



**GRAND VALLEY  
STATE UNIVERSITY**

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CONTRACT FOR CONSTRUCTION

**FOR ALL FORMS OF CONTRACTOR'S AGREEMENTS**

CHAPTER 3

**GENERAL TERMS AND CONDITIONS**

*INSERT PROJECT TITLE*

SAMPLE

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**CONTRACT FOR CONSTRUCTION**  
**CHAPTER 3**  
**GENERAL TERMS AND CONDITIONS**

**ARTICLE 1**  
**CONTRACT DOCUMENTS**

- 1.1 **Additional Sets Of Documents.** Any additional copies of the Construction Documents required by the Contractor for execution of the Work shall be made by the Contractor at its cost and expense from the reproducible set(s) furnished by the Owner or Professional.
- 1.2 **Minimum Requirements.** In every case, requirements established by the Construction Documents shall be considered as the minimum which will be accepted.
- 1.3 **Conflicts In Documents.** In the event of any conflict, discrepancy, or inconsistency among any of the documents which make up this Contract For Construction, the following shall control:
- 1.3.1 As between figures on plans and scaled measurements, the figures shall govern.
- 1.3.2 As between large-scale plans and small-scale plans, large-scale plans shall govern.
- 1.3.3 As between plans and specifications, specifications shall govern.
- 1.3.4 As between this document and the plans, specifications, general conditions or general requirements, this document shall govern.
- 1.4 **Shop Drawings And Submittals.** Shop drawings and other submittals from the Contractor or its subcontractors and suppliers do not constitute a part of this Contract For Construction.
- 1.5 **Integration.** This Contract For Construction represents the entire and integrated agreement between the Owner and the Contractor, and supersedes all prior negotiations, representations or agreements, either written or oral, for the Project. This Contract For Construction may be amended only by written instruments signed by both the Owner and the Contractor, and is subject to such reasonable modifications as may be required by the Owner or its insurer(s).

**ARTICLE 2**  
**CONTRACTOR'S REVIEWS AND EVALUATIONS**

- 2.1 **Sufficiency Of Site.**
- 2.1.1 The Contractor certifies that prior to signing the Contract For Construction, it has:
- (i) visited the Site and become familiar with local conditions under which the Project is to be constructed and operated, and the Work is to be performed; and
  - (ii) reviewed and familiarized itself with the Site survey and any existing structures on the Site, and gathered all other information necessary for a full understanding of the Work.
- In addition, if the Work involves modifications to or remodeling of an existing structure(s) or other man-made feature(s) on the Site, the Contractor certifies that prior to signing the Contract For Construction it has also:
- (iii) reviewed all available as-built and record drawings, plans and specifications; and
  - (iv) thoroughly inspected the structure(s) and man-made feature(s) to be modified or remodeled.
- 2.1.2 By signing the Contract For Construction, the Contractor certifies that it has correlated the results of its activities pursuant to Paragraph 2.1.1 with the requirements of the Construction Documents. Claims resulting from the Contractor's failure to properly or adequately perform those activities shall be deemed waived.
- 2.2 **Sufficiency Of Construction Documents And Drawings.** The Contractor acknowledges its continuing duty to review and evaluate the Construction Documents during the performance of its services and shall immediately notify the Owner and the Professional, if any, about any:
- (i) problems, conflicts, defects, deficiencies, inconsistencies or omissions it discovers in or between the Construction Documents; and
  - (ii) variances it discovers between the Construction Documents and applicable laws, statutes, building codes, rules and regulations.
- 2.2.1 If the Contractor performs any Work which it knows or should have known involves:
- (i) a recognized problem, conflict, defect, deficiency, inconsistency or omission in the Construction Documents; or
  - (ii) a variance between the Construction Documents and requirements of applicable laws, statutes, building codes, rules and regulations, without notifying the Professional, if any, or the Owner if there is no Professional, and prior to receiving written authorization to proceed,

the Contractor shall be responsible for the consequences of such performance.



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- 2.2.2 Drawings are generally drawn to scale; however, the figured dimensions or notes thereon shall govern. Before ordering any materials or doing any Work, the Contractor and its subcontractors shall take and verify all field measurements at the Site and shall be responsible for the correctness of same. Discrepancies shall be reported in writing to the Professional, if any, or to the Owner if there is no Professional, prior to proceeding with the Work. No claim for extra charge or compensation will be entertained due to differences between actual field measurements and dimensions indicated on drawings, if such differences do not result in a change in the scope of Work or if the Professional or Owner failed to receive written notice before the Work was performed.

**ARTICLE 3  
CONTRACTOR'S DUTIES, OBLIGATIONS  
AND RESPONSIBILITIES**

- 3.1 **Performance Of Work.** The Contractor shall perform and complete its obligations under the Contract For Construction using its best skill and attention, and covenants with the Owner to furnish management, supervision, coordination, labor and services:
- (i) which expeditiously, economically and properly completes the Work in the manner most consistent with the Owner's interests and objectives;
  - (ii) which comply with the Construction Documents and this Contract For Construction; and
  - (iii) in accordance with the highest standards currently practiced by persons and entities performing or providing management, supervision, coordination, labor and services on projects similar in size, complexity and cost to the Project.
- 3.1.1 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering.
- 3.1.2. All services rendered by the Contractor for the Project shall be performed by or under the immediate supervision of persons possessing expertise in the discipline of the service being rendered.
- 3.1.3 The Contractor shall, in the course of providing the Work, cooperate and communicate with the Owner and all other persons or entities as required for satisfactory completion of the Project.
- 3.1.4 The Contractor shall not damage, endanger, compromise or destroy any part of the Project or the Site, including by way of example and not limitation, work being performed by others on the Site, monuments, stakes, benchmarks and other survey points, utility services, and existing features or structures on the Site. Should the Contractor damage, compromise or destroy any part of the Project or the Site, the Contractor shall be fully responsible for all costs associated therewith.
- 3.1.5 The Owner may do work, or let other contracts in connection with the Work. The Contractor shall properly connect and coordinate its work with that of the Owner or other contractors. If any part of the Contractor's work depends for proper results upon the work of the Owner or another contractor, the Contractor shall promptly notify the Owner in writing of any apparent discrepancies which will affect its work. Failure to so notify will constitute Contractor's acceptance of the Owner's or other contractor's work.
- 3.2 **Provisions Required By Law.** Any term, condition, or provision required by law to be in the Contract For Construction shall be deemed to be inserted as if fully set forth herein, and the Contract For Construction shall be read, interpreted and enforced as if such term, condition or provision were inserted.
- 3.3 **Compliance With Governmental Requirements.** The Contractor shall:
- (i) comply with all applicable laws, statutes, building codes, rules, regulations and lawful orders of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
  - (ii) prepare and file documents required to obtain, and shall obtain and pay for, all necessary approvals and permits, including building permit(s), from all governmental authorities having jurisdiction over the Work;
  - (iii) pay for all governmental fees, licenses and inspections necessary for the proper execution and completion of the Work; and
  - (iv) give all notices required of it by governmental authorities relating to the Project.
- 3.4 **Health, Safety And Welfare.**
- 3.4.1 Safety shall be a primary concern of the Contractor at all times.
- 3.4.2 The Contractor shall be solely responsible for and have control over the means, methods, techniques, sequences and procedures for coordinating and constructing the Work, including Site safety precautions and programs. The Contractor shall not rely upon or assume any specialized safety knowledge, experience or supervision on the part of the Owner.
- 3.4.3 The Contractor shall conduct, and shall ensure that its subcontractors and suppliers conduct, all construction operations so as to:
- (i) insure the safety of, and shall provide protection to prevent damage, injury or loss to, all persons who and property which may be on or adjacent to the Site;
  - (ii) comply with all OSHA and MIOSHA construction industry safety and health standards applicable to the Site;
  - (iii) comply with all state and local construction industry safety and health standards applicable to the Site; and

