Maximum Price by Change Order.

ARTICLE 9. PAYMENT TO THE CONSTRUCTION MANAGER

9.1. SOLE REMUNERATION

The City shall pay the Construction Manager, as Construction Manager's sole remuneration in connection with the Project, the Construction Cost and the Construction Manager's Fee.

9.2. CONSTRUCTION MANAGER'S FEE

9.2.1. The Construction Manager's Fee is based on the Professional Services rendered in connection with the Work. The amount of the Construction Manager's Fee is

set forth in the Schedule of Project Details. In the case of changes to the Fixed Limit of Construction Cost or Guaranteed Maximum Price that are required due to a City change to the original scope included in this Agreement or for Design Professional error and omissions, the Construction Manager will be entitled to additional fee only in accordance with the Schedule of Project Details. No additional Construction Manager fee shall be allowed for any payments in satisfaction and resolution of claims or disputes.

(a) The calculation for Subcontractor's mark-up used in Article 6 of the General Conditions (the net compounded amount) excludes any allowed Construction Manager's Fee.

9.2.2. In the case of a termination of the Contract by the Construction Manager pursuant to Article 13 of the General Conditions, the Construction Manager's Fee through the date of termination shall be calculated as if the termination were by the City for convenience pursuant to Article 13. of the General Conditions.

9.3. PAYMENT OF CONSTRUCTION COST

9.3.1. The Construction Cost will be paid monthly as expenses are incurred in accordance with Article 8 of the General Conditions. The Construction Manager's Fee for Pre-Construction Phase Services shall be billed and paid monthly in equal installments as set forth in the Schedule of Project Details. The Construction Manager's Fee for Construction Phase Services shall be billed and paid monthly in proportion to the Construction Base and General Conditions Items on which it is based.

9.3.2. The Construction Manager's Applications for Payment shall be accompanied by whatever supporting data substantiating the Construction Manager's right to payment that the City may reasonably require, such as copies of paid statements from Subcontractors.

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

9.4. DISCOUNTS

Trade discounts, rebates and refunds, and returns from sale of surplus materials and equipment shall accrue to the City to the extent the City makes funds available in a

manner that allows such discounts, rebates and returns to be obtained, and the Construction Manager shall make provisions so that they can be secured. All items paid for by the City which are not consumed shall be turned over (or title transferred) to the City upon Final Completion. To the extent such items are being billed to the City on the basis of cost, the Construction Manager shall cause all members of the Construction Team to take advantage of all available discounts, rebates and the like and pass that advantage fully on to the City.

ARTICLE 10. MISCELLANEOUS PROVISIONS

10.1. LIQUIDATED DAMAGES; WAIVER OF CONSEQUENTIAL DAMAGES

10.1.1. If, in the Schedule of Project Details, the parties (i) agree that the damages which the City will sustain as a result of a failure to meet the date of Substantial Completion as set forth therein, except as modified by Change Order, are difficult or impossible to determine with certainty and (ii) in good faith estimate and set forth as fair compensation (and not as a penalty) "Liquidated Damages" to be based upon the actual date Substantial Completion is achieved, then Liquidated Damages shall apply.

(a) If Liquidated Damages apply and Substantial Completion occurs later than the Substantial Completion date established in the Schedule of Project Details, except as modified by Change Order, to the extent not excused as a Force Majeure Event, as defined in Article 7 of the General Conditions, Liquidated Damages shall be applied, reducing the Construction Manager's Fee, for each day of delay thereafter as set forth in the Schedule of Project Details, and if Final Completion is delayed beyond the date established therefor in the Schedule of Project Details, enhanced Liquidated Damages shall apply in that amount set forth in the Schedule of Project Details for each day of delay.

10.1.2. If, but only if, Liquidated Damages apply, notwithstanding any other provision of this Agreement, the City waives all Claims against the Construction Manager for direct, incidental, and consequential damages arising out of or relating to the failure to achieve Substantial Completion on or before the date established therefor in the Schedule of Project Details, except as modified by Change Order.

10.1.3. If Liquidated Damages do not apply to a failure to achieve Substantial Completion on or before the date established therefor in the Schedule of Project Details, except as modified by Change Order, and in any event in the case of any other breach of the Agreement by the Construction Manager, then the City may pursue and enjoy any and all rights it may have at law or in equity, including Claims for direct, incidental, and consequential damages.

10.1.4. Notwithstanding any other provision of this Agreement, the Construction Manager waives all Claims against the City for consequential damages, including damages incurred by the Construction Manager for principal office expenses including the compensation of personnel stationed there, for losses of financing, business

and reputation, general conditions and site expenses (except to the extent recovery is otherwise specifically permitted by this Agreement), and for loss of opportunity or profit.

10.1.5. If this Agreement includes a provision for Liquidated Damages, it shall not, on account of the Liquidated Damages provision, directly or indirectly or wholly or in part increase (or permit any increase in) the Construction Cost, the Guaranteed Maximum Price, or any fee or compensation it may be entitled to receive beyond what would have otherwise been charged. It is the intention of the parties that risk of Liquidated Damages will be borne solely by the members of the Construction Team and that none of that risk will in any way be passed or charged back to the City; provided, however, that the Construction Manager shall not, by contract or otherwise, require any Subcontractor to bear the risk or burden of Liquidated Damages except to the extent of that Subcontractor's responsibility for any delay giving rise to the imposition of Liquidated Damages. The Construction Manager shall not in any manner be held responsible for liquidated or other damages for matters outside the Construction Manager's control, or those delays caused by others for which the Construction Manager is not responsible.

10.2. EXHIBITS

Any exhibits attached hereto are hereby incorporated into this Agreement and are deemed a material part of this Agreement.

10.3. NOTICES

10.3.1. All notices required or permitted to be given by one party to the other under this Agreement shall be in writing and shall be sent by certified U.S. Mail, return receipt requested, or recognized overnight courier service, or shall be hand-delivered. Notices shall be effective upon the earlier of actual receipt or two (2) business days after posting or delivery to a courier, at the following addresses:

To the City:

City of Grand Rapids
300 Monroe Avenue, N.W.
Grand Rapids, Michigan 49503
Attention: As shown in the Schedule of Project Details

To the Construction Manager:

As shown in the Schedule of Project Details

10.3.2. Either party may change its address for the purpose of receiving notices under this Agreement by written notice to the other party in the manner set forth above.

10.4. RELATIONSHIP OF THE PARTIES

Construction Manager agrees that its relationship with the City is one of an independent contractor, and that, except to the extent it is expressly permitted by this Agreement to do so, it will not act or represent that it is acting as an agent of the City or incur any obligation on the part of the City. The Construction Manager acknowledges that the City is not a partner or joint-venturer of the Construction Manager and that the Construction Manager is not an employee or agent of the City.

10.5. CONFLICT OF INTEREST

The Construction Manager shall notify the City if at any time during the term of this Agreement, any actual or potential conflict exists between the interests of the Construction Manager and the City. The City shall be entitled to take reasonable steps to manage any such conflicts of interest, up to and including prohibition in appropriate circumstances. The Construction Manager will ensure that all members of the Construction Manager's staff are made aware of and required to comply with this Article 10.

10.6. ADDITIONAL BONDING

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

10.7. CONSTRUCTION MANAGER'S COMPENSATION

The compensation to be paid hereunder shall be the Construction Manager's sole remuneration in connection with the Project. The Construction Manager shall neither solicit nor accept any fee, payment, kickback or benefit of any kind in connection with the Project from any Subcontractor, Supplier or other Construction Manager Affiliate. The Construction Manager shall take advantage of all available discounts, rebates and the like and pass that advantage fully on to the City.


IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date as written above.

CITY OF GRAND RAPIDS, MICHIGAN

[Firm Name]

By: _____
Its _____

By: _____
Its _____

Attest: _____
 Its _____

GENERAL CONDITIONS
BETWEEN
THE CITY OF GRAND RAPIDS, MICHIGAN
AND
FIRM NAME

Project:

Project Name

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GENERAL CONDITIONS

1. GENERAL PROVISIONS

1.1. DEFINITIONS

Whenever the words hereinafter defined, or any pronouns, used in their stead, occur in the Contract, they shall have the meanings herein given.

1.1.1. Addenda - Written or graphic instruments issued prior to the opening of bids which clarify, correct or change the Bidding Documents or the Contract.

1.1.2. Applicable Law - All laws, ordinances, codes, rules, regulations and orders applicable to the Project or the Project Site.

1.1.3. Approved - Wherever in the Specifications or upon the Drawings the words "as ordered," "as directed," "as required," "as permitted," or words of like import are used, it shall be interpreted that the written order, direction, requirement of permission of the Engineer is intended; and similarly, the words "approved," "acceptable," or "satisfactory," or words of like import shall mean "approved by," or "acceptable or satisfactory" to the Engineer as indicated by the Engineer in writing. The Engineer shall be entitled to act in his or her discretion.

1.1.4. Beneficial Occupancy – Occurs prior to Substantial Completion when a Project or part of a Project, such as a system, is put to use by the City. Beneficial Completion occurs when the Work has reached a stage where, even though it is not substantially complete, it is available for the City to take Beneficial Occupancy.

1.1.5. Bid - The written offer of the Bidder, on the Bid Form furnished by the City for the Work proposed.

1.1.6. Bidder - The individual, partnership or corporation formally submitting a bid for the Work contemplated, or any portion thereof, acting directly or through an authorized representative.

1.1.7. Bidding Documents - The Invitation to Bid, the Information for Bidders, and those items defined herein as the Contract, upon which the Bidder is to base its Bid for the Work under the Contract.

1.1.8. Bid Security - The security designated in the Information for Bidders and furnished by the Bidder as a guarantee of good faith to enter into a Contract for the Work proposed.

1.1.9. Change Order - A document signed by the Construction Manager and Engineer, issued on or after the effective date of the Contract, which authorizes any one or more of the following: (i) an addition, deletion or revision in the Work, (ii) an adjustment in the Contract Price, or (iii) the time of the Contract. All Change Orders shall take the form of GR-CO attached.

- 1.1.10. City - The corporation of the City of Grand Rapids, Michigan.
- 1.1.11. City Manager - The person holding the position or acting in the capacity of the City Manager, appointed by the City Commission or his/her duly authorized representative.
- 1.1.12. Commission - The duly elected Commissioners of the City of Grand Rapids, acting as a corporate body, or any officer duly authorized to act for the Commission in any matter pertaining to the Contract.
- 1.1.13. Construction Manager - The individual, partnership or corporation identified in the Contract, whether acting directly or through agents or employees.
- 1.1.14. Construction Manager's Prequalification - The classification and rating based on the Experience and Financial Statement of the Bidder in accordance with City Commission Policy for prequalification of contractors and Subcontractors.
- 1.1.15. Construction Team. "Construction Team" includes the Construction Manager, the Subcontractors and Suppliers and (i) all other persons in privity of contract with any of them in connection with the Work (except the City), (ii) anyone else providing labor, materials, supplies, equipment or services as part of or in connection with the Work (except those, if any, hired directly or indirectly by the City), and (iii) all of their officers, employees, agents, and independent contractors.
- 1.1.16. Contract - The Agreement for Management and Construction Services covering the performance of the Work, Addenda (which pertain to the Contract), Construction Manager's Bid (including documentation accompanying the bid and any post bid documentation) when attached as an exhibit to the Contract, the Bonds, these General Conditions, the Supplementary Conditions, the Standard and Special Specifications, the Construction Schedule and the Construction Documents, together with all Change Orders (collectively the "Contract Documents").
- 1.1.17. Contract Bonds - The statutory bonds, executed by the Construction Manager and the Surety, guaranteeing performance of the Contract and the payment of all lawful indebtedness pertaining thereto.
- 1.1.18. Contract Price - The moneys payable to the Construction Manager for completion of the Work in accordance with the Contract as stated on the Contract Form.
- 1.1.19. Contract Time - The number of calendar days described in the Construction Schedule in which (or, alternatively, the date set forth in the Construction Schedule by which) Substantial Completion shall be achieved, subject to any extensions granted in executed Change Orders or otherwise specifically permitted by the Contract Documents.
- 1.1.20. Critical Path. The term "Critical Path" means the longest continuous chain of activities through the network schedule that establishes the minimum time to achieve Final Completion of the Work.

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

1.1.22. Defective - An adjective which when modifying the word “Work” refers to Work that is unsatisfactory, faulty or deficient, in that it does not conform to the Contract, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract, or has been damaged prior to Engineer’s recommendation of final payment.

1.1.23. Drawings - The Drawings which show the scope, extent and character of the Work to be furnished and performed by the Construction Manager and which have been prepared or approved by Engineer and are referred to in the Contract. Shop drawings are not Drawings as so defined.

1.1.24. Engineer - The person holding the position or acting in the capacity of the City Engineer or his/her duly authorized representative, as identified in the Schedule of Project Details. Unless the context clearly requires otherwise, all references in the Contract Documents to the City shall be deemed to refer to the Engineer.