- (iv) comply with applicable laws, ordinances, rules, regulations and orders of public authorities bearing on the safety of persons and property and their protection from damage, injury or loss.
- 3.4.4 The Contractor shall allow equipment and machinery to be operated only by individuals qualified to do so by training and experience.
- 3.4.5 The Contractor shall prohibit use of any tools, machinery, material or equipment that does not comply with federal, state or local safety standards and identify and lock the controls of any such tool, machinery, material or equipment.
- 3.4.6 The Contractor shall secure, update and maintain on Site all applicable material safety data sheets and all applicable OSHA and/or any similar state and local permits including confined entry permits.
- 3.4.7 The Contractor shall not permit its employees or the employees of any of its consultants, subcontractors or suppliers and or any other persons to be or remain on the Site unless they are wearing a safety hard hat and any other safety gear necessary, required or appropriate for their activities.
- 3.4.8 The Contractor shall erect and maintain, as required by existing conditions and applicable safety laws, rules and regulations, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and notifying owners and users of adjacent sites and utilities.
- 3.4.9 The Contractor shall enforce strict discipline and good order among its employees, and among the employees of its consultants, subcontractors and suppliers and other persons carrying out the Work.
- 3.4.10 The Contractor shall not permit smoking or the use of tobacco products by its employees or the employees of any of its consultants, subcontractors or suppliers inside any building or structure, and shall permit smoking only in designated areas during permitted breaks. Designated areas shall be at least fifty (50) feet from any building, structure or stockpiled material, and shall contain a sand-filled receptacle for disposal of butts and matches.
- 3.4.11 The Contractor shall not permit the sale or use of alcoholic beverages, illegal drugs or controlled substances, or the preparation of food, on the Site by its own employees or the employees of its consultants, subcontractors and suppliers, or allow any such persons under the influence of any such beverages, drugs or substances to remain on the Site.
- 3.4.12 The Contractor shall require its employees, and the employees of any of its consultants, subcontractors or suppliers to comply with all of the Owner's parking and traffic rules and regulations on Site.
- 3.5 **Bribes And Kick-Backs.** The Contractor shall not by any means:
- (i) induce any person or entity employed in the construction of the Project to give up any part of the compensation to which that person or entity is entitled;
  - (ii) confer on any governmental, public or quasi-public official having any authority or influence over the Project, any payment, loan, subscription, advance, deposit of money, services or anything of value, present or promised;
  - (iii) offer nor accept any bribes or kick-backs in connection with the Project from or to any individual or entity, including any of its trade Contractors, subcontractors, consultants, suppliers or manufacturers of Project goods and materials; or
  - (iv) without the express written permission of the Owner, call for or by exclusion require or recommend the use of any subcontractor, consultant, product, material, equipment, system, process or procedure in which the Contractor has a direct or indirect proprietary or other pecuniary interest.
- 3.6 **Quality Control And Testing.** The Contractor shall develop and implement a quality management program to insure quality construction. Unless otherwise specified in this Contract For Construction, the Owner shall select the quality control and testing agencies and pay for the cost of specified measures and tests required by the Construction Documents. The Contractor shall coordinate all tests and inspections required by the Construction Documents, and the Contractor shall arrange for tests and inspections to be conducted as necessary to avoid any interference with the progress of Work. No claims for extension of time or extra costs will be allowed on account of any testing, retesting, inspection, re-inspection, or rejection of Work when defective or deficient Work is found.
- 3.7 **Incident Reporting.** The Contractor shall immediately notify the Owner and Professional, if any, both orally and in writing, of the nature and details of all incidents which may adversely affect the quality or progress of the Work including, but not limited to, union jurisdictional disputes, accidents, delays, damages to Work and other significant occurrences.
- 3.8 **Hazardous Substances And Michigan Right-To-Know Law.**
- 3.8.1 The Contractor shall conform to the provisions of the Michigan Right-to-Know Law, 1986 PA 80, which requires employers to:
- (i) develop a communication program designed to safeguard the handling of hazardous chemicals through labeling of chemical containers, and development and availability of Material Safety Data Sheets (MSDS's);
  - (ii) provide training for employees who work with these chemicals; and
  - (iii) respond to employee requests for copies of MSDS's.
- Provisions of Michigan's Right-to-Know Law may be found in those sections of the Michigan Occupational Safety and Health Act (MIOSHA) which contain Right-to-Know provisions, and the Federal Hazard Communications Standards, which is part of the MIOSHA Right-to-Know Law through adoption.

- 3.8.2 The Contractor shall immediately notify the Owner and Professional, if any, both orally and in writing, of the presence and location of any physical evidence of, or information regarding, environmental contamination on the Site (including but not limited to Hazardous Substances and petroleum releases) of which it becomes, or reasonably should have become, aware. If the Contractor encounters environmental contamination (including but not limited to Hazardous Substances and petroleum releases), the Contractor shall
- (i) immediately stop performance of Work or that portion of the Work affected by or affecting such contamination;
  - (ii) secure the contaminated area against intrusion;
  - (iii) not disturb or remove the contamination;
  - (iv) not proceed, or allow any subcontractor or supplier to proceed, with any Work or other activities in the area affected by such contamination until directed to do so by the Owner or Professional, if any; and
  - (v) take any other steps necessary to protect life and health.

**3.9 Use Of And Access To The Site.**

- 3.9.1 The Contractor understands and acknowledges that the Owner may need access to or use of certain areas of the Site or Work prior to the Contractor's achievement of Substantial Completion, and that such occupancy, access or use shall not constitute the Owner's acceptance of any Work. The Contractor shall perform the Work so as not to interrupt any operations of the Owner on the Site.
- 3.9.2 The Contractor shall not enter any Owner-occupied area of the Site or Project unless first approved and scheduled by the Owner. The Contractor understands and acknowledges that the Owner may incur damages if the Owner's operations on the Site are interrupted or impaired as a result of the Work.
- 3.9.3 The Contractor understands and acknowledges that the Work referred to in this Contract For Construction may be only part of the Project and that the Project may include the construction of other structures or other construction activities on the same Site. The Contractor shall conduct all its activities so as not to interfere with the construction of, or operations within or from, other structures on the Site.
- 3.9.4 The Contractor shall afford the Owner's own forces, and other consultants, subcontractors and suppliers, access to the Site for performance of their activities, and shall connect and coordinate its construction and operations with theirs as required by the Construction Documents.
- 3.9.5 The Contractor shall confine its operations and vehicular traffic, and that of its consultants, subcontractors and suppliers, to existing paved walks and roads and shall park vehicles and store materials only in locations approved by the Owner.
- 3.9.6 The Contractor shall be responsible for protection of the Owner's property and shall take care to prevent damage to structures, equipment, utility services, storm and sanitary drainage systems, lawns, trees, plant material, fences, walks, drives, and other improvements in and adjacent to the Site. Any damage to Owner's property resulting from the Contractor's activities shall be repaired or replaced by the Contractor without additional cost to the Owner.
- 3.9.7 The Contractor shall not erect or maintain, and shall not permit its consultants, subcontractors or suppliers to erect or maintain, any sign(s) on the Site without written approval from the Owner.