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

1.1.26. Final Completion - The time at which the Work has been deemed to be totally completed and final payment has been authorized by the Engineer.

1.1.27. Including - The word “including” shall not be a word of limitation, but instead shall be construed as introducing one or more non-exclusive examples.

1.1.28. Inspector - The authorized representative of the Engineer, assigned to make detailed inspections of any or all portions of the Work or the materials therefor.

1.1.29. Knowledge - The terms “knew,” “knowledge,” “recognize” and “discover,” their respective derivatives and similar terms in the Contract Documents, as used in reference to the Construction Manager, shall be interpreted to mean that which the Construction Manager exercising the Standard of Care required by the Contract (as defined in Section 1.1.16 above) knows or should know, recognizes or should recognize, and discovers or should discover. Analogously, the expression “reasonably inferable” and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the Standard of Care required by the Contract.

1.1.30. Laboratory - The materials testing laboratory will be the laboratory which may be designated by the Engineer to inspect and determine the suitability of materials.

1.1.31. Progress Clause - That part of the Contract pertaining to the order of proceeding with the various items of the Work to be done and the rate of progress for completing said items of Work.

1.1.32. Project - The "Project" is identified in the Schedule of Project Details. The Work may be the whole or a part of the Project, and the Project may include construction by the City or contractors not hired by the Construction Manager.

1.1.33. Promptly – Means as soon as reasonably possible, but not longer than seven (7) days.

1.1.34. The "Record Documents" include: a record copy of all logs, reports, Contract Documents, and Record Drawings, in good order and marked to record all changes made during construction; all approved Shop Drawings, Product Data, Samples, and other Submittals; applicable handbooks; maintenance and operating manuals and instructions; and other related documents and revisions which arise out of the Contract Documents or the Work. As part of the Record Documents, the Construction Manager shall maintain records of principal building layout lines, elevations of the bottoms of footings, project floor levels and key site elevations certified by a qualified surveyor.

1.1.35. The "Record Drawings" are one current, updated record copy of the Drawings in good order that the Construction Manager shall maintain at the Work Site in accordance with Section 3.26.1 below and which it shall make available to the Owner and the Design Professional. Upon Final Completion of the Work, the Record Drawings shall depict the Work "as built."

1.1.36. Risk Manager - The person holding the position or acting in the capacity of the Risk Manager for the City of Grand Rapids, or his/her duly authorized representative.

1.1.37. Shop Drawings - All drawings, diagrams, illustrations, schedules and other data or information which are specifically prepared or assembled by or for the Construction Manager and submitted by the Construction Manager to illustrate some portion of the Work.

1.1.38. Special Specifications - Special requirements, regulations, or directions prepared to cover Work on a particular project not satisfactorily provided by the Standard or Supplemental Specifications.

1.1.39. Standard Specifications - All requirements contained in the latest edition of the City of Grand Rapids Standard Construction Specifications, including Standard Details included therein.

1.1.40. Subcontractor - The individual, partnership or corporation undertaking the execution of part of the Work under the terms of the Contract, by virtue of an agreement with the Construction Manager.

1.1.41. Substantial Completion - The Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, it is sufficiently complete, in accordance with the Contract, so that the Work (or specified part) can be utilized for the purposes for which it is intended.

1.1.42. Supplemental Specifications - Detailed specifications which are supplemental to or which supersede any part of the Standard Specifications.

1.1.43. Supplementary Conditions - Project specific written modifications or supplements (or both) to these General Conditions.

1.1.44. Supplier - A person who is hired by the Construction Manager or a Subcontractor to provide materials, equipment or supplies in connection with the Work which are not fabricated to a special design according to the Contract Documents.

1.1.45. Surety - The corporate body which is bound with and for the Construction Manager for the performance of the Contract and for the payment of all lawful indebtedness pertaining thereto.

1.1.46. Traffic Safety Director - The person holding the position or acting in the capacity of the Traffic Safety Director for the City of Grand Rapids, or his/her duly authorized representative.

1.1.47. Work - The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract. Work includes and is the result of performing or furnishing labor and furnishing or incorporating materials and equipment into the construction, and performing or furnishing services and furnishing documents, all as required by the Contract. To the extent the Work requires the provision of professional services, the Construction Manager shall ensure that it is performed by a person holding the appropriate professional license.

1.1.48. AASHTO - The American Association of State Highway and Transportation Officials.

1.1.49. AED - Associated Equipment Distributors.

1.1.50. ACI - American Concrete Institute

1.1.51. ANSI - American National Standard Institute.

1.1.52. ASTM - The American Society for Testing Materials.

1.1.53. AWPA - American Wood Preservers Association.

- 1.1.54. AWWA - The American Water Works Association.
- 1.1.55. EEI - Edison Electric Institute.
- 1.1.56. IES - Illuminating Engineering Society.
- 1.1.57. MDOT - The Michigan Department of Transportation.
- 1.1.58. Michigan Building Code
- 1.1.59. MIOSHA – Michigan Occupational Safety and Health Act
- 1.1.60. National Fire Protection Association
- 1.1.61. NEC - National Electric Code.
- 1.1.62. NEMA - National Electrical Manufacturers Association.
- 1.1.63. Ten States Standards

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

1.1.65. The terms “known”, “knowledge”, “recognize”, “believe”, “discover” and any derivatives thereof and similar terms, when used in reference to the Construction Manager, shall mean that which the Construction Manager knows or should reasonably know, recognizes or should reasonably recognize, and discovers or should reasonably discover in exercising the care, skill, and diligence required of the Construction Manager by the Contract. Analogously, the expression “reasonably inferable” and similar terms mean reasonably inferable by a Construction Manager familiar with the Work and exercising the care, skill and diligence required of the Construction Manager by the Contract.

1.1.66. Whenever the word “strictly” is used, it means “strictly, not substantially.” Likewise, use of the word “strict” means “strict, not substantial.”

1.1.67. When the phrases “at no cost to the City,” “without additional cost to the City,” “without increase in the cost to the City,” “without adjustment to the Construction Manager’s Compensation,” or phrases having like import are used, they shall mean that the required task shall be performed solely at the expense of the Construction Manager, without any additional cost to the City, whether by increase in the Contract Price, use of any contingency, claim or otherwise. Unless specifically provided in the Contract Documents, the Contract Price includes everything that is the responsibility of the Construction Manager.

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

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

1.1.70. Correlation and Intent of the Contract Documents. Performance by the Construction Manager shall be required to the extent consistent with the Contract Documents. It is the intent of the Contract to describe a functionally complete Project. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Construction Manager. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. All Work, materials or equipment that may reasonably be inferred from the Contract or from prevailing custom or trade usage as being required to produce the intended result will be furnished and performed whether or not specifically called for.

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

1.1.72. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the City and the Construction Manager. However, the City is and shall be designated an intended third-party beneficiary of all subcontracts, purchase orders and other agreements between the Construction Manager and third parties in respect of the Work.

1.2. THE CITY CHARTER

The City Charter shall be the governing document in all contractual relations with the City of Grand Rapids. Any apparent discrepancy in the text of any other Contract

Document, or in construction drawings, or in sketches, shall be interpreted, or construed, or set aside in favor of the specific provision or provisions of the City Charter.

1.3. CONTROL

1.3.1. The Construction Manager acknowledges that it, and not the City, is solely in control of the Project Site even if the City has one or more separate contractors on site in accordance with Article 5. The City, its consultants and other persons authorized by the City will at all times have access to the Work wherever it is in preparation or progress. The Construction Manager shall provide safe and proper facilities for such access and for inspection.

1.3.2. The City will not under any circumstances have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Construction Manager's responsibility. The City will not have control over or charge of and will not be responsible for acts or omissions of any member of the Construction Team. Any separate contractors retained by the City that are present on the Project site shall abide by the rules established by the Construction Manager therefor, and the City shall notify them of this requirement.

1.4. LIMITATIONS ON THE CITY'S RESPONSIBILITY

1.4.1. The City may, in addition to delivering them to the Design Professional, from time to time receive or review and approve or take other appropriate action upon the Construction Manager's submittals, such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with the City's objectives and goals. Review of Submittals will not be conducted for the purpose of determining their accuracy and completeness of details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Construction Manager. The City's review and approval of or taking other appropriate action on the Construction Manager's submittals shall not relieve the Construction Manager or the Design Professional of any of their obligations.

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

1.5. CONFIDENTIALITY

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

1.5.2. The Construction Manager shall not identify, expressly or by implication, the City, or its affiliates, or use any of their proprietary marks, or reference the Work performed under the Contract, in any advertising, press releases, publicity matters, or other promotional materials without the City's prior written permission.

2. THE CITY'S RIGHTS, DUTIES AND RESPONSIBILITIES

2.1. ACCESS

2.1.1. The Engineer and his/her representatives shall be allowed access to all parts of the Work at all times and shall be furnished such information and assistance by the Construction Manager as may be required to make a complete and detailed inspection. Such inspection may include mill, plant or shop inspection of materials and workmanship.

2.1.2. Scales and weighing equipment may be inspected at any time by the City. The City shall have the right to inspect calibration of equipment and scales for compliance with industry standards. Claims by the Construction Manager for delays or inconvenience due to these operations will not be considered.

2.2. AUTHORITY AND DUTIES OF INSPECTORS

Inspectors shall not supervise, direct, or have control of the Construction Manager's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto. Inspectors are not authorized to revoke, alter, enlarge or relax any of the Specifications or to change the Drawings. The Inspectors are not authorized to increase or decrease any Contract item nor to add new items to the Contract. The Inspector will inform the Engineer as to the progress of the Work and the quality of the completed Work, and the quality of the materials being used. No payments will be made for materials or Work found to be defective by the Inspector. No additional payments will be made to the Construction Manager for efforts required to uncover Defective Work which was covered after the Inspector informed the Construction Manager of the defect. In no instance shall any action or omission on the part of the Inspector relieve the Construction Manager of the responsibility for completing the Work in accordance with the Contract.

2.2.1. The Construction Manager shall only be entitled to act upon those instructions and directions provided by the City's authorized representative.

2.3. FINAL INSPECTION

The Engineer shall make inspection of the completed Work, or such portions thereof which are eligible for acceptance upon notification by the Construction Manager that the Work is complete or substantially complete. If the completed Work is not acceptable to the Engineer at the time of such inspection, he/she shall inform the Construction Manager orally or in writing as to the particular defects to be remedied before final payment can be made.

2.4. AUTHORITY OF THE ENGINEER

2.4.1. The Engineer shall decide all questions which may arise as to the quality and acceptability of materials furnished and Work completed; all questions which may arise as to the interpretation of the Drawings and specifications; and all questions as to the satisfactory and acceptable fulfillment of the terms of the Contract. The City reserves the right to make minor technical changes in the Work, when such changes would provide a better completed project, in the judgment of the Engineer, and would not incur additional expense for the Construction Manager.

2.5. THE CITY'S RIGHT TO STOP THE WORK

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

3. THE CONSTRUCTION MANAGER'S ROLE

3.1. GENERAL RESPONSIBILITY

3.1.1. Except as otherwise provided in the Contract Documents, the Construction Manager shall hire, contract, coordinate, administer, supervise, assume responsibility and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, light, power, utilities, transportation, parking, and other goods, facilities and services necessary for or appropriate to the proper and timely execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. If the Work is to be performed in phases, the provisions of the Contract Documents shall apply fully to each phase.

3.1.2. Once the Work commences, the Construction Manager shall diligently pursue it to completion.

3.2. CONTRACT DOCUMENTS; PHYSICAL CONDITION

3.2.1. In addition to the Construction Manager's pre-construction responsibilities, as set forth in the Agreement, before undertaking each part of the Work:

(a) The Construction Manager shall carefully study and compare the Contract Documents with each other and with information furnished by the City. It shall also compare all of the foregoing with the observable physical condition of the Project Site.

(b) The Construction Manager shall take field measurements and verify field conditions and underground utility locations and shall carefully compare such field measurements and conditions and other information known to the Construction Manager with the Contract Documents.

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

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

(e) The Construction Manager shall at once report to the City any errors, inconsistencies or omissions it discovers.

(f) The Construction Manager shall arrange for a Preconstruction Meeting with the City. At the Preconstruction Meeting the Construction Manager shall present to the Engineer a proposed work schedule for his/her approval. The meeting shall also serve to coordinate the Construction Manager's Work with the utility companies.

3.3. UNFORESEEN SITE CONDITIONS

3.3.1. If the Contract Price exceeds \$75,000 and if, during the course of any part of the Work, the Construction Manager discovers a subsurface or latent physical condition at the Project site that differs materially from those indicated in the Contract documents or an unknown condition of an unusual nature differing materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the Contract Documents, whether or not it is entitled to assert a Claim under Section 10.3 below, the Construction Manager shall promptly (and before disturbing any physical condition) notify the City in writing of such conditions so that the City can (i) comply with the requirements of MCL 125.1592 and (ii) determine if such conditions require design details which differ from those design details shown in the Design or require some other remedial action. The Construction Manager shall be liable to the City for any extra costs incurred as the result of the Construction Manager's failure to promptly give such notice.

3.3.2. If the City receives a notice under Subsection 3.3.1 above, the City shall promptly investigate the physical condition.

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

3.3.4. The Construction Manager cannot make a claim for additional costs or time because of a physical condition unless the Construction Manager has complied with the notice requirements of Subsection 3.3.1 above. The City may extend the time required for notice under Subsection 3.3.1 above.

3.3.5. If the Construction Manager does not agree with the City's determination, with the City's consent, the Construction Manager may complete performance on the Contract under protest.

3.3.6. At the option of the City, the Construction Manager and the City shall arbitrate the Construction Manager's entitlement to recover the actual increase in Contract Time and costs incurred because of the physical condition of the improvement site. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association and judgment rendered may be entered in any court having jurisdiction

3.4. SUPERVISION AND SUPERINTENDENCE

3.4.1. The Construction Manager shall supervise, inspect and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract. The Work, including any design services required of the Construction Manager, shall be done in compliance with all Applicable Law.

3.4.2. The Construction Manager shall keep on the Work at all times during its progress a competent superintendent who has been vetted and approved by the City, and who will cooperate fully with the City at all times, and who shall not be replaced without the prior written approval of the City. The superintendent will be the Construction Manager's representative at the site and shall have authority to act on behalf of the Construction Manager.

3.5. LABOR, MATERIALS, AND EQUIPMENT

3.5.1. The Construction Manager shall provide competent, suitably qualified personnel to perform the Work as required by the Contract. The Construction Manager shall at all times maintain good discipline and order at the site.

3.5.2. All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract. All warranties and guarantees specifically called for by the Specifications shall expressly run to the benefit of the City. If required by the

Engineer, the Construction Manager 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 instructions of the applicable Supplier, except as otherwise provided in the Contract. The Construction Manager shall obtain at the City's request, any and all necessary documentation with Suppliers that Supplier's materials and/or products have been approved to be accepted by said substrates, has been installed per manufacturer's instructions, has provided a report of said material and/or product that quantifiably meets or exceed manufacturer's instructions and/or recommendations, and that the final in-service/or final constructed state meets or exceeds the manufacturer's instructions and/or recommendations and is acceptable to receive beneficial use or the next sequence in the project.

3.6. TESTS AND INSPECTIONS

3.6.1. Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by Applicable Law, and the responsibility and requirements for arranging, conducting and paying for such tests, inspections and approvals shall be allocated and/or borne as set forth in the Specifications or other Contract Documents, as applicable. Such items shall not be a change order to the contract for an increase in contract price if the City believes that the CM should have reasonably known this to be the case or it was documented on file with the City Engineer's Office in some manner while the CM was under contracted services with the City.

3.6.2. Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Construction Manager.

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

3.6.4. Any inspection or test shall be for the sole benefit of the City and shall not relieve the Construction Manager of the responsibility of providing quality control measures to assure that the Work strictly complies with the requirements of the Contract Documents.

3.7. WARRANTY

3.7.1. The Construction Manager warrants to the City that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. and that the Work will be performed in accordance with all specifications, and the Work will not infringe upon or violate any right held by a third party, such as a patent or copyright, and will be of good quality, free from faults and defects, fit for its intended purpose, and will be in compliance with all Applicable Law. Other warranties may be set forth elsewhere in the Contract Documents. The Construction Manager further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the

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

3.7.2. The Construction Manager shall assign to the City the full benefit of all third-party warranties and guarantees relating to the Work, all of which are in addition to the Construction Manager's warranty and none of which shall commence until Final Completion of the Work, and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. At the time of Final Completion of the Work, the Construction Manager shall furnish the City with one (1) loose-leaf binder compiling all warranties, instructions, procedures and schedules for proper operation and service, maintenance, and use of the Project.

(a) All Subcontractors', manufacturers', or Suppliers' warranties and guarantees, expressed or implied, with respect to any material or equipment used in or incorporated as a part of the Work shall be obtained by the Construction Manager as agent for the City, and all such warranties and guarantees shall inure to the benefit of the City without the necessity of separate transfer or assignment thereof; Provided: that if required by the Engineer, the Construction Manager shall require such Subcontractors, manufacturers, or Suppliers to execute such warranties and guarantees in writing to the City.

3.7.3. The Construction Manager shall be responsible to perform all Work strictly accordance with the manufacturer's specifications and/or recommendations for material and equipment used and shall, at no cost to the City, defend, indemnify, hold harmless, save and defend the City, and its agents, officers, subconsultants, engineers, commissioners, and employees from and against all claims that the Work was not performed in strict accordance with such specifications and/or recommendations for materials and equipment used.

3.8. EMPLOYMENT

The Construction Manager has and retains the right to exercise full control over the employment, direction, and discharge of all persons assisting it in the execution of the Work. The Construction Manager shall be solely responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Construction Manager shall be solely and fully responsible for its own acts and those of its subordinates, employees, and Subcontractors during the term of the Contract. The City will not entertain any correspondence or communication or meeting with any Subcontractors or even with the presence of the Construction Manager.

3.9. PERMITS AND LICENSES

The Construction Manager shall procure all permits and licenses and pay all charges and fees necessary to the due and lawful prosecution of the Work. Costs for these items shall be included in the price bid for other items of Work.

3.10. SANITARY PROVISIONS

The Construction Manager shall comply with all rules and regulations of the State and local health officials, and must take such precautions as are necessary to avoid creating unsanitary conditions.

3.11. THE CONSTRUCTION SCHEDULE

3.11.1. The Construction Schedule shall be in a detailed critical path method format satisfactory to the City which shall also: (i) provide a graphic representation coordinating and sequencing all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; (iii) identify Float Time with early start/late start and early finish/late finish dates for each Activity on the schedule; and (iv) set forth Milestone Dates and manpower loading.

3.11.2. All Float time in the Construction Schedule shall be used in all cases for the benefit of the Project so as to achieve Substantial Completion as required by the Contract Documents.

3.11.3. The Construction Manager shall proceed strictly in accordance with the Critical Path set forth in the Construction Schedule. The Construction Manager shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the City of any delays or potential delays. If any progress report indicates any delays resulting from the performance (or non-performance) of any member of the Construction Team, the Construction Manager shall propose and implement, without adjustment to the Contract Price, an affirmative plan to correct the delay, including Extraordinary Measures, if necessary.

3.12. CONSTRUCTION MANAGER SUPERVISION AND COORDINATION PROCEDURES

3.12.1. The Construction Manager shall properly coordinate, schedule and sequence the Work of the Subcontractors with each other (to avoid both duplication and omission of Work) and with the activities and responsibilities of the Construction Manager, the City and the Design Professional to complete the Work in accordance with the requirements of the Contract Documents with respect to cost, time and quality and to ensure that the other goals of the Work are otherwise met or exceeded.

3.12.2. The Construction Manager shall schedule and conduct with the Subcontractors pre-construction and construction progress and any other meetings deemed necessary to discuss such matters as procedures, progress, problems, safety, inspections, sequencing, and scheduling, and shall prepare and promptly distribute

minutes. Construction progress meetings will be conducted by the Construction Manager weekly unless otherwise directed by the City and attended by all Subcontractors whose Work has not been completed. Executive level progress meetings will be held on a monthly basis. All progress meeting minutes shall be provided to the City by the Construction Manager within five (5) days after the meeting and distributed to all attendees promptly after they have been approved by the City. The City will act promptly in providing its approval.

3.12.3. The Construction Manager shall supervise and direct the Work, using the Construction Manager's best skill and attention.

3.12.4. The members of the Construction Team shall cooperate with each other and with any separate contractors or persons employed by the City.

3.12.5. The Construction Manager shall establish a process for managing, and where possible avoiding, Subcontractor requests for information (RFI). All RFI's shall initially be submitted to the Construction Manager, which shall review them and respond, if possible, in a timely manner. Upon receipt of an RFI to which the Construction Manager cannot respond, the Construction Manager shall consult with the Design Professional or the City for interpretation and response.

(a) If, in the opinion of the Construction Manager or the Design Professional, any RFI was unnecessary, the member of the Construction Team submitting it shall be charged all costs resulting from that submission.

3.12.6. General Workmanship Standards. The Construction Manager shall comply with recognized Workmanship quality standards within the industry as applicable to each unit of Work. When reference is made to standards, they shall become a part of the Contract Documents and shall be as binding as if fully reproduced therein.

3.12.7. Coordination with the City's Agencies. The Construction Manager shall provide reasonable time in the construction sequence, for the City's, the Design Professional's, any testing agency's or other governmental or regulatory agency's inspections, tests, audits, reviews, or observations to be performed. The Construction Manager shall cooperate with the City and the City's agencies and provide incidental labor and services needed for the removal and delivery of test samples, and for inspections and taking measurements. The Construction Manager shall provide patching and restoration services where test samples have been removed, complying with individual technical sections of the Contract Documents.

3.13. SURVEYS

Unless the Schedule of Project details provides otherwise, the Construction Manager shall be responsible for and shall obtain and pay for all surveys required to establish building alignment and elevations, as well as all the construction and reference points needed to properly locate the Work for its use and the use of others. The Construction Manager shall preserve all stakes and benchmarks and replace at its expense any that are lost or destroyed.

3.14. UTILITIES

3.14.1. In all cases involving utilities, unless the Contract Documents specifically provide otherwise, it shall be the Construction Manager's responsibility to coordinate the Work with the owners of utilities, for the protection of such utilities and for the safety associated with working with or in the vicinity of utilities.

3.15. TEMPORARY LIGHTING AND POWER

3.15.1. The Construction Manager shall furnish, install, maintain and remove temporary lighting and power as needed during construction. The cost of temporary utilities shall be borne by the Construction Manager unless the project specifications provide otherwise. On projects utilizing existing lighting and power sources, the Construction Manager shall turn off all lighting and non-essential power during non-work hours.

3.16. SUBMITTALS

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

(a) The Construction Manager shall obtain and furnish to the Design Professional all Submittals which may be required by the Contract Documents, requested by the Design Professional or the City, or otherwise necessary for the proper execution of the Work.

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

(c) The Construction Manager shall take appropriate action to ensure the timely submission and review of Submittals.

(d) The Construction Manager shall be responsible for the accuracy, constructability, content, completeness and consistency of all Submittals.

3.16.2. Prior to their submission, the Construction Manager shall (i) carefully check all Submittals to verify measurements, sizes of members, materials and all other details to assure that they conform to the intent of the Contract Documents and (ii) cause any necessary corrections to be made promptly and, in any event, without delay to the Critical Path set forth in the Construction Schedule.

(a) The Design Professional and the City will review the Submittals within the time limits agreed upon in writing between the Construction Manager and the

City and will return them, indicating by notation, or by written instructions, or other directions, any corrections, which in the judgment of the Design professional or the City may be necessary to meet the requirements of the Contract Documents. The Construction Manager shall then review the notations, instructions, or directions, and if the Construction Manager concurs therein, shall make or have made the corrections (but no other changes), and resubmit corrected Submittals as soon as possible, for final review.

3.16.3. The Construction Manager, and not the Design Professional or the City, is responsible for errors, omissions or deviations from the Contract Documents contained in any Submittals.

3.16.4. The Construction Manager shall permit no portion of the Work requiring review of any Submittal to be performed until the submittal has been approved. Once they have been approved, Work shall be in accordance with all approved Submittals.

3.17. SUBSTITUTIONS

3.17.1. The Construction Manager may, but only following receipt and acceptance of all bids, make substitutions only when (i) permitted by the City, (ii) after evaluation by the Design Professional and (iii) authorized by a Change Order or Construction Change Directive in accordance with Article 6.

3.18. SOIL EROSION AND SEDIMENTATION CONTROL (SESC)

3.18.1. The Construction Manager shall implement and maintain a soil erosion and sedimentation control plan as specified in the Contract Documents.

3.19. TAXES

The Contract Price includes all applicable Federal, State, Local, County or Municipal taxes of whatever nature and description. The Construction Manager shall be responsible for the payment of all such taxes.

3.20. ROYALTIES AND PATENTS

The Construction Manager shall pay all royalties and license fees. The Construction Manager shall at its expense, without recovery from the City, under the Contract Price, any contingency or otherwise, defend suits or claims for infringement of patent rights and shall indemnify the City against and hold it harmless from any and all loss, damage or liability, including attorneys' fees and costs, on account thereof. Notwithstanding the above, the Construction Manager shall not be responsible for such defense, indemnity, loss, damage or liability, including attorneys' fees and costs, when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Design Professional.