**3.10 Site Dust, Dirt And Debris Control And Clean-Up**

- 3.10.1 The Owner's standards regarding a clean Site are above industry standards. The Contractor shall prevent empty bags, cartons, construction materials and other debris from blowing around the Site and onto adjacent property and streets. The Contractor shall, and shall require that its subcontractors and suppliers, clean up and remove construction refuse, waste materials, rubbish and other debris from the Site daily. All such materials shall be collected, extracted, transported and disposed of within and from the Site in compliance with all local, state, and federal laws and regulations. Burning of materials on the site is prohibited. At the completion of the Work, the Contractor shall remove from the Site all tools, construction equipment, machinery, waste materials, rubbish and surplus materials.
- 3.10.2 During grading and excavating operations, the Contractor shall take all necessary precautions including, but not limited to, watering exposed soil to keep entrance and egress drives clean and free of sand, mud and other debris, and to prevent any dirt or sand from blowing onto adjacent streets or properties.
- 3.10.3 During all construction activities, the Contractor shall take all necessary precautions to prevent construction waste, rubbish, dirt and debris from migrating to portions of the Site which remain open and operational, and to promptly clean up any such items from areas and streets outside the immediate construction area.
- 3.10.4 Upon completion of its Work, the Contractor shall remove from the Site all construction refuse, waste materials, rubbish, other debris, excess materials, equipment, sheds, etc. related to or produced by its construction activities and those of its subcontractors and suppliers.
- 3.10.5 No final payment will be made to the Contractor until satisfactory final clean-up is accomplished and inspection is made by the Owner and the Professional, if any. In the event that the Owner has to engage in clean-up activities at any time during the construction period, the full cost of the clean-up shall be deducted from monies due the Contractor, and the Contractor shall promptly reimburse any deficiency amount to the Owner.
- 3.10.6 Contractor shall provide for the control of materials which can leach into the ground. Contractor shall safely remove from the site immediately after the completion of the Work all delivered, manufactured, spilled, disposed of, or stored chemicals, lime-based materials, hazardous materials or toxic substances used on the Site in accordance with all applicable laws and regulations. Contractor shall indemnify the Owner against all obligations and liabilities arising out of claims made or suits resulting from environmental contamination due to

the acts of the Contractor or its subcontractors or suppliers.

#### ARTICLE 4 CONTRACTOR'S PERSONNEL, SUBCONTRACTORS, AND SUPPLIERS

- 4.1 **Project Staffing.** The Contractor shall staff the Project with qualified and designated individuals and entities responsible for its obligations and performance.
- 4.1.1 The Contractor shall employ persons skilled in the tasks assigned to them and shall contract with subcontractors and suppliers skilled in the tasks assigned to them and capable of working harmoniously with all trades, crafts and other individuals on the Project. The Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.
- 4.1.2 The Contractor shall immediately remove from the Site, for the duration of the Project, any person making any inappropriate religious, racial, sexual or ethnic comment, statement or gesture toward any other individual.
- 4.1.3 The Contractor shall immediately remove from the Site, for the duration of the Project, any person who is incompetent, careless, or not working in harmony.
- 4.1.4 The Contractor shall be responsible to the Owner for the acts and omissions of its agents and employees, consultants, subcontractors and suppliers.
- 4.2 **Subcontractor / Supplier Contracts.** The Contractor shall enter into written contracts with its subcontractors and suppliers, and those written contracts shall be consistent with this Contract For Construction. It is the intent of the Owner and the Contractor that the obligations of the Contractor's subcontractors and suppliers inure to the benefit of the Owner and the Contractor, and that the Owner be a third-party beneficiary of the Contractor's agreements with its subcontractors and suppliers.
- 4.2.1 The Contractor shall make available to each subcontractor and supplier, prior to the execution of written contracts with any of them, a copy of the pertinent portions of this Contract For Construction, including those portions of the Construction Documents to which the subcontractor or supplier will be bound, and shall require that each subcontractor and supplier shall similarly make copies of applicable parts of such documents available to its respective subcontractors and suppliers.
- 4.2.2 The Contractor shall include in its written contracts with its subcontractors and suppliers a provision which contains the acknowledgment and agreement of the subcontractor or supplier that it has received and reviewed the applicable terms, conditions and requirements of this Contract For Construction that are included by reference in its written contract with the Contractor, and that it will abide by those terms, conditions and requirements.
- 4.2.3 The Contractor's written contracts with its subcontractors and suppliers shall preserve and protect the rights of the Owner and include the acknowledgment and agreement of each subcontractor or supplier that the Owner is a third-party beneficiary of the contract. The Contractor's agreements with its subcontractors and suppliers shall require that in the event of default under, or termination of, this Contract For Construction, and upon request of the Owner, the Contractor's subcontractors and suppliers will perform services for the Owner.
- 4.3 **Non-Discrimination** For this Contract For Construction and for all contracts for goods or services which the Contractors enters into in connection with performance of services under this Contract For Construction, the Contractor agrees as follows:
- 4.3.1 The Contractor shall not discriminate against any employee or applicant for employment because of age, color, disability, familial status, height, marital status, national origin, political affiliation, race, religion, sex/gender, sexual orientation, veteran status, or weight. The Contractor shall take affirmative action to insure that applicants are employed and employees are treated during employment without regard to their age, color, disability, familial status, height, marital status, national origin, political affiliation, race, religion, sex/gender, sexual orientation, veteran status, or weight. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship.
- 4.3.2 The Contractor shall comply with all published rules, regulations, directives, and orders of the Michigan Civil Rights Commission ("the Commission") relevant to Section 6, 1976 PA 453 as amended, which may be in effect prior to the taking of bids for the Project.
- 4.3.3 The Contractor shall furnish and file compliance reports within such time and upon such forms as provided by the Owner. Said forms may also elicit information as to the practices, policies, program and employment statistics of the Contractor and any subcontractors or suppliers, and the Contractor shall permit access to books, records and accounts by the Owner and/or its agent, for purposes of investigation to ascertain compliance with this Contract For Construction and with rules, regulations, and orders of the Commission relevant to Section 6, 1976 PA 453, as amended.
- 4.3.4 The Owner believes that it economically makes good business sense and contributes to the economic growth of West Michigan to make every reasonable, opportunity for minority / women / disabled-person business enterprises (M/W/DBE) to participate in Owner contracts as suppliers, contractors and subcontractors performing work for the Owner. Therefore, the Contractor is strongly encouraged to actively locate and include M/W/DBE's in its procurement efforts and to increase the amount of business done with these enterprises. An M/W/DBE is defined as a privately or publicly owned business organization whose ownership is at least 51% owned, controlled and actively managed by one or more minority/women/disabled persons as defined by

federal law. The Contractor shall, upon request, provide reports within such time and upon such forms as provided by the Owner as to its good faith efforts to provide opportunities for M/W/DBE's.

4.3.5 The Contractor shall include, or incorporate by reference, the provisions of the foregoing or orders of the Commission, and shall provide in every subcontractor's and suppliers subcontract or purchase order that said provisions shall be binding on its subcontractors and suppliers.

#### 4.4 **Prevailing Wage and Fringe Benefit Rates.**

4.4.1 The rates of wages and fringe benefits to be paid to each class of construction employees by the Contractor and all of its subcontractors shall be not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed, in accordance with Act No. 166, Michigan Public Acts 1965.

4.4.2 The Contractor and its subcontractors shall keep posted on the construction site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates prescribed and shall keep an accurate record showing the name and occupation of, and the actual wages and benefits paid to, each construction employee employed by it in connection with the Project. This record shall be available for reasonable inspection by the Owner, or the Michigan Department of Labor.

4.4.3 The Owner by written notice to the Contractor and the sureties of the Contractor, known to the Owner, may terminate the Contractor's right to proceed with that part of the Contract For Construction for which less than the prevailing rates of wages and fringe benefits have been or will be paid, and may proceed to complete the contract by separate agreement with another entity or otherwise, and the original Contractor and its sureties shall be liable to the Owner for any excess costs occasioned thereby.

4.4.4 In case there is an omission of any trade from the list of wage rates and fringe benefits to be paid to each class of construction employees, it shall be understood that the trades omitted shall also be paid not less than the wage and fringe benefit rates prevailed in the locality in which the work is to be performed.

4.5 **Resolution Of Trade Disputes.** The Contractor shall promptly resolve claims, complaints, labor disputes and disputes over assignment of work tasks by and among its subcontractors and suppliers.

### **ARTICLE 5 GOODS, PRODUCTS AND MATERIALS**

5.1 **Quality Of Materials.** The Contractor shall furnish goods, products, materials, equipment and systems which:

- (i) comply with this Contract For Construction;
- (ii) conform to applicable specifications, descriptions, instructions, drawings, data and samples;
- (iii) are new (unless otherwise specified or permitted) and without apparent damage;
- (ii) are of quality, strength, durability, capacity or appearance equal to or higher than that required by the Construction Documents;
- (v) are merchantable;
- (vi) are free from defects; and
- (vii) are beyond and in addition to those required by manufacturers' or suppliers' specifications where such additional items are required by the Construction Documents.

5.2 **Installation And Use Of Materials.** All goods, products, materials, equipment and systems named or described in the Construction Documents, and all others furnished as equal thereto shall, unless specifically stated otherwise, be furnished, used, installed, employed and protected in strict compliance with the specifications, recommendations and instructions of the manufacturer or supplier, unless such specifications, recommendations or instructions deviate from accepted construction practices, or the Construction Documents, in which case the Contractor shall so inform the Owner, and the Professional, if any, and shall proceed as directed by the Professional, unless otherwise directed by the Owner. The Contractor shall coordinate and interrelate all trade contracts, and subcontracts to ensure compatibility of goods, products, materials, equipment and systems, and validity of all warranties and guarantees, required by the Construction Documents for the Work.

5.3 **Unsuitable Materials.** The Contractor shall inform the Owner of goods, products, materials, equipment or systems which the Contractor knows or should have known are unsuitable or unavailable at the time of bid submission, and claims relating to or arising out of claims that goods, products, materials, equipment or systems are unsuitable or unavailable shall not be entertained by the Owner unless the Contractor, subcontractor, or supplier notified the Owner in writing at the time of bid submission, along with proposed alternatives. Approval by the Owner and Professional, if any, of substitute goods, products, materials, equipment or systems does not mean or imply final acceptance by the Owner and Professional, if any, if such items should be defective or not as previously represented. Should the Contractor furnish any approved goods, products, materials, equipment or systems different from or in addition to those required by the Construction Documents which require supplemental materials or installation procedures different from or in addition to those required for specified items, the Contractor shall provide such at no increased cost to the Owner.

5.4 **Security For The Project.** The Contractor shall provide security for the Project, including but not limited to security for its Work in progress, and shall take all known and available measures, and employ all known and available techniques, for the protection of goods, products, materials, equipment, systems, construction machinery, tools, devices and other items required, used or to be used for the Work against damage, injury or loss from the elements, vandalism, theft or accelerated degradation or depreciation.



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- 5.5 **Buy American.** The Owner endeavors to buy products made in the United States of America whenever an American-made\* product is available that meets or exceeds the specifications requested and the price is equal to or lower than a foreign-made product. Vendors are requested to bid American-made products and/or services whenever available. Vendors may bid foreign-made products or services when:
- (i) they are specified; and
  - (ii) they are identified as an alternate by the vendor as long as they are technically acceptable.

\* More than 50% of the product is manufactured or assembled in the United States.

## ARTICLE 6 DOCUMENTS AND INFORMATION

- 6.1 **Information From Owner.** The Owner shall provide the Contractor, through the Professional, if any, or directly if there is no Professional, information reasonably necessary to assist the Contractor in performing its services including, if applicable:
- (i) the Site legal description and any required survey;
  - (ii) all written and tangible material in its possession concerning conditions below ground at the Site;
  - (iii) if the Project involves an existing structure, all available as-built drawings, record drawings, plans, specifications and structure system information with respect to such structure; and
  - (iv) the Owner's pertinent Project dates and key milestone dates.
- 6.2 **Resolution Of Questions.** The Contractor shall resolve all questions concerning the Construction Documents with the Professional who has prepared the documents, if any, or with the Owner if there is no Professional.
- 6.3 **Processing Of Documents.** When requested to do so by the Owner, the Contractor shall process documents, and provide other reasonably required drawings, services and certifications, necessary to enable the Owner to
- (i) obtain approvals, permits and Certificates of Occupancy for the Project not otherwise required to be obtained by Contractor; and
  - (ii) represent that the Work complies with requirements of governmental agencies having jurisdiction over the Project.
- 6.4 **Sufficiency Of Owner Information.** The furnishing of information by the Owner to the Contractor shall not relieve the Contractor of responsibilities contained elsewhere in this Contract For Construction to evaluate information and documents provided by the Owner and the Contractor shall timely notify the Owner in writing of any additional information needed or services required from the Owner in order for the Contractor to perform the Work.

## ARTICLE 7 SUBMITTALS

- 7.1 **Submittal Schedule.** The Contractor shall timely prepare and transmit to the Professional, if any, or to the Owner if there is no Professional, a schedule for provision of all anticipated submittals. The schedule shall:
- (i) include submittals required by the specifications;
  - (ii) be in a format acceptable to the Professional or Owner; and
  - (iii) set forth specific dates for submission of the listed submittals.

The Contractor shall review and approve all submittals prior to submission to the Professional or Owner.

- 7.2 **Processing Of Submittals.** The Contractor shall in timely fashion review, approve if appropriate and forward submittals to the Professional, if any, or to the Owner if there is no Professional, for review and approval along with such detail and information as the Professional or Owner requires. No part of the Work dealt with by a submittal shall be fabricated or performed until such approval has been given.
- 7.2.1 A Professional, if any, is responsible to the Owner, but not to the Contractor, to verify that the submittals conform to the design concept and functional requirements of the plans and specifications, that the detailed design portrayed in shop drawings and proposed equipment and materials shown in submittals are of the quality specified and will function properly, and that the submittals comply with the Contract For Construction.
- 7.2.2 All Work shall be performed in accordance with approved submittals. Approval of submittals by a Professional or the Owner shall not relieve the Contractor from complying with this Contract For Construction, including all plans and specifications, except as changed by Change Order.