3.21. "MISS DIG"

3.21.1. The Construction Manager shall notify the municipality, public utilities, agencies, Miss Dig and the City, in a timely manner so as to allow reasonable response time, before digging any tunnels or similar underground Work;— and shall protect all existing utilities, sidewalks, streets, and similar improvements, while performing the Work.

3.22. USE OF SITE

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

3.22.2. Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project Site. After equipment is no longer required for the Work, if feasible, it shall be promptly removed from the Project Site. Protection of construction materials and equipment stored at the Project Site from weather, theft, damage and all other casualty is solely the responsibility of the Construction Manager, who shall bear the risk thereof.

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

3.22.4. The Work shall be performed, to the fullest and most expedient extent reasonably possible, in a manner so that public areas adjacent to the Project Site shall be free from all debris, building materials and equipment. Without limiting any other provision of the Contract Documents, the Construction Manager shall use its best efforts to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the Project Site or portions of the Project in which Work is not being carried out in the event of partial occupancy.

3.23. CUTTING AND PATCHING

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

3.24. RECORD/AS-BUILT DOCUMENTS

3.24.1. The Construction Manager shall keep one copy of all Record Documents, as defined in Section 1.1.34, in good order at the Project site, available for review to all parties having rightful interest in the Project. The Record Drawings, as defined in Section 1.1.35, shall at all times be kept current and made available to the City and the Design Professional on request.

3.24.2. The Construction Manager shall, at minimum, note on the Record Drawings of (i) revisions made, (ii) omissions, including Work omitted by Change Order or accepted alternates, (iii) exact dimensioned locations of concealed lines, (iv) locations of all control devices, (v) any additions to Work, (vi) changes in significant details, and (vii) any other information of a similar nature.

3.24.3. Within sixty (60) days of Substantial Completion, the Construction Manager's notes on the Record Drawings shall be neatly transcribed onto a clean set of drawings and shall be submitted to the City and the Design Professional as the "As-Built" drawings. This submission shall include the original field hardcopy markup (if not electronically generated), and an electronic PDF copy of either the original field or field generated CAD drawings.

3.25. PUNCHLIST

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

3.25.2. The Construction Manager shall coordinate with the City to ensure that the Punchlist, which shall be updated by the Construction Manager at Beneficial Completion and again at Substantial Completion, shall be in a database format compatible with that of the Construction Manager and the City. The Punchlist, shall be attached to and shall become a part of each Certificate of Substantial Completion. Failure to include an item on the list does not alter the responsibility of the Construction Manager to complete all Work in accordance with the Contract Documents. The Construction Manager shall proceed promptly to cause completion and correction of all items on the Punchlist executed by the Design Professional. The Construction Manager shall monitor each Subcontractor's progress in completing its Punchlist items satisfactorily, and shall Work with the Subcontractor to ensure that, unless delayed by a need to order materials that should not reasonably have been anticipated by the Construction Manager, its Punchlist items are completed in thirty (30) days or less following the date of Substantial Completion.

4. SUBCONTRACTORS; SUPPLY CONTRACTS

4.1.1. By appropriate written agreement, the Construction Manager shall require each Subcontractor to be bound to the Construction Manager by terms of these General Conditions, except to the extent clearly inapplicable to the Work to be performed by the Subcontractor. Each Subcontract shall preserve and protect the rights of the City with respect to the Work to be performed by the Subcontractor so that its rights will not be prejudiced. Where appropriate, the Construction Manager shall require each Subcontractor to enter into similar agreements with other members of the Construction Team.

4.1.2. Without limiting the generality of the foregoing, each Subcontract shall contain provisions that:

(a) includes the following sentence: "The City is an intended third-party beneficiary of this Subcontract";

(b) requires dispute resolution in the manner provided below in Article 10;

(c) requires each Subcontractor to make all claims for changes or extensions of time to the Construction Manager strictly in the manner provided in the Contract Documents;

(d) limits claims and damages in the manner provided in the Contract Documents;

(e) require that the Construction Manager make prompt payment as required by Applicable Law;

(f) requires that, if the Subcontract includes a provision for Liquidated Damages, the Subcontractor shall not, by contract or otherwise, require any Subcontractor or Supplier to bear the risk or burden of Liquidated Damages except to the extent of that Subcontractor or Supplier's responsibility for the delay giving rise to the imposition of Liquidated Damages ; and

(g) are in no way inconsistent with any provision of the Contract Documents.

4.1.3. As part of the bidding process, the Construction Manager shall provide each prospective bidder with a copy of these General Conditions.

4.1.4. Upon request, the Construction Manager shall deliver a copy of any Subcontract or Supply Contract to the City. The Construction Manager shall demonstrate how a minimum of three bids were solicited for each subcontract, how supplier diversity was achieved, and how the City's policy on Micro-Local Business Enterprise was utilized to the fullest extent possible during the bidding process.

Contractors and subcontractors whose portion of the work is \$10,000 or more, must be prequalified with the Engineering Department of the City of Grand Rapids per the current City Commission Policy, Procedures for Prequalification of Bidders and Subcontractors.

4.2. CONSTRUCTION TEAM PERFORMANCE

4.2.1. The Construction Manager is fully responsible for the acts and omissions of members of the Construction Team, and of any persons or entities either directly or indirectly employed by any one or more of them, to the same extent as the Construction Manager is responsible for the acts and omissions of persons or entities directly employed by the Construction Manager. The Construction Manager shall require

all members of the Construction Team to engage in proper behavior and exhibit proper form in front of the public.

4.3. CONTINGENT ASSIGNMENT OF SUBCONTRACTS

4.3.1. Each Subcontract and Supply Contract entered into by the Construction Manager as part of the Work is assigned by the Construction Manager to the City provided that:

(a) assignment is effective only after termination of the Contract by the City pursuant to the terms of the Contract Documents and only for those Subcontracts or Supply Contracts which the City accepts by notifying the Subcontractor or Supplier in writing; and

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

4.3.2. Upon the City's request, the Construction Manager shall execute further documentation conditionally assigning each Subcontract to the City on the terms stated above (and the Construction Manager shall cause the Subcontractor to acknowledge said assignment). Copies of the executed Subcontracts shall be delivered to the City upon the City's request.

4.4. SUBCONTRACTORS TO PREQUALIFY

Approval of the subcontracting of any portion of the Contract will not be granted unless and until the Subcontractor is prequalified for work of the type and magnitude proposed. The current City Commission Policy and Procedures for Prequalification of Bidders and Subcontractors, and a list of prequalified Bidders and Subcontractors are on file at the City Engineer's Office for reference.

4.5. SUBCONTRACTS

All contractors will be required to provide the City with copies of executed Subcontracts for all subcontracted Work in excess of \$3,000. Said Subcontracts shall be executed on forms supplied by the City Engineer's Office.

5. SEPARATE CONTRACTORS

5.1. THE CITY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

5.1.1. The City reserves the right to perform construction or operations related to the Project with the City's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Project Site. The Construction Manager shall promptly notify the City in writing upon becoming aware that an independent action will in any way compromise the Construction Manager's ability to meet its responsibilities under the Contract Documents.

5.1.2. The Construction Manager shall cooperate with the sequencing of the Work, and coordinate the activities of the City's own forces and of each separate contractor with the Work of members of the Construction Team, who shall, without additional cost to the City, cooperate with them.

(a) Upon request, the Construction Manager shall integrate the work of the City's own forces into the Construction Schedule in a manner that depicts any effect that work may have on the Work.

(b) When the Construction Manager's Work is dependent upon the Work of the City or the City's separate contractors, the Construction Manager shall notify the City of the condition in ample time to prevent any delays to the Project's progress.

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

6. CHANGES IN THE WORK

6.1. CHANGE ORDERS

6.1.1. A Change Order is a Contract Document which has been signed by both the City and the Construction Manager, stating their agreement upon a change in one or more of the following:

- (a) the Work;
- (b) the Contract Time;
- (c) the Contract Price; and/or
- (d) Modifications to other Contract terms or conditions.

If any one or more of the foregoing is not specifically addressed in a Change Order, the parties shall be deemed to have agreed that it is unaffected by the Change Order. For example, if a Change Order modifies the Work and the Contract Time but is silent as to the Contract Price, the parties shall be deemed to have agreed that the Contract Price is not affected by the Change Order.

6.1.2. An agreement by the Construction Manager on any Change Order shall constitute a final settlement by it of all matters relating to changes in the Work and a waiver of and permanent bar to all claims by it relating to changes in the Work which are the subject of that and any previous Change Order, including all direct and indirect costs associated with the change and any and all adjustments to the Contract Price and the Contract Time. The Construction Manager shall include the Work covered by Change

Orders in its Applications for Payment as if the Work were originally part of the Contract Documents.

6.2. AUTHORIZED EXTRAS AND CHANGES IN THE WORK

6.2.1. Increased or Decreased Quantities of Contract Items. The City reserves the right under the Contract to make such changes from time to time in the character of the Work and the length of the Project as may be necessary or desirable. When said changes are made in original Contract items, and if such a change amounts to Twenty-five Percent (25%) or more in any one Contract item, or in two or more closely related items, a new unit price may be negotiated for each of the items thus increased or decreased, or as otherwise specified in the Special Specifications.

6.2.2. Construction Items Not in Original Contract. The amount to be paid to the Construction Manager for Work and materials not included in a specific Contract item shall be determined by one or more of the following methods, the City reserving the right to select the method or methods at the time the change in the Work is ordered.

(a) By an acceptable lump sum bid. All lump sum bids shall be itemized and all quantities and unit prices shall be given, as well as the total amount.

(b) By unit prices. The payment for such items(s) of Work shall be made on the basis of the actual quantity completed at the unit prices(s) for such items(s) in the original Bid or fixed by subsequent agreement.

(c) By force account. The Engineer may order such Work, including any required off-site work, to be done by force account. The compensation as herein provided shall be accepted by the Construction Manager as payment in full for extra Work done by force account, and the general expense, overhead, miscellaneous costs, unforeseen costs, and the use of small tools and equipment.

For approved subcontract Work, the Construction Manager will be paid an amount equal to that percentage of the total administrative costs incurred in connection with the subcontract Work set forth in the Schedule of Project Details. When it becomes necessary for the Construction Manager to hire a firm to perform a specialized type of Work or a service for which the Construction Manager or Subcontractors are not qualified to do, payment will be made at the invoice costs. Prior approval by the Engineer is required. The Construction Manager will be paid an amount equal to that percentage of the invoice costs, as reimbursement for administrative costs set forth in the Schedule of Project Details. This administrative cost shall be a one-time cost and paid by the City to the Construction Manager, and no additional costs therefore shall be paid to any intermediate tier of Subcontractors.

For all labor and for all craft forepersons directly engaged in the specified Work, the Construction Manager will be paid the actual rate of wages and the number of hours paid said labor and forepersons computed to the nearest half hour, plus that percentage of the sum thereof set forth in the Schedule of Project Details.

For materials, the Construction Manager will receive the actual cost of such materials and supplies delivered to the site of the Work, including freight charges as shown by original receipted bills, plus that percentage of the sum thereof set forth in the Schedule of Project Details. If a change in the amount or type of the force account Work results in a surplus of the materials and/or supplies ordered and delivered to the Project site, the City will reimburse the Construction Manager for the costs incurred in returning the surplus materials and/or supplies to the Supplier.

For any machinery and equipment owned by the Construction Manager, which it may be deemed necessary or desirable to use on force account Work, the Construction Manager shall be paid an ownership expense price as approved by the Engineer and which will be reviewed annually.

When it is necessary for the Construction Manager to rent equipment in the performance of the force account Work, the Construction Manager shall be allowed the actual rental price paid, if reasonable, for each and every unit of time (i.e., hourly, daily, weekly, monthly) that such equipment is used on the Work, to which the sum of that percentage shown in the Schedule of Project Details will be added. The Construction Manager will be required to furnish receipted bills to cover such rental costs.

Bond premium, worker's compensation insurance, personal injury public liability insurance, property damage public liability insurance, unemployment compensation, and federal social security shall be paid for at actual cost to which the sum of that percentage shown in the Schedule of Project Details. The Construction Manager shall furnish satisfactory evidence of the amounts paid for each of these required costs as related to the force account Work.

The Construction Manager shall furnish to the Engineer itemized reports of the costs of all force account Work. The reports shall be furnished as often as required by the Engineer and shall include a certified copy of the weekly payroll and copies of the bills for the materials used and freight charge paid on the same. Discount for prompt payment or penalty for late payment will not be considered in determining the net amount of the bill. The net amount of the bill shall be charged to the force account Work. When materials used are not specifically purchased for use on extra Work but are taken from the Construction Manager's stock, the Construction Manager shall submit certification of the quantity, price and freight of such materials in lieu of the original bills and invoices.

The Construction Manager shall prepare on acceptable City forms itemized statements, including but not necessarily limited to, the following information:

Name, class, dates, number of hours worked each day, total hours computed to the nearest half hour, rate, and extension for each laborer and foreperson engaged.