## ARTICLE 8 CONTRACTOR'S INSPECTION AND CORRECTION OF DEFECTIVE OR INCOMPLETE WORK

- 8.1 **Rejection And Correction Of Work In Progress.** During the course of Project, the Contractor shall inspect and promptly reject any Work which does not:
- (i) conform to the Construction Documents; or



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- (ii) comply with any applicable law, statute, building code, rule or regulation of any governmental, public and quasi-public authorities and agencies having jurisdiction over the Project.
- 8.1.1 The Contractor shall promptly correct or require the correction of all rejected Work, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear all costs of correcting such Work, including additional testing and inspections and compensation for all services and expenses necessitated by such correction.
- 8.1.2 The Contractor shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, of the Owner or other trade Contractors or subcontractors caused by the Contractor's correction or removal of rejected Work.
- 8.2 **Covered Or Concealed Work.** If a portion of the Work has been covered, the Contractor shall, if notified to do so by the Professional, if any, or by the Owner if there is no Professional, uncover the designated portion for observation and then replace it.
  - 8.2.1 If the designated portion of the Work was covered contrary to the request of the Professional or Owner, or to requirements specifically expressed in the Construction Documents, the Contractor shall receive no additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule.
  - 8.2.2 If the designated portion of the Work was covered prior to a specific request by the Professional or Owner that it remain uncovered, the Contractor shall receive additional compensation for the costs of uncovering and replacement or modification of the Construction Schedule(s) only if the designated portion of the Work was in conformance with the Construction Documents.

## ARTICLE 9 CHANGE ORDERS AND CHANGES TO THE WORK

- 9.1 **Change Order Requests.** Any party to the construction process may request changes to the Work or compensation.
  - 9.1.1 With respect to such requests for changes by the Contractor, the Contractor shall prepare and submit change order requests to the Professional, if any, or to the Owner if there is no Professional.
  - 9.1.2 With respect to requests for changes by parties other than the Contractor, the Contractor shall promptly review and respond to change order requests submitted by the Professional or Owner.
  - 9.1.3 When requested to do so, the Contractor shall prepare and submit drawings, specifications or other data in support of a change order request.
  - 9.1.4 Each change order shall include time and monetary impacts of the change, whether the change order is considered alone or with all other changes during the course of the Project.
- 9.2 **Owner-Directed Changes.** The Owner shall have the right to make changes, including additions, deletions and revisions in the work. Should the Owner desire to make a change, it will request the Contractor, either orally or in writing, to submit a written proposal to the Professional, if any, or to the Owner if there is no Professional, setting forth the amount of any adjustment to be made in either the Construction Price or the Construction Schedule. The Contractor shall supply such a written proposal within seven (7) calendar days, or as otherwise specified by the Owner, after requested to do so. The Contractor is authorized to proceed with a change in the work only upon written authorization from the Owner. The Contractor waives any claim for *quantum meruit* or other equitable relief should it determine to proceed in the absence of written authorization from the Owner. The amount of any change order shall reflect the considered bid of the Contractor taking into account all financial ramifications of the work requested. The Owner shall promptly confirm its written authorization by execution of a written change order.
- 9.3 **Professional-Directed Changes.** The Professional, if any, without the Owner's prior approval, may authorize or direct the Contractor to make minor changes in the Work which are consistent with the intent of the Construction Documents and which do not involve a change in Project cost, time for construction, scope, or approved design elements, and the Contractor shall promptly carry out such changes. Any such minor changes shall be implemented by written field order and executed by the Contractor.
- 9.4 **Administration Of Changes.** The Professional, if any, will administer and manage all change order requests and change orders and will prepare required drawings, specifications and other supporting data as necessary in connection with minor changes, change order requests and change orders.
- 9.5 **Compensation For Changes.** With respect to all change order requests involving credit to the Owner or additional compensation to the Contractor, the Contractor shall:
  - (i) obtain from subcontractors and suppliers the best possible price quotations, which shall not be based upon standard industry pricing tables;
  - (ii) review such quotations to ascertain whether they are reasonable;
  - (iii) prepare an itemized accounting together with appropriate supporting data, including reasonable expenditures by, and savings to, those performing the Work involved in the proposed change; and
  - (iv) provide a reasonable price quotation to the Professional, if any, or to the Owner if there is no Professional.

- 9.5.1 If price quotations for change order requests are determined to be unreasonable, the Contractor shall, in writing, justify said quotations or provide additional back-up materials. If after review of the additional information, it is determined that the quotation is unreasonable, the Owner may require the subject Work be performed on a time and material basis.
- 9.5.2 The Contractor and its subcontractors and suppliers shall be allowed no additional compensation for any costs, fees or expenses incurred in performing services already required by this Contract For Construction, and shall not be entitled to additional reimbursement for home-office, other non-job-site or indirect overhead expenses, or tools necessary for construction.
- 9.5.3 It is the responsibility of the Contractor to review and approve all pricing of additional work required of its subcontractors and suppliers.
- 9.6 **Performance Of Changes.** Upon receipt of a field order or change order, changes in the Work shall be promptly performed. All changes in the Work shall be performed under applicable conditions of the Construction Documents.
- 9.7 **Disputes Regarding Changes.**
- 9.7.1 Regardless if there is a dispute:
- (i) that a change has occurred;
  - (ii) whether a change in the Work will result in adjustment of compensation or applicable schedules; or
  - (iii) as to the amount of any adjustment of compensation or applicable schedules,
- the change shall be carried out if the Owner so directs. No claim shall be prejudiced by performance of the Work so long as the Owner is notified of the claim in writing prior to performance of the Work which is the subject of the dispute and the party disputing the decision of the Owner recites the reasons for its dispute in the written notice. Failure to notify the Owner in writing shall constitute a waiver of any claim resulting from the change.
- 9.7.2 In the event a change order request is approved by the Owner in the absence of an agreement as to cost, time, or both, the Professional, if any, will:
- (i) receive and maintain all documentation pertaining thereto;
  - (ii) examine such documentation on the Owner's behalf;
  - (iii) take such other action as may be reasonably necessary or as the Owner may request; and
  - (iv) make a written recommendation to the Owner concerning any appropriate adjustment in the Construction Price or time.
- 9.8 **Necessity For Signed Writing.** No act, omission or course of dealing shall alter the requirement that change orders shall be in writing and signed by the Owner, and that change orders are the exclusive method for effecting any adjustment to compensation or applicable schedules. The Contractor understands and agrees, on behalf of itself and its subcontractors and suppliers, that neither compensation nor applicable schedules can be changed by implication, oral agreement, or unwritten change order.

#### ARTICLE 10 FINANCIAL CLAIMS AND LIENS

- 10.1 **Notification Regarding Liens.** The Contractor shall immediately notify the Owner and Professional, if any, both orally and in writing, of the nature and details of any mechanics' liens, construction liens, Contractor's trust fund claims, or claims of any type made by anyone against the Owner, the Professional, the Contractor or any subcontractor or supplier of any of them or against the Project whether or not such claims arise from the Work.
- 10.2 **Discharge Of Liens.** The Contractor shall take all action necessary to obtain the prompt discharge of any liens or claims filed against the Project. If any lien or claim filed against the Project is not discharged and released by the claimant, the Contractor shall, within a reasonable period of time, but in no event more than fourteen calendar days after request and at its own cost, promptly obtain discharge and release of, or indemnity for, such lien or claim by providing or filing, as appropriate, the requisite bond. If the Contractor fails to have any such lien or claim discharged and released, or fails to provide or file the requisite bond, the Owner shall have the right to pay all sums necessary to obtain such a discharge and release, and the Contractor shall bear all expenses incurred by the Owner in so doing.