Designation, number of hours computed to the nearest half hour worked each day, total hours, rental rate, and extension for each unit of equipment engaged.

Quantities of materials, prices, and extensions.

Freight on materials.

The Construction Manager and the Engineer shall compare records of force account Work and bring them into agreement, as often as required by the Engineer.

6.2.3. Deleting Items. The Engineer shall have the right at any time to delete the performance or completion of any Contract item, and shall promptly execute the standard City forms as evidence of such action. A fair and equitable amount, representing all costs incurred on such items prior to such deletion, shall be agreed upon in writing and paid to the Construction Manager.

6.2.4. Equivalent Materials and Equipment. Whenever any material or equipment is defined by describing a proprietary product, or manufacturer's name, the specified material or equipment shall be understood to indicate a standard of quality, and the term "or approved equal," if not inserted, shall be implied, subject always to the approval of the Engineer. The Engineer will consider alternate products upon request of the Construction Manager and may allow such substitution, when in the opinion of the Engineer equal products are being offered. Said approval shall be in writing in accordance with Section 3.17.1.

7. CONSTRUCTION PROGRESS; DELAYS AND SUSPENSION

7.1. TIME FOR PERFORMANCE

7.1.1. The construction schedule referenced in this Section and in other Sections of the Contract Documents ("Construction Schedule") shall be in a detailed format [precedence-style critical path management ("CPM") or primavera-type format] satisfactory to the Engineer and shall also: (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates and manpower loads that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents ("Milestone Dates"). Upon review and acceptance by the Engineer of the Milestone Dates, the Construction Schedule shall be deemed part of the Contract Documents. If not accepted, the Construction Schedule shall be promptly revised by the Construction Manager in accordance with the recommendations of the Engineer and resubmitted for Engineer's acceptance. The Construction Manager shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Engineer of any delays or potential delays. If any progress report on the Construction Schedule indicates any delays, the Construction Manager shall propose an affirmative plan to correct the delay. No progress report shall constitute an adjustment of the Contract Time, any Milestone Date, or the Contract Price unless any such adjustment is agreed to by the City and authorized pursuant to a Change Order.

7.1.2. If the Engineer determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the

Contract Documents, the Engineer shall have the right to order the Construction Manager to take corrective measures necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, (iii) expediting the delivery of materials, and (iv) other similar measures (collectively, "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The City's right to require Extraordinary Measures is solely for the purpose of ensuring the Construction Manager's compliance with the Construction Schedule. The provisions of this section shall not apply to delays caused by the City's separate contractors or others who are not members of the Construction Team.

7.1.3. The Construction Manager shall not be entitled to an adjustment in the Contract Price in connection with Extraordinary Measures required by the Engineer unless the delay(s) are the result of actions of the City's separate contractors or others who are not members of the Construction Team.

Time is of the essence of the Contract.

7.2. TEMPORARY SUSPENSION OF WORK

7.2.1. The Engineer shall have the authority to reasonably suspend the Work wholly or in part, for such period or periods as he/she may deem necessary. Except in the case of an emergency, the threat of imminent harm, non-payment by the City, or other reasonable cause, the Construction Manager shall not suspend the Work or remove equipment or materials without permission from the City.

7.2.2. Upon suspension, the Work shall be put in proper and satisfactory condition, carefully covered and adequately protected. In all cases of suspension of construction operations, the Work shall not again be resumed until permitted by written order of the Engineer. In the event that the Work is temporarily suspended, no claims for additional compensation will be approved except as provided by section 7.2.5, and extensions of the Contract completion date will only be allowed if approved in writing by the Engineer.

7.2.3. The Engineer shall not supervise, direct, control, or have authority over or be responsible for the Construction Manager's means, methods, techniques, and sequences of construction, or safety precautions and programs incident thereto.

7.3. SUSPENSION BY THE CITY

7.3.1. If any such Suspension exceeds a period of seven (7) days, the Construction Manager shall be reimbursed for the actual out-of-pocket costs incurred by the Construction Manager or its Subcontractors directly as a result of the Suspension (such as reasonable demobilization and remobilization costs), and an appropriate extension of the Contract Time will be granted by the Engineer, provided the Construction Manager provides appropriate documentation of the related delay.

7.4. DELAYS

7.4.1. Except as provided in this Section, the Construction Manager shall be fully responsible for the timely completion of the Work in accordance with the Construction Schedule. The Construction Manager shall cause all members of the Construction Team to meet all Milestone Dates in the Construction Schedule. The Construction Manager agrees to use its best efforts to avoid the occurrence of any cause for delay, to avoid any extension of performance dates, and to mitigate the effect of any delay that does occur.

(a) The Construction Manager acknowledges that in preparing the Construction Schedule and in agreeing to the times or dates of completion set forth the Contract Documents it will be required to make an appropriate allowance for all events that are on the Critical Path. Thus the Construction Schedule should reflect the anticipated dates of all City events.

(b) Without limiting the specificity applicable to City Delays and Force Majeure (both as defined below), immediately following the commencement of any cause for delay, representatives of the Construction Manager and City shall confer for the purpose of determining the probable length of the delay and a course of action which would end or eliminate the occurrence or event which is causing delay.

(c) The Contract Price will be adjusted, and Contract Time will be extended only under the exact circumstances described in this Section and then if, and only, if the Construction Manager complies strictly (not substantially) with the requirements of this Section.

(d) Except as otherwise provided in the Contract Documents and/or by legal statute, an extension of Contract Time shall generally be the exclusive remedy of the Construction Manager for the delay, interference, or hindrance in the performance of the Work, loss of productivity, manpower inefficiencies, impact damages and similar claims and damages whether or not contemplated by the parties. The provisions of this Subsection do not preclude or limit recovery of damages for delay attributed to the City, its separate Contractors, design consultants or other persons or entities for which the City is responsible, as granted by other provisions of the Contract Documents as well as those provided under applicable statutes. The Construction Manager agrees and covenants to use its best efforts to work closely with the City to prevent, or minimize, claims against the City for such damages noted herein, as well as other similar issues, which may occur outside the control of the Construction Manager.

7.4.2. A delay is a "Critical Delay" if and only to the extent it adversely affects the Critical Path of the Work as established in the Construction Schedule or subsequent Subcontractor schedules that fall within the Construction Schedule. When two (2) or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delay(s) would be critical, then all such concurrent delays shall be considered Critical Delays. For the purpose of determining whether and to what extent the Contract Time should be adjusted, such concurrent Critical Delays shall be treated as a single

delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.

7.4.3. “City Delay” means, and is limited to, a Critical Delay to the Construction Manager’s completion of the Work to the extent caused by one or more of the following: (i) Change Orders (excluding minor changes in the Work and Engineer interpretations), (ii) the City’s failure (or that of any other person for whom the City is responsible to the Construction Manager) to provide any data or information requested by the Construction Manager in writing that is reasonably necessary for the Construction Manager to carry out its duties and is the City’s obligation to provide (so long as the City and any other responsible person are given adequate time to respond); or (iii) interference by the City or persons for whom it is responsible to the Construction Manager, with the Construction Manager’s performance of the Work (which continues after written notice to the City of such interference).

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

(b) In the event of City Delay, the Construction Manager shall be entitled to an equitable adjustment in the Contract Price. This adjustment shall be based solely upon and limited to additional direct out-of-pocket expenses to the extent they are incurred directly as a result of the City Delay. Without limiting the generality of the foregoing, such out-of-pocket expenses shall be calculated on an “actual cost” basis, and shall exclude home office expense and other overhead, profit and the value of lost opportunities. The Construction Manager shall furnish such documentation as may be requested by the City, including, without limitation, cost records, to substantiate its claim and allow the City to evaluate it.

(c) Following receipt of all requested information, the Engineer shall decide whether to grant, grant in part or deny a request for an equitable adjustment to the Contract Price. Any adjustment granted shall be memorialized in the form of a Change Order. Acceptance and execution of any such Change Order by the parties shall constitute an accord and satisfaction that forever bars any and all claims for an equitable adjustment to the Contract Price arising out of or in connection with the City Delay. If the Construction Manager disagrees with the City’s decision, it may pursue the remedies available to it.

(d) Except only as provided in this Section, an extension of the Contract Time, to the extent permitted under this Section, shall be the sole and exclusive remedies (in lieu of all other remedies whatsoever) of the Construction Manager for any delay, interference, hindrance in the performance of the Work, loss of productivity, manpower inefficiencies, impact damages and similar claims and damages, whether or not contemplated by the parties. Except only as provided in this Section, under no

circumstances shall the Construction Manager be entitled to any compensation or recovery of any damages in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. Except as permitted under Subsection 7.3.3 below, the Construction Manager hereby expressly waives and covenants and agrees not to assert any claims against the City for any damages, costs, losses or expenses of any nature whatsoever which any member of the Construction Team may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any act or omission of the City, its representatives or agents.

(e) Notices in connection with City Delays shall be made by the Construction Manager to the City in accordance with this Subsection 7.3.3. The Construction Manager shall use its best efforts to provide oral notice to the City within twenty-four (24) hours after the commencement of a delay. Any oral notice given shall be confirmed in writing within 48 hours after the verbal notice is given. If the Construction Manager fails to deliver oral notice within 24 hours days after the commencement of a delay, it shall not be entitled to any relief pertaining to the period of time before it gave verbal notice. If the Construction Manager fails to confirm any oral notice within 48 hours after the oral notice was given, it shall not be entitled to any relief for the period of time beginning after the passage of such 48 hours and ending when the confirmation is actually received by the City. And, if the Construction Manager fails to provide oral notice within five (5) days after the commencement of a delay or to confirm any oral notice within 48 hours after the verbal notice was given, the Construction Manager shall be barred from seeking any relief whatsoever relating to the delay. The Construction Manager shall also within ten (10) days after the cessation of such delay notify the City of the date of such cessation and the total amount of delay, if any, in performance dates which the Construction Manager is entitled to claim by reason of any such occurrence.

(f) Failure of the Construction Manager to timely assert any alleged City Delay or claim for an equitable adjustment to the Contract Price or schedule relief strictly (not substantially) in accordance with the provisions of this Section shall constitute a waiver of and shall forever bar that claim, even if the City was not prejudiced thereby.

(g) The Construction Manager shall use its best efforts to avoid or reduce delay damages to any member of the Construction Team caused by City Delay.

7.4.4. The term "Force Majeure" means, and is limited to, the following: (i) strikes, lockouts, or picketing (legal or illegal) of an area-wide, trade-wide, City-wide, or industry-wide nature (a strike, lockout or picket [legal or illegal] specific to the Project Site, or directed at the Construction Manager or any of its Affiliates shall not be considered an area-wide, trade-wide or industry-wide strike, and does not constitute Force Majeure); (ii) governmental action (other than green building laws, regulations or like actions) and condemnation; (iii) riot, civil commotion, insurrection, and war; (iv) fire or other casualty not the fault of the Construction Manager, accident, acts of God or the public enemy; (v) unusual adverse weather conditions not reasonably expected for the location of the Work and the time of the year in question; (vi) unavailability of fuel, power, supplies or materials

that is not the fault of the Construction Manager; or (vii) the passage or unexpected interpretation or application of any statute, law, regulation or moratorium of any governmental authority that has the effect of delaying the Work, excluding any green building statute, law, or regulation as to which any public or advance notice was available prior to its adoption or issuance. "Force Majeure" does not include, among other things, the unavailability of any building material, equipment or supply which is specified for the Project or Work, nor of any specialized Supplier, Subcontractor, laborer or other entity or person.

(a) If the Construction Manager is delayed by Force Majeure and the delay is a Critical Delay, then the Construction Schedule and the Contract Time may be adjusted.

(b) If the Construction Manager is delayed by a Force Majeure Event, it shall immediately notify the City by telephone and promptly (and not more than 24 hours following the commencement of the occurrence of a Force Majeure delay), also notify the City in writing, setting forth the cause of the delay, a description of the portions of the Work affected, and additional relevant details, such as the anticipated duration of the delay. Failure to submit the notice of Force Majeure delay required herein shall constitute a waiver of claim by the Construction Manager. In the case of a continuing cause of Force Majeure delay, only one notice is necessary.

(c) All claims for extension of time on account of Force Majeure shall be made in writing to the City no more than seven (7) days after the conclusion of the delay.

7.4.5. If the Construction Manager intends to request an extension of time on account of a City Delay or Force Majeure, it shall in the notice given the specific extension or adjustment requested and justifying the reason for the extension or adjustment. The Construction Manager shall furnish such documentation as may be requested by the City, including, without limitation, CPM Schedule analysis, to substantiate its claim and allow the City to evaluate it. Following receipt of all requested information, the City shall decide whether to grant, grant in part or deny the request. Any extension of time or adjustment granted shall be memorialized in the form of a Change Order. Acceptance and execution of any such Change Order by the parties shall constitute an accord and satisfaction that forever bars any and all claims arising out of or in connection with the Construction Manager's request for schedule relief. If the Construction Manager disagrees with the City's decision, it may pursue the remedies available to it.