#### ARTICLE 11 INSPECTION, CORRECTION OF WORK, AND PROJECT CLOSE OUT

- 11.1 **Substantial Completion.** Substantial Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Substantial Completion inspection, and the required Substantial Completion documentation and items have been produced.
- 11.1.1 When the Contractor believes that the Work is substantially complete, it shall notify the Owner and the Professional, if any, that its Work is ready for a Substantial Completion inspection.
- 11.1.2 At or prior to the Substantial Completion inspection, the Contractor will prepare and furnish to the Professional,



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if any, or to the Owner if there is no Professional, a Declaration of Substantial Completion, which at a minimum must:

- (i) contain a blank for entry of the date of Substantial Completion, which date will fix the commencement date of warranties and guaranties and allocate between the Owner and the Contractor responsibility for security, utilities, damage to the Work and insurance;
  - (ii) include a list of items to be completed or corrected and state the time within which the listed items will be completed or corrected; and
  - (iii) contain signature lines for the Owner, Contractor and Professional, if any.
- 11.1.3 Upon receipt of notification from the Contractor, the Professional, if any, or the Owner if there is no Professional, will coordinate with the Owner and the Contractor a date for inspection of the Work to determine whether the Work is substantially complete.
- 11.1.4 At inspection(s) to determine whether the Work is substantially complete, the Professional, if any, or the Owner if there is no Professional, will:
- (i) inspect the Work;
  - (ii) list additional items to be completed or corrected; and
  - (iii) determine, in consultation with the Owner, whether Substantial Completion of the Work has occurred.
- 11.1.5 If the Work is determined not to be substantially complete, the Work shall be prosecuted until the Work is substantially complete and the inspection process shall be repeated at no additional cost to the Owner until the Work is determined to be substantially complete.
- 11.1.6 On or prior to the required date of Substantial Completion, the Contractor shall deliver to the Professional, if any, or to the Owner if there is no Professional, keys, permits, the certificate of occupancy, and other necessary and customary documents and items pre-requisite for the Owner's occupancy and use of the Work for its intended purpose. The Professional, if any, or the Owner if there is no Professional, will obtain and review Substantial Completion documentation and items, and will inform the Contractor of any deficiencies.
- 11.1.7 When the Owner, Contractor and Professional, if any, agree that the Work has passed the Substantial Completion inspection and the Contractor has produced the required Substantial Completion documentation and items, they shall each sign the Declaration of Substantial Completion declaring the Work substantially complete and establishing the actual date of Substantial Completion. The Declaration of Substantial Completion shall also include a list of and timeline for the completion of Work needing completion and correction.

11.2 **Final Completion.** Final Completion of the Work shall be deemed to have occurred on the later of the dates that the Work passes a Final Completion inspection and that the Contractor has produced all required Final Completion close-out documentation and items. Final Completion shall not be deemed to have occurred and no final payment shall be due the Contractor or any of its subcontractors or suppliers until the Work has passed the Final Completion inspection and all required Final Completion close-out documentation and items have been produced to the Owner by the Contractor.

- 11.2.1 When the Contractor believes the Work is finally complete, the Contractor shall notify the Owner and the Professional, if any, that the Work is ready for Final Completion inspection.
- 11.2.2 Upon receipt of such notification from the Contractor, the Professional, if any, or the Owner if there is no Professional, will coordinate with the Owner and the Contractor a date for inspection of the Work to determine whether the Work is finally complete.
- 11.2.3 At the Final Completion inspection to determine whether the Work is finally complete, the Professional, if any, or the Owner if there is no Professional, will:
- (i) inspect the Work;
  - (ii) determine whether all items on the list included with the Declaration of Substantial Completion have been satisfactorily completed and corrected;
  - (iii) determine whether the Work complies with (a) this Contract For Construction; (b) applicable laws, statutes, building codes, rules or regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project; and (c) applicable installation and workmanship standards;
  - (iv) determine whether required inspections and approvals by the official(s) having or asserting jurisdiction over the Project have been satisfactorily completed; and
  - (v) determine whether the Work is finally complete.
- 11.2.4 If the Work is not finally complete, the Contractor shall continue to prosecute the Work, and the inspection process shall be repeated at no additional cost to the Owner, until the Work is finally complete.
- 11.2.5 On or prior to the date of Final Completion, the Contractor shall deliver to the Professional, if any, or to the Owner if there is no Professional, the following Final Completion close-out documentation and items:
- (i) all operating and instruction manuals not previously produced during commissioning;
  - (ii) two (2) sets of as-built drawings and markups;
  - (iii) certification and affidavit that all insurance required of the Contractor beyond final payment, if any, is in effect and will not be canceled or allowed to expire without notice to the Owner;
  - (iv) written consent of the surety(ies), if any, to final payment;
  - (v) full, final and unconditional waivers of mechanics or construction liens, releases of Contractor's trust fund or similar claims, and release of security interests or encumbrances on the Project property from each Contractor, subcontractor, supplier or other person or entity who has, or might have a claim against the Owner or the Owner's property;
  - (vi) full, final and unconditional certification and affidavit that all of the Contractor's obligations to

- Contractors, subcontractors, suppliers and other third parties for payment for labor, materials or equipment related to the Project have been paid or otherwise satisfied;
- (vii) all written warranties and guarantees relating to the labor, goods, products, materials, equipment and systems incorporated into the Work, endorsed, countersigned, and assigned as necessary;
  - (viii) affidavits, releases, bonds, waivers, permits and other documents necessary for final close-out of Work;
  - (ix) a list of any item(s) due but unable to be delivered and the reason for non-delivery; and
  - (x) any other documents reasonably and customarily required or expressly required herein for full and final close-out of the Work,

and shall deliver to the Owner all required attic / maintenance stocks.

- 11.2.6 The Professional, if any, or the Owner if there is no Professional, will review and determine the sufficiency of all Final Completion close-out documentation and items required for Final Completion which are submitted by the Contractor, and will immediately inform the Contractor about any deficiencies and omissions.