(a) When permitted under this Section, schedule relief shall be granted as necessary to compensate for the delay (but the total extension of all Critical Path Activities may not exceed the period of time required by the Construction Manager, using its best efforts, to mitigate the effect of the delay).

(b) Adjustments in the Contract Time will be permitted for any City Delay or Force Majeure only to the extent such delay (i) is not caused or contributed to, and could not have been anticipated, by the Construction Manager using the degree of

diligence required by the Contract Documents, (ii) could not have been prevented by the exercise of reasonable care, reasonable precautions, or reasonably circumvented by the Construction Manager through the use of alternate sources, workaround plans or other means, including disaster recovery plans; (iii) was critical, that is, had an impact on the overall completion of the Project or rendered other activities critical that otherwise were not critical; (iv) was not concurrent with any other contemporaneous delays attributable to or controlled by the Construction Manager; (v) could not be limited or avoided by the Construction Manager's timely notice to the City of the delay, (vi) for which an equitable adjustment is provided or excluded under any other provision of the Contract Documents, or (vii) is of a duration of not less than one (1) day.

(c) Failure of the Construction Manager to timely assert any alleged delay or claim for schedule relief strictly (not substantially) in accordance with the provisions of this Section shall constitute a waiver of and shall forever bar that claim, even if the City was not prejudiced thereby.

7.4.6. If the Construction Manager, but for a delay not within its control, would have completed the Work prior to the expiration of the Contract Time, the Construction Manager shall not be entitled to recovery of damages arising out of any event or delay whatsoever which prevented such early completion of the Work.

7.4.7. Nothing contained in this Section shall preclude the recovery of liquidated damages, if liquidated damages, as provided herein, by the City for delay.

7.4.8. Permitting the Construction Manager or the Surety to continue and finish the Work, or any part thereof, after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the City of any of its rights under the Contract.

7.5. COMPLETION/SUBSTANTIAL COMPLETION

7.5.1. When the Construction Manager considers the Work complete, it shall notify the Engineer. If the Engineer agrees and the Construction Manager has furnished the City with all required records, operating and/or maintenance manuals, guarantees, bonds and other such documents required by the Contract or applicable permits, law, etc., the Engineer will notify the Construction Manager that the Work is complete and accepted.

7.5.2. Should the Engineer not consider the Work complete, he/she shall notify the Construction Manager of the incomplete or Defective Work and the Construction Manager shall promptly remedy the deficiencies.

7.5.3. Should the Construction Manager consider that all or a portion of the Work is Substantially Complete as defined herein and as more fully described below, it shall declare so in writing and request the Engineer to concur in writing.

7.5.4. Within two weeks thereafter, the Engineer shall make an inspection of the Work or a portion thereof, to determine the status of completion. If the Engineer

does not consider the Work or a portion thereof substantially complete, the Engineer shall notify the Construction Manager in writing, giving reasons therefor. If the Engineer considers the Work or a portion thereof substantially complete, the Engineer shall prepare a Notice of Substantial Completion which will fix the date of Substantial Completion and the responsibilities between the City and the Construction Manager for operation, utilities, and maintenance. The notice shall include a tentative list of items to be completed or corrected before final acceptance.

7.5.5. The date of Substantial Completion for general construction may be upon final payment for the Work performed or as otherwise agreed in writing between the Engineer and the Construction Manager after a written request from the Construction Manager to the Engineer.

7.5.6. The date of Substantial Completion for equipment may be the date of successful start-up of said equipment or the successful start-up or use of the Project in which the equipment operates, and the Engineer accepts the equipment for the City's beneficial use, whichever event occurs last, or as otherwise agreed in writing between the Engineer and the Construction Manager after a written request from the Construction Manager to the Engineer.

7.5.7. "Substantial Completion" includes, but is not limited to the following examples: the treated water main is completed, including testing and disinfection, and can be put into service in accordance with the City's standard operating procedures; and all valves, branch piping, distribution mains, appurtenances and connections to existing water mains have been installed and operational; the sanitary sewer system has been installed and tested for infiltration and exfiltration; the storm sewers and catch basin leads have been installed to adequately collect and transport stormwater runoff; all final grading and pavement restoration including bituminous leveling course, drive approaches, sidewalks, curbs and gutter, have been completed. Substantial Completion for equipment requires the successful start-up of said equipment or the successful start-up of the facility in which the equipment operates, and the Engineer accepts the equipment for the City's beneficial use.

7.6. ACCEPTANCE OF NON-CONFORMING WORK

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

8. PAYMENTS

8.1. PROGRESS PAYMENTS

8.1.1. The person designated by the City in the Schedule of Project Details is the person to whom written requests for progress payments are to be submitted; and the person designated by the Construction Manager in the Schedule of Project Details is the person who will submit written requests for progress payments.

8.1.2. Completed Work. Projects will fall into one of the following classifications:

- (a) Projects of less than \$30,000.
- (b) Projects which there will be a maximum of three payments.
- (c) All other projects.

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

(1) a duly executed and acknowledged sworn statement in statutory form with all information provided, together with sworn statements, current through the previous draw, from the Construction Manager and all of the Subcontractors; and

(2) except as otherwise provided, duly executed unconditional releases in the form required by the City establishing payment or satisfaction of all obligations; provided, however, that the Construction Manager may furnish with each Application for Payment applicable releases concerning the immediately preceding Application for Payment, as opposed to the current Application for Payment, provided final payment shall not be forthcoming until final conditional releases from the Construction Manager and all of the Subcontractors have been delivered.

I. Projects less than \$30,000. Progress payments will be made monthly or as may be otherwise agreed by the Construction Manager and the Engineer. Such payments shall be made on the basis of 90% of the amount earned. Said progress payments shall be subject to the following provisions: that the Work is progressing satisfactorily, the time for completion has not expired, and that not less than \$500 has been earned during the month.

When, in the opinion of the Engineer, the Project has been substantially completed, the Engineer may reduce the retained amount to an amount sufficient to pay for the Work yet to be done provided that the Construction Manager has filed with the City the written consent of the Surety to such reduction and, that the Construction Manager has furnished an affidavit that all its indebtedness by reason of the Contract has been paid.

II. Projects with a maximum of three payments. For certain projects the Engineer may state in the Special Specifications that a maximum of three payments will be made. The Special Specifications shall also describe how the payments will relate to the progress schedule, i.e., at which major points in Work the Construction Manager can expect to receive payments. In these cases the first two payments will be made on a basis of 90% of the amount earned. Said progress payments will be subject to the following provisions: that the Work is progressing in accordance with the Contract, that the time for completion has not expired, and that not less than \$500 has been earned since the last payment.

When, in the opinion of the Engineer, the Project has been substantially completed, the Engineer may reduce the retained amount to an amount sufficient to pay for the Work yet to be done; provided, that the Construction Manager has filed with the City the written consent of the Surety to such reduction and, that the Construction Manager has furnished an affidavit that all its indebtedness by reason of the Contract has been paid.

III. All other projects. For all projects not as described in Subparagraphs I or II above, progress payments will be made monthly or as may otherwise be agreed by the Construction Manager and Engineer and on the basis of the amount earned. However, payments for Work done, which exceed 95% of the final Contract amount, shall be made only after the Construction Manager has filed with the City the written consent of the Surety and has furnished a conditional affidavit that all its indebtedness, by reason of the Contract, has been paid.

Said progress payments shall be subject to the following provisions: that the Work is progressing satisfactorily in accordance with the Contract, that the time for completion has not expired, and that not less than \$500 has been earned during the month.

8.1.3. Accepting Payment. By accepting payments, the Construction Manager agrees that it has not, during the period of the time for which it is accepting payment, performed any Work, furnished any materials, sustained any loss, damage, or delay, or otherwise done anything for which the Construction Manager shall ask, demand, sue for, or claim compensation from the City of Grand Rapids in addition to the regular items as set forth in the Contract executed between the Construction Manager and the City of Grand Rapids and the extra Work as agreed to in writing between the Construction Manager and the City of Grand Rapids except as the Construction Manager has filed a written claim with the Engineer prior to the Construction Manager's acceptance of said payment.

8.1.4. Delivered Materials. Generally no allowance will be made in any payment for materials furnished and delivered until such materials have been permanently incorporated into the Work. In the case of non-perishable or indestructible materials which are properly stored and protected to the satisfaction of the Engineer, and are not scheduled to be incorporated into the Work for 30 days or more, the Engineer may make an allowance in the estimate not to exceed the invoice price of such items.

However, the Construction Manager shall be responsible for any such materials which are lost or stolen even though they have been included in progress payments.

8.1.5. Acceptance and Final Payment. When the Work has been completed and the Engineer has ascertained that each and every part of the Work has been performed in accordance with the Contract or such modifications thereof as have been approved, the same will be accepted and the Engineer will make a final estimate as soon as practicable, but not more than one month after acceptance, for the completed Work, and the total amount due the Construction Manager, less the total amount of all previous payments will be paid.

Final payment will not be made until the Construction Manager has filed with the City the consent of the Surety to payment of the final estimate and satisfactory evidence by conditional affidavit or otherwise that all its indebtedness by reason of the Contract has been fully paid or satisfactorily secured (unconditional evidence shall be provided following receipt of final payment). In case such evidence is not furnished, the Engineer may retain out of any amount due the Construction Manager sums sufficient to cover all claims unpaid.

The acceptance by the Construction Manager, or by anyone claiming by or through him/her of the final payment, whether such payment be made pursuant to any judgment of any court or otherwise, shall constitute and operate as a release of the City from any and all claims of and liability to the Construction Manager for anything theretofore done or furnished for or relating to or arising out of the Contract, and the Work done thereunder, and for any prior act, neglect or default on the part of the City or any of its officers, agents, or employees, excepting only a claim against the City for the amount deducted or retained in accordance with the terms and provisions of the Contract.

8.2. PAY ITEMS

The listing of Pay Items in the Bid Form and the Contract is intended to define the complete Work for the purposes of receiving competitive bids, and for determining the amounts of partial and final payments to the Construction Manager. The Pay Items describe the Work to be done for each unit price bid. Additional descriptions of some Pay Items are included in those Divisions of these Standard Specifications and in Special Specifications included with some contracts, which specify and describe the Work in detail. The cost of Work which is required to provide a complete project, but which is not described either in the wording of the Pay Items or in the additional descriptions of Pay Items, shall be considered to have been included in the prices bid for the Pay Items listed in the Bid Form, and will not be paid for separately.

9. PROTECTION OF PERSONS AND PROPERTY

9.1. ASBESTOS, PCBs, PETROLEUM, HAZARDOUS WASTE OR RADIOACTIVE MATERIAL

9.1.1. If, during the course of construction, any asbestos, PCBs, petroleum, hazardous waste or radioactive materials are uncovered or revealed at the site which

were not shown or indicated on the Drawings or in the Special Specifications to be within the scope of the Work and which may present a substantial danger to persons or property exposed thereto in connection with the Work at the site, the Construction Manager shall cease operations affecting the find and shall notify the Engineer, who shall notify the necessary parties. No further disturbance of the materials shall ensue until the Construction Manager has been notified by the Engineer that it may proceed.

9.1.2. Any additional Work or Contract Time associated with removal and disposal of any such hazardous materials, if encountered, shall be included in a Change Order. The Contract Price and Contract Time shall be adjusted in accordance with the provisions stated in these General Requirements. The City reserves the right to negotiate such additional Work under a separate contract.

9.2. CONSTRUCTION MANAGER'S RESPONSIBILITIES

9.2.1. The Construction Manager shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Construction Manager shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:

the public and all persons on the Work site or who may be affected by the Work;

all the Work and materials and equipment to be incorporated therein, whether in storage on or off the site; and

other property at the site or adjacent thereto, including trees, shrubs, lawns, irrigation systems, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

9.2.2. The Construction Manager shall comply with all applicable Laws and Regulations of any public body having jurisdiction for safety of persons or property or to protect them from damage, injury or loss; and shall erect and maintain all necessary safeguards for such safety and protection. The Construction Manager 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 referred to in this paragraph shall be remedied by the Construction Manager to the extent caused, directly by the Construction Manager, any member of the Construction Team or any other person or organization employed by any of them to perform or furnish any of the Work or anyone for whose acts any of them may be liable. The Construction Manager's duties and responsibilities for safety and protection of the Work shall continue until such time as all the Work is completed and accepted.

9.2.3. The Construction Manager shall designate a qualified and experienced safety representative at the site whose duties and responsibilities shall be

the prevention of accidents and the maintaining and supervising of safety precautions and programs.

9.2.4. The Construction Manager shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the site in accordance with Laws or Regulations.