## ARTICLE 12 CONTRACTOR'S WARRANTIES AND GUARANTEES

- 12.1 **One-Year Warranty.** In addition to the warranties and guarantees set forth elsewhere in this Contract For Construction, the Contractor, upon request by the Owner or the Professional, shall promptly correct all failures or defects in the Work for a period of one year after the actual date of Substantial Completion, or the date of acceptance by the Owner, whichever is later.
  - 12.1.1 The Contractor shall schedule, coordinate and participate in a walk-through inspection of the Work one month prior to the expiration of the one-year correction period, and shall notify the Owner, the appropriate Professional(s), and any necessary subcontractors and suppliers of the date of, and request their participation in, the walk-through inspection to determine if there are defects or failures which require correction.
  - 12.1.2 Should the Contractor fail to promptly correct any failure or defect, the Owner may take whatever actions it deems necessary to remedy the failure or defect and the Contractor shall promptly reimburse the Owner for any expenses or damages it incurs as a result of the Contractor's failure to correct the failure or defect.
- 12.2 **Express Warranties And Guarantees – Contractor.** In addition to the warranties and guarantees set forth elsewhere herein, the Contractor expressly warrants and guarantees to the Owner that:
  - (i) the Work complies with (a) the Construction Documents; and (b) all applicable laws, statutes, building codes, rules and regulations of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Project;
  - (ii) all goods, products, materials, equipment and systems incorporated into the Work conform to applicable specifications, descriptions, instructions, drawings, data and samples and shall be and are (a) new (unless otherwise specified or permitted) and without apparent damage or defect; (b) of quality equal to or higher than that required by the Construction Documents; and (c) merchantable; and
  - (iii) all management, supervision, labor and services required for the Work shall comply with this Contract For Construction and shall be and are performed in a workmanlike manner.
- 12.3 **Express Warranties And Guarantees - Subcontractors And Suppliers.** The Contractor shall require that all of its subcontractors and suppliers provide written warranties, guarantees and other undertakings to the Owner and the Contractor in a form identical to the warranties, guarantees and other undertakings set forth in this Contract For Construction, including the warranties, guarantees and undertakings set forth in this Article, which warranties, guarantees and undertakings shall run to the benefit of the Owner as well as the Contractor.
- 12.4 **Purchase And Warranty Of Custom And/Or Proprietary Products.** If the Contractor, either directly or through any of its subcontractors or suppliers (for purposes of this paragraph only "Provider"), incorporates into the Owner's facility or sells the Owner other equipment comprising, in whole or in part, custom designed products or components, including controls or computer software programs ("Products"), claimed by the Provider to be proprietary, the Provider shall:
  - (i) warrant the Products to be free from defects and perform, at no additional charge to the Owner, all repairs, including parts and labor necessary to render the Products operational up to that performance initially called for by specification, for the entire useful life of the Products;
  - (ii) maintain the Products, at whatever charge the parties may agree to before installation of the Products, for the entire useful life of the Products, and in the absence of such prior agreement as to maintenance charges, at no cost; and
  - (iii) deposit with the Owner the design documents, plans, technical specifications and source code, where necessary and applicable, even if claimed proprietary by the Provider, so that the Owner, with or without the Provider or assistance from others, would be fully capable of repairing and properly maintaining the Products.
- 12.5 **Non-Exclusivity And Survival.** The warranties and guarantees set forth in this Article shall be in addition to all other warranties, express, implied or statutory, and shall survive the Owner's payment, acceptance, inspection of or failure to inspect the Work, and review of the Construction Documents.



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- 12.6 **Non-Limitation.** Nothing contained in Paragraph 12.1, shall be construed to establish a period of limitation with respect to the Contractor's obligations under this Contract For Construction. Paragraph 12.1 relates only to the Contractor's specific obligations with respect to the Work, and has no relationship to the time within which the Contractor's contractual obligations under this Contract For Construction may be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to any contractual obligations pursuant to Paragraph 12.1 or contained elsewhere herein.
- 12.7 **Commencement Of Obligations.** Unless otherwise specified, all of the Contractor's warranty and guaranty obligations, including the time period(s) for all written warranties and guarantees of specifically designated equipment required by the Construction Documents, shall begin on the actual date of Substantial Completion or the date of acceptance by the Owner, whichever is later.

**ARTICLE 13  
OWNER'S DUTIES, OBLIGATIONS AND RESPONSIBILITIES**

- 13.1 **Timely Compensation Of Contractor.** The Owner shall timely compensate the Contractor in accordance with this Contract For Construction.
- 13.2 **Owner Review Of Documents.** The Owner shall review documents prepared by the Contractor in a timely manner and in accordance with schedule requirements. Review by the Owner shall be solely for the purpose of determining whether such documents are generally consistent with the Owner's intent. No review of such documents shall relieve the Contractor of any of its responsibilities.
- 13.3 **Status Of Owner.** The Owner shall not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Contractor, for any of the foregoing purposes, be deemed the agent of the Owner.
- 13.4 **Owner's Utilities.** The Owner shall provide water, gas and electrical energy only as they exist at the Site prior to the start of construction. The Contractor shall be responsible to provide and pay for connections to, extensions from and means of using these utilities.
- 13.4.1 The Owner will pay utility company bills for water which is required for the Project and which passes through the Owner's meters, but will not pay for water which is expended without proper regard for ecological and conservation considerations;
- 13.4.2 On projects lasting more than 30 days, the Contractor shall pay utility company bills for electrical and gas energy which is required for the Project and which passes thru temporary metering, if electric, and permanent metering, if gas. Payment for temporary meters and installation shall be the Contractor's responsibility.
- 13.4.3 Acceptance by the Contractor of the use of the Owner's water, gas and electrical energy constitutes a release from the Contractor to the Owner of all claims and liability for any damages or losses which may be incurred by the Contractor as a result of water, gas and electrical energy outages or voltage variations or surges.

**ARTICLE 14  
CONTRACTOR'S COMPENSATION**

- 14.1 **Unit Prices.** If any portion of the Construction Price is determined by the application of unit prices, the number of units contained in the Contractor's Compensation Schedule is an estimate only, and the compensation to the Contractor shall be determined by the actual number of units incorporated in, or required by, the Work.
- 14.2 **Invoicing Procedures.** In accordance with the procedures and requirements set forth in this Article, the Contractor shall invoice the Owner and the Owner shall pay the Contractor the Construction Price.
- 14.2.1 At least every thirty calendar days after commencement of performance, but no more frequently than once a month, the Contractor shall submit invoices to the Professional requesting payment for labor and services rendered during the preceding thirty calendar days. Each invoice shall contain such detail and be backed up with whatever supporting information the Owner or a Professional requests and shall at a minimum state:
- (i) the total Construction Price;
  - (ii) the amount due for properly provided labor, materials and equipment properly incorporated into the Project; and with respect to amounts invoiced for materials or equipment necessary for the Project and properly stored at the Site (or elsewhere if offsite storage is approved in writing by the Owner), be accompanied by written proof that the Owner has title to such materials or equipment and that such material and equipment is fully insured against loss or damage;
  - (iii) a breakdown of the various phases or parts of the Work as related to the Construction Price;
  - (iv) the value of the various phases or parts of the Work actually performed;
  - (v) previously invoiced amounts and credit payments made;
  - (vi) the total amount due, less any agreed retainage; and,
  - (vii) the Owner's purchase order number,
- and shall also have attached such lien waiver and other documentation verifying the Contractor's payment to subcontractors and suppliers as the Owner or Professional, if any, may request.

14.3 **Payment Procedures.**

14.3.1 The Professional, if any, or the Owner if there is no Professional, will review the Contractor's applications for payment, including such accompanying data, information and schedules as the Owner or Professional requires, to determine the amounts due to the Contractor and, based upon such review, together with its inspections of the Work, shall authorize payment by the Owner to the Contractor in writing. Such authorization will constitute the Professional's certification to the Owner that:

- (i) the Work described in the Contractor's invoice has progressed to the level indicated and has been performed in accordance with the Contract For Construction;
- (ii) all necessary and appropriate lien waivers have been submitted; and
- (iii) the amount requested is currently due and owing to the Contractor.

14.3.2 In the case of unit price work, the Professional's recommendations, if any, for payment will constitute a final determination of quantities and classifications of such work.

14.3.3 Payments shall be deemed timely if postmarked at least two business days before the Payment Date defined in Chapter 1 or any other payment due date stated in this Article 14.