9.2.5. The Construction Manager shall comply with and be governed by all acts as they pertain to the safety of its employees while working on the City's property.

9.2.6. In emergencies affecting the safety or protection of persons or the Work or property at the site or adjacent thereto, the Construction Manager, without special instruction or authorization from the City or the Engineer, is obligated to act to prevent threatened damage, injury or loss. The Construction Manager shall give the Engineer prompt written notice if the Construction Manager believes that any significant changes in the Work or variations from the Contract have been caused thereby. If the Engineer determines that a change in the Contract is required because of the action taken by the Construction Manager in response to such an emergency, a Change Order will be issued to document the consequences of such action.

9.3. SECURITY

9.3.1. All members of the Construction Team shall cooperate with the City's security personnel and shall comply with all of the City's security requirements. Such requirements shall include, without limitation, if requested by the City, delivering to the City's security personnel, prior to the commencement of the Work on each day, a list of all personnel who will be permitted access to the Work.

(a) The Construction Manager shall be responsible for providing Project site security to the extent necessary to safeguard the building, tools, equipment, materials, open excavations, incomplete work that may cause public hazard, and completed Work.

(b) The Construction Manager shall complete background checks when required by the Grand Rapids Police Department for projects that require it to do such. The Construction Manager shall be responsible to coordinate any and all members of the Construction Team that require background checks by the Grand Rapids Police Department in order to participate within the Project site.

(c) The Construction Manager shall cooperate with any and all emergency personnel in the event of a situation that arises on site to a level that involves the following but not limited to police, fire, and natural gas explosion.

9.4. FIRE PRECAUTIONS

9.4.1. All members of the Construction Team shall take all necessary precautions to guard against and eliminate all possible fire hazards and to prevent fire

damage to any construction Work, building materials, equipment, temporary field offices, storage sheds, and all other property, both public and private.

9.4.2. The Construction Manager shall at all times cooperate with the City and keep the municipal fire department informed of the means of entrance and changes to roadways or fire aisles as needed and the location of active fire hydrants or fire suppression systems to provide fire department access to or around to Project site.

9.4.3. The Work shall be executed in a manner which will cause as little inconvenience as possible to the City in the City's use of the property and existing facilities and structures.

9.4.4. The Construction Manager shall continuously maintain adequate protection of all Work from damage and shall protect the City's property from injury or loss.

9.5. DAMAGE

The Construction Manager shall make good any such damage, injury or loss at no cost to the City, except to the extent directly caused by agents or employees of the City or others who are not members of the Construction Team, the City's separate contractors, others not employed by the Construction Manager or actions and events beyond the Construction Manager's control. The Construction Manager shall adequately protect the Work and adjacent property as required by law, the Contract Documents, or as otherwise required, to cause no damage to the Work and adjacent property during the execution of the Work. This requirement shall also apply to structures above and below ground as conditions of the site require.

10. CLAIMS

10.1. TIME LIMITS ON CLAIMS

Claims by either party must be made promptly and strictly within twenty-one (21) days, unless a longer period is granted in writing, after the claimant first recognizes the condition giving rise to the Claim, whether or not any impact in money or time has been determined. The City's special procedures pertaining to claims in respect of private property shall always be applicable.

10.2. CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, Work shall continue unabated on Work not under dispute. The Construction Manager shall proceed diligently with performance of the Work, and the City shall continue to make payments in accordance with the Contract Documents, except as to amounts in good faith dispute.

10.3. CLAIMS FOR ADDITIONAL COST

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

10.3.2. If the Construction Manager contends that it is entitled to an adjustment to the Contract Price in accordance with the Contract Documents, the Construction Manager shall be obligated to substantiate any such claim with complete detailed and accurate cost records as required by the City meeting the requirements of the Contract Documents. The City shall be entitled to determine amounts, if any, due to the Construction Manager for claims made by the Construction Manager if the Construction Manager fails to submit complete, detailed and accurate cost records substantiating the amount claimed by the Construction Manager.

10.4. SUBMISSION TO PROCEEDINGS

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

11. INSURANCE AND INDEMNIFICATION; BONDS

11.1. INDEMNITY—GENERAL

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

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

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

11.2. REQUIREMENTS

11.2.1. Prior to commencing Work under the Contract, the Construction Manager as successful Bidder shall file with the City a certificate of insurance acceptable to the City as proof that the Construction Manager has secured the types and amounts of insurance as stated herein or as stated in any Special Specifications applicable to the Contract. The City reserves the right, in its sole discretion, to require the Construction Manager to file with the City certified copies of any policies of required insurance either prior to the execution of the Contract or at any time thereafter.

11.2.2. The certificate, policies, or other proofs of insurance filed with the City must provide for giving the City 30 days prior written notice of any cancellation or material change in coverage prior to the expiration date of the insurance. In addition, if the stated expiration date for any of the required policies of insurance precedes the stated Contract completion date, the applicable certificate, policy, or other proof of such insurance filed with the City must provide for giving the City 30 days prior written notice of an intent not to renew any such required insurance coverage.

11.2.3. The furnishing by the Construction Manager of any insurance policies and insurance certificates required and their acceptance or approval by the City shall not release the Construction Manager from the obligation to provide sufficient coverage as set forth herein and shall not waive liability of the Construction Manager to indemnify the City against all damage as aforesaid.

11.2.4. For each Contract to which these Standard Specifications apply, the following types and amounts of insurance shall be provided by the Construction Manager, unless any Special Specifications applicable to the Contract provide for different insurance requirements. The Construction Manager may comply with these or any Special Specifications by providing insurance with separate limits for bodily injury and property damage and/or by providing umbrella insurance which provides substantially equivalent coverage to that required by the applicable specifications. THE CITY RESERVES THE ABSOLUTE RIGHT TO MAKE THE FINAL DETERMINATION AS TO

WHETHER ANY INSURANCE PROVIDED BY THE CONSTRUCTION MANAGER COMPLIES WITH THESE STANDARD SPECIFICATIONS OR ANY APPLICABLE SPECIAL SPECIFICATIONS. In addition, the City reserves the absolute right to modify or waive at any time, by mutual agreement with the Construction Manager, any applicable insurance requirements when, in the sole discretion of the City's Risk Manager or any other authorized representative of the City Manager, it is in the City's best interests to do so.

(a) Construction Manager's General Liability Insurance. The Construction Manager shall secure and maintain during the life of the Contract, Commercial General Liability insurance in an amount not less than One Million Dollars (\$1,000,000) Combined Single Limits (CSL) per occurrence; Two Million Dollars (\$2,000,000) General Aggregate; Two Million Dollars (\$2,000,000) Products Completed Operations Aggregate, for both bodily injury and property damage providing the coverages equivalent or greater than those provided by Insurance Services Office (ISO) 1986 Commercial General Liability Policy, Occurrence Form, without any other than the standards exclusions contained in such ISO policy form. These coverages include but are not limited to:

- Premises Operations
- Products/Completed Operations
- Independent Contractors
- Personal Injury
- Broad Form Property Damage - including completed operations
- Contractual Liability, including coverage for the Indemnity Liability assumed pursuant to Subsection 11.1 above.
- Explosion, Collapse, and Underground Hazard

In addition to the foregoing, the Construction Manager, if required in the Bid Form or Special Specifications, will be required to provide umbrella coverage in an amount of One Million Dollars (\$1,000,000) to Five Million Dollars (\$5,000,000) as determined necessary by the City's Risk Manager based on an analysis of the risks involved in the particular Work to be performed.

(b) Construction Manager's Motor Vehicle Insurance. The Construction Manager shall secure and maintain during the life of the Contract, Construction Manager's Motor Vehicle Insurance, with required Michigan endorsements, in an amount of One Million Dollars (\$1,000,000) Combined Single Limit (CSL) per occurrence for bodily injury and property damage, such insurance to be provided through an ISO Business Auto Policy, 1986 Form, Occurrence Basis, or through another policy which provides equivalent or greater coverages than those provided as a standard feature of such ISO form, with no exclusions other than the standard exclusions for such form.

(c) Professional Liability Insurance. The Construction Manager shall secure and maintain during the life of the Contract, Professional Liability Insurance in an amount not less than Two Million Dollars (\$2,000,000) Annual Aggregate.

(d) Owners and Contractors Protective Liability Insurance. The Construction Manager shall secure and pay the premiums for, and maintain during the entire life of the Contract, Owners and Contractors Protective Liability Insurance written in the name of the City of Grand Rapids in an amount of One Million Dollars (\$1,000,000) Combined Single Limit (CSL) per occurrence for bodily injury and property damage, such insurance to be provided through an ISO Owners and Contractors Protective Liability (OCP), 1986 Occurrence Form, or through another policy which provides equivalent or greater coverages than those provided as a standard feature of such ISO form, with no exclusions other than the standard exclusions for such form. Only the City of Grand Rapids and the City's Consultant for the Project shall be a named insured on such policy, except that, if there are any named additional insureds, then the policy limits shall be increased by an additional One Million Dollars (\$1,000,000) CSL for each named additional insured.

(e) Worker's Compensation Insurance. The Construction Manager agrees that it and all of its Subcontractors will comply with all applicable Workers' Compensation laws and will provide proof of such insurance coverage.

(f) Builders Risk Insurance. When required in the Special Specifications, the Construction Manager shall purchase Builder's Risk insurance naming the City as an insured party, which provides coverage for all risks on a Completed Value form policy in the amount of the Contract Price, which shall include coverage for at least the following perils: Fire, lightning, removal, wind, hail, aircraft, vehicles, explosion, riot, smoke, vandalism, malicious mischief, collapse, theft, and water damage.

(g) Notification of Cancellation. A guarantee that thirty (30) days' notice to the City prior to the cancellation of, change in, or non-renewal of any such insurance shall be endorsed on each policy and shall be noted on each certificate. If any of the insurance is canceled, the Construction Manager shall cease operations on the date of termination and shall not resume operations until new insurance is in force.

(h) If the Work is located in the City of Kentwood, City of Walker, Township of Cascade, or Township of Grand Rapids, the Construction Manager shall furnish to that unit of government an Owners Protective or Contingent Liability policy written in the name of that unit of government in the amount of the Owners and Contractors Protective Liability Insurance limits specified above, Owners and Contractors Protective Liability Insurance.

11.3. PERFORMANCE BOND AND PAYMENT BONDS

11.3.1. The Construction Manager shall furnish a Performance Bond and Labor and Material Payment Bond meeting all statutory requirements of the State of Michigan and complying with the following specific requirements:

(a) Except as otherwise required by statute, the form and substance of such bonds shall be reasonably satisfactory to the City; and

(b) Bonds shall be executed by a responsible surety licensed in the State of Michigan with a Best's rating of no less than A/XII.

(c) Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other Modification of the Contract Documents and the Subcontracts.

12. UNCOVERING AND CORRECTION OF WORK

12.1. DEFECTIVE MATERIALS AND WORK

12.1.1. All materials which do not meet the requirements of the specifications at the times they are to be used shall be rejected, unless otherwise authorized as acceptable by the Engineer.

12.1.2. All completed Work that may be found to be defective before the final acceptance of the completed Work shall be corrected and replaced immediately in conformance with the Specifications.

12.1.3. The Construction Manager shall be responsible for any and all damages that the Work, for which the Construction Team is directly responsible, may sustain prior to its acceptance and for which any member of the Construction Team is responsible, and shall rebuild, repair, restore and make good at its own expense, all injuries and damages to any portion of the Work by the action of the elements or from any cause whatsoever prior to its acceptance.

12.2. CORRECTION OF WORK

12.2.1. The Construction Manager shall promptly correct, repair, replace, restore, or rebuild (collectively "Corrections"), as the Engineer may determine, any Work in process, or finished Work, in which defects of materials or workmanship may appear or to which damage may occur (or has occurred) because of such defects during the course of the Work and/or the period specified in the Schedule of Project Details following Final Completion except where other periods of maintenance are provided.

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

12.2.3. Notice by the Engineer to the Construction Manager to repair, replace, rebuild or restore such defective or damaged Work shall be timely if given not later than ten days subsequent to the expiration of the stipulated correction period or other periods provided herein.

12.3. PERIODS OF LIMITATION

Nothing contained in this Article 12 shall be construed to establish a period of limitation with respect to other obligations which the Construction Manager might have under the Contract Documents or applicable law. Establishment of the Correction Period relates only to the specific obligation of the Construction Manager to correct the Work under this Article 12 and has no relationship to the time within which the obligation to comply with the Contract may be sought to be enforced by the City, nor to the time within which proceedings may be commenced to establish the Construction Manager's liability with respect to its obligations under the Contract.