14.4 **Owner's Right To Refuse Payment.** A Professional's approval of the Contractor's invoice shall not preclude the Owner from exercising any of its remedies under this Contract For Construction. In the event of a dispute, payment shall be made on or before the Payment Date for amounts not in dispute, subject to any setoffs claimed by the Owner. The Owner shall have the right to refuse to make payment and, if necessary, may demand the return of a portion or all of the amount previously paid to the Contractor due to:

- (i) the Contractor's failure to perform, or correct defective, Work in compliance with the requirements of this Contract For Construction;
- (ii) the Contractor's failure to correctly and accurately represent the Work performed in a payment request, or otherwise;
- (iii) the Contractor's performance of the Work at a rate or in a manner that, in the Owner's opinion, is likely to result in the Project or any portion of the Project being inexcusably delayed or likely to exceed the unpaid balance of the Construction Price;
- (iv) the Contractor's failure to use funds previously paid the Contractor by the Owner, to pay the Contractor's Project-related obligations including, but not limited to, the Contractor's subcontractors, materialmen, and suppliers;
- (v) claims made, or likely to be made, against the Owner or its property;
- (vi) loss or damage caused by the Contractor or its subcontractors, or suppliers; or,
- (vii) the Contractor's failure or refusal to perform any of its obligations to the Owner.

14.5 **Contractor's Right To Refuse Performance For Non-Payment.** If within thirty calendar days from the Payment Date the Owner, without cause or basis hereunder, fails to pay the Contractor any amounts then due and payable to the Contractor, the Contractor shall have the right, in addition to all other rights and remedies contained herein, to cease performance of the affected Work until receipt of proper payment after first providing fourteen calendar days written notice to the Owner of its intent to cease work.

14.6 **Correction Of Past Payments.** All prior payments, whether based on estimates or otherwise, may be corrected and adjusted in any subsequent payment and shall be corrected and adjusted in the final payment. In the event that any invoice contains a defect or impropriety which would prevent payment by the Payment Date, the Owner shall notify the Contractor in writing of such defect or impropriety. Any disputed amounts determined by the Owner to be payable to the Contractor shall be due thirty calendar days from the date the dispute is resolved.

14.7 **Interest On Outstanding Amounts Due.** Interest shall accrue on amounts owed by the Owner to the Contractor which remain unpaid thirty calendar days following the date on which payment is due. Said interest shall accrue at the discounted ninety-day U.S. Treasury bill rate as established by the Weekly Auction and as reported in *The Wall Street Journal* on the weekday following each such Weekly Auction. No interest shall accrue when payment is delayed because of a dispute between the Owner and the Contractor, or a dispute as to the accuracy or completeness of any request for payment received. This exception to the accrual of interest shall apply only to that portion of a delayed payment which is actually the subject of the dispute and shall apply only for the duration of such disagreement. Nor shall interest accrue on retainage which is withheld to assure performance of this Contract For Construction.

14.8 **Invoice Warranties And Guarantees.** The Contractor expressly warrants and guarantees to the Owner that:

- (i) title to all goods, products, materials, equipment and systems covered by an invoice will pass to the Owner either by incorporation into the Work, or upon receipt of payment by the Contractor, whichever occurs first;
- (ii) all goods, products, materials, equipment and systems covered by an invoice are free and clear of liens, claims, security interests or encumbrances; and
- (iii) no goods, products, materials, equipment or systems covered by an invoice have been acquired by the Contractor, or its subcontractors or suppliers, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor, or its subcontractors or suppliers.

14.9 **Contractor's Signature.** The signature of the Contractor on any invoice constitutes the Contractor's certification to the Owner that:



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- (i) the Contractor's services listed in the invoice have progressed to the level indicated and have been performed as required by this Contract For Construction;
- (ii) the Contractor has paid its subcontractors and suppliers their proportional share of all previous payments received from the Owner; and
- (iii) the amount requested is currently due and owing.

14.10 **Taxes.** The Contractor shall incorporate into the Construction Price, and pay, all sales, consumer, use and similar taxes for goods, products, materials, equipment and systems incorporated into the Work which were legally required at the time of execution of this Contract For Construction, whether or not yet effective or merely scheduled to go into effect.

14.10.1 The Contractor shall secure, defend, protect, hold harmless, and indemnify the Owner from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants) relating to any taxes assessed or imposed upon, incurred by or asserted against the Owner by any taxing authority with respect to such taxes.

14.10.2 The Contractor shall cooperate with and assist the Owner in securing qualified refunds of any sales or use tax paid by the Owner or Contractor on goods, products, materials, equipment or systems. Any refund secured shall be paid to the Owner.

14.11 **Compensation Of Contractor's Subcontractors And Suppliers.** Upon receipt of payment from the Owner, the Contractor shall pay each of its subcontractors and suppliers out of the amount received by the Contractor on account of such subcontractor's or supplier's portion of the Work, the amount to which each entity is entitled, reflecting percentages actually retained from payments to the Contractor on account of such entity's portion of the Work. The Owner shall have no obligation to pay, and shall not be responsible for payments to, the Contractor's subcontractors or suppliers. However, the Owner reserves the right, but has no duty, to make payment jointly to the Contractor and to any of its subcontractors or suppliers in the event that the Owner becomes aware that the Contractor fails to pay or unreasonably withholds payment from one or more of those entities. Such joint check procedure, if employed by the Owner, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit the Owner to repeat the procedure in the future.

14.12 **Final Payment.** Prior to being entitled to receive final payment, and as a condition precedent thereto, the Contractor must achieve Final Completion. The Owner shall, subject to its rights set forth above in this Article, make final payment of all sums due the Contractor within fourteen calendar days of a Professional's execution of a final approval for payment.

## ARTICLE 15 SCHEDULE REQUIREMENTS

15.1 **Construction Schedule.** The Construction Schedule shall include all pertinent dates and periods for timely completion of the Work.

15.1.2 The Construction Schedule shall include:

- (i) the required Commencement Date and the required dates of Substantial Completion and Final Completion;
- (ii) any guideline and milestone dates required by the Owner;
- (iii) any applicable subcontractor and supplier subschedules;
- (iv) a submittal schedule which allows sufficient time for review of documents and submittals;
- (v) the complete sequence of construction by activity, with dates for beginning and completion of each element of construction; and
- (vi) required decision dates.

15.1.3 By reviewing the Construction Schedule, the Owner and a Professional do not assume any of the Contractor's responsibility:

- (i) that the Construction Schedule be coordinated or complete; or
- (ii) for timely and orderly completion by the required dates of Substantial Completion, Final Completion and any milestone dates required by the Owner.

15.2 **Delay In Performance.** If at any time the Contractor anticipates that performance of the Work will be delayed or in fact has been delayed, the Contractor shall:

- (i) immediately notify the Professional, if any, or the Owner if there is no Professional, of the probable cause of and effect from the delay, and possible alternatives to minimize the delay; and
- (ii) take all corrective actions necessary to deliver the Work by the required dates of Substantial Completion and Final Completion, and other milestone dates required by the Owner, if any.

15.3 **Document Review.** The Contractor shall provide documents to the Owner and Professional(s), if any, for review in accordance with schedule requirements and with sufficient lead time to allow the Owner and Professional(s) reasonable time for review.



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**ARTICLE 16  
CONCEALED AND UNFORESEEN CONDITIONS**

- 16.1 **Notification Regarding Unusual Conditions.** If:
- (i) the Contractor encounters concealed and unforeseen conditions of an unusual nature which affect the performance of the Work; or
  - (ii) the conditions vary from those indicated by the Construction