13. TERMINATION OF THE CONTRACT

13.1. TERMINATION FOR CAUSE

13.1.1. If the Construction Manager shall be prosecuting the Work with a work force, equipment or materials insufficient to complete the Work by the date set for completion; or shall discontinue the performance of the Work; or shall neglect or refuse to remove such materials or to replace any such Work as shall have been rejected as defective and unsuitable; or shall, for any reason, not complete the Work in accordance with the Contract; the Engineer may give the Construction Manager and Surety written notice, specifying the delay, neglect or default, and the action to be taken by them; and if the Construction Manager or Surety, within a period of ten days after such notice, shall not proceed satisfactorily in accordance therewith; then the City may terminate the Contract; and may complete the Work with its own forces; may enter into another contract to finish the Work; may appropriate and use any and all materials on the site which may be suitable; or may use such other methods as in its judgment may be required for the proper completion of the Work.

13.1.2. If the Construction Manager commits any act of bankruptcy, or becomes insolvent or is declared bankrupt; if the Construction Manager follows any final judgment against him/her to remain unsatisfied for a period of five days; or, if the Construction Manager shall make an assignment for the benefit of its creditors; then in such case, the City shall have full power and authority to proceed in any of the ways aforesaid, forthwith upon the delivery by the Engineer to the Construction Manager and Surety of written notice stating the reasons for the Engineer's said action.

13.1.3. In case the City takes over the uncompleted Work under any of the provisions of this section, all additional costs and damages, and costs and charges for completing the Work shall be deducted from moneys due or to become due the Construction Manager; and if the total of such damages, costs and charges exceeds the balance of the Contract Price which would have been payable to the Construction

Manager had it completed the Work, then the Construction Manager and Surety shall, on demand, pay to the City the amount of such excess.

13.1.4 If the City shall default on its obligations under the Contract, the Construction Manager shall have the right, following 30 days' prior written notice and opportunity to cure, to terminate the Contract and recover, as its damages, all amounts due for Work properly performed to the date of termination.

13.2. TERMINATION BY THE CITY FOR CONVENIENCE

13.2.1. As consideration for the City's agreeing to engage the Construction Manager, the Construction Manager grants the City the right, exercisable at any time, to terminate the Contract in whole or in part for the City's convenience and without cause. Termination by the City under this Section shall be by a notice of termination delivered to the Construction Manager specifying the extent of termination and the effective date.

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

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

(b) enter into no additional Subcontracts, except as necessary to complete continuing portions of the Contract and as approved by the City;

(c) terminate, on the most favorable and negotiable terms, all Subcontracts to the extent they relate to the Work terminated;

(d) complete the performance of Work not terminated; and

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

13.2.3. Upon such termination, the City shall pay, and the Construction Manager, as its sole remedy, may recover payment, including a reasonable allowance for overhead and profit, for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination, for items theretofore properly and timely fabricated off the Project Site, delivered and stored in accordance with the City's instructions, and for any actual out-of-pocket costs it incurs in complying with Subsection 13.2.2 above, such as reasonable demobilization costs, protection and preservation costs, negotiated settlements with Subcontractors and Suppliers, claims resolution, restocking charges, shutdown costs, and similar. The Construction Manager

hereby waives all other claims whatsoever against the City based on the termination except to the extent the Construction Manager has filed a written claim with the Engineer that has not been previously resolved. In addition to the aforementioned payment(s) related to the City's termination for convenience, the City will bring current all payments due and payable to the Construction Manager for Work properly completed up to the effective date of termination.

13.2.4. In any recovery by the Construction Manager, the City shall be credited for (i) payments previously made to the Construction Manager for the terminated portion of the Work.

13.2.5 Any termination by the City under Section 13.1 that is determined to have been wrongful will then be deemed a termination for convenience under Section 13.2

14. CLAIMS AND DISPUTES

14.1. OTHER REMEDIES

The previous provisions outlined shall be in addition to any and all other legal remedies permissible under laws in effect.

15. MISCELLANEOUS PROVISIONS

15.1. RULES OF CONSTRUCTION

The rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not apply to the interpretation of the Contract.

15.2. PROJECT SITE

The City and its representatives shall be freely entitled to inspect the Project Site during the construction period. The Construction Manager shall neither invite nor permit third parties to enter the Project Site.

15.3. INDEPENDENCE

The Construction Manager is and at all times shall be an independent contractor with respect to the Work and the Project. Neither the Contract nor any of the Contract Documents nor any course of dealing or practice shall be interpreted as creating, or shall be deemed to create, any employer-employee, principal-agent, partnership, joint venture or other relationship between the City and the Construction Manager.

15.4. ESTOPPEL (NO WAIVER OF LEGAL RIGHTS BY THE CITY)

The City or any officer, agent or employee thereof, shall not be estopped, bound or precluded by any determination, return, decision, approval, order, letter, payment or certificate made or given by the City Manager, or other officer, employee or agent of the

municipality at any time, either before or after the Final Completion and acceptance of the Work and payment therefor from: (1) showing the true and correct amount, classification, quality and character of the Work done and materials furnished by the Construction Manager or any other person under the Contract, or from showing at any time that any determination, return, decision, approval, order, letter, payment or certificate is untrue and incorrect, or improperly made in any particular, or that the completed Work or incorporated materials or any part thereof, do not in fact conform to the specifications, and (2) from demanding and recovering from the Construction Manager any overpayments made to him/her, or such damages as it may sustain by reason of its failure to perform each and every part of the Contract in strict accordance with its terms, or both.

15.5. UNLAWFUL PROVISIONS

Whenever possible, each provision of the Contract shall be interpreted in a manner as to be effective and not invalid under Applicable Law. If, however, any provision of the Contract, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of the Contract or valid portions of such provision, which are hereby deemed severable.

15.6. SURVIVAL

The provisions of the Contract which by their nature survive termination of the Contract or Final Completion, such as all warranties, indemnities, payment obligations, the City's right to audit Construction Manager's books and records, and the Construction Manager's obligation of confidentiality, shall remain in full force and effect after Final Completion or any termination of the Contract, as defined within the Contract.

15.7. NOT EXCLUDED

15.7.1. Construction Manager warrants that neither Construction Manager, nor, to the best of Construction Manager's knowledge, Construction Manager Personnel, is excluded from participating in the Medicare or Medicaid program nor currently debarred or suspended or listed on the General Services Administration's ("GSA") List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Orders 12549 and 12689, "Debarment and Suspension". Construction Manager shall immediately notify the City if it becomes debarred or suspended during the term of the Contract.

15.7.2. Construction Manager further represents that no adverse action by the federal government that will or may result in exclusions from a federal health care program has occurred or is pending or threatened against Construction Manager or its affiliates, or to the best of its knowledge, against any Construction Manager Personnel. Construction Manager agrees that it shall not perform any act that shall cause Construction Manager to be excluded from a federal health care program or debarred, suspended or listed in the GSA's List of Parties Excluded from Federal Procurement or Nonprocurement Programs during the term of the Contract.

15.8. LIMITATION ON CONSTRUCTION MANAGER'S PERSONNEL

Construction Manager agrees that unless otherwise approved by the City in writing in advance, no Construction Manager Personnel shall provide services if any of the following have occurred: (a) any applicable registration, certification, licensure (including where applicable, Medicare/Medicaid provider status) of Construction Manager Personnel, in any state, is or has been threatened with limitation, suspension, revocation or exclusion; (b) any applicable registering, certifying, or licensing board reprimands, sanctions or otherwise disciplines Construction Manager Personnel; or (c) a negligence or malpractice claim related to the provisions of the services or similar services has been asserted against Construction Manager Personnel.

15.9. BUY DOMESTIC/BUY MICHIGAN PROVISION

15.9.1. The City shall give preference to goods or services manufactured/offered by United States of America-based firms provided that these services and materials meet the specifications of the Contract Documents and are obtained at the lowest total contract cost.

15.9.2. The City shall give preference to services offered by Michigan-based firms provided that these services and materials meet the specifications of the Contract Documents and are obtained at the lowest total contract cost. This provision is not intended to prohibit businesses in other states from competing for contracts, but to include Michigan firms in every possible contracting opportunity.

15.10. INTEGRATION

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

15.11. WAIVER

No term or provision of the Contract shall be deemed waived and no breach excused unless either (i) waiver or bar is required by the terms of the Contract or (ii) such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether expressed or implied, shall not constitute a consent to, or waiver of, or excuse for any other different or subsequent breach.

15.12. ASSIGNMENT

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

15.13. REMEDIES NOT EXCLUSIVE

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

15.14. LIQUIDATED DAMAGES

If Liquidated Damages are applicable as set forth in the City/Construction Manager Agreement, then the combined total of all Liquidated Damages included in the Subcontractors' contracts may not exceed the total amount of Liquidated Damages included in the City/Construction Manager Agreement.

15.15. THE CITY'S RIGHT TO AUDIT

15.15.1. The City shall have the right to audit all relevant Construction Manager's books and records including the administrative and accounting policies, guidelines, practices and procedures of the Construction Manager for the Project as follows:

(a) The City reserves the right to audit and adjust the final Contract Price for discrepancies for any compensation amount included in the original Contract which was based on methods other than lump sum or fixed price. Construction Manager must segregate its records in such a manner as to facilitate a complete audit of all charges included in the Contract and agrees that such audit may be used as the basis for settlement of charges against this Contract.

(b) The City reserves the right to audit and adjust the final price for any changed Work performed for the Project, whether authorized by CCD or Change Order, and whether determined under Method No.1, Method No.2 or Method No.3 under Article 6.

(c) The City reserves the right to audit the Construction Manager's books and records for the Project to insure compliance with the City's Policy including Gifts and Gratuities.

(d) The City reserves the right to audit the Construction Manager's books and records for the Project to verify, substantiate and investigate any Construction Manager or Subcontractor or Supplier claim regarding the Project.

(e) The City reserves the right to audit the Construction Manager's books and records for the Project to confirm Construction Manager's compliance with any and all laws, regulations or ordinances.

(f) The City reserves the right to audit the Construction Manager's books and records for the Project to verify Project accounting procedures in connection with Projects that are subject to a Guaranteed Maximum Price.

15.15.2. The Construction Manager further agrees, for the purpose of the City's right to audit under Section 15.15, to preserve all such documents for a period of six (6) years after Final Payment or Final Acceptance, or longer period if required by law, including documents of the Subcontractor(s) and Suppliers.

15.16. NON-DISCRIMINATION PROVISION

The Construction Manager warrants that it is an equal opportunity employer and that, during the performance of the Contract, it will comply with Federal Executive Order 11246, as amended, The Rehabilitation Act of 1973, as amended, and the respective regulations thereunder, and the Michigan Civil Rights Act of 1976.

15.17. COMPLIANCE WITH "KICK-BACK" AND WAGE REGULATIONS STATUTES

The members of the Construction Team shall comply with the following statutes, and with amendments issued pursuant thereto, which are incorporated herein by reference:

15.17.1. Title 18 U.S.C. §874: "874. Kick-Back from Public Work Employees - whoever, by force, intimidation or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public works, or building or work financed in whole or in part by loans or grants from the United States of America, to give up any part of the compensation to which they are entitled under their contract of employment, shall be fined under this title, or imprisoned not more than five (5) years, or both."

15.17.2. Title 40 U.S.C. §276C: “276C. Regulations Governing Construction Managers and Subcontractors - The Secretary of Labor shall make reasonable regulations for Construction Managers and Subcontractors engaged in the construction, completion or repair of public buildings, public works or buildings or works financed in whole or in part by loans or grants from the United States of America, including a provision that each Construction Manager and Subcontractor shall furnish weekly a statement with respect to the wages paid each employee during the preceding week. §1001 of Title 18 shall apply to such statements.”

15.18. MEDICARE AND MEDICAID PROVISIONS

If it is determined that §952 of the Medicare and Medicaid provisions of the Omnibus Reconciliation Act of 1980 (§952 amends §1861(v)(1) of the Social Security Act) applies to the Work, then until the expiration of four years after the furnishings of services required by the Contract Documents, the Construction Manager shall make available, upon written request, to the secretary of the Department of Health and Human Services or upon request to the Controller General of the United States or any of their duly authorized representatives, the Contract Documents, any books, documents, and records of such Construction Manager which are deemed necessary to certify the nature and extent of costs for services furnished under the Contract Documents, and if the Construction Manager carries out any of the duties of the Contract Documents through a Subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, with a related organization, such Subcontract shall also contain a clause binding the Subcontractor to the identical provisions contained in this Section 15.19.

15.19. NON-DISCRIMINATION AND AFFIRMATIVE ACTION REQUIREMENTS

15.19.1. The Construction Manager shall not discriminate against any employee or applicant for employment, to be employed in the performance of its contract, with respect to his/her hire, tenure, terms, conditions or privileges of employment because of race, color, religion, national origin, age, sex, height, weight or marital status (Act 453, P.A. 1976.). Breach of the Contract may be regarded as material breach of Contract as provided for in Act 453, of the Public Acts of 1976. The Construction Manager further agrees to require similar provision from any Subcontractors and Suppliers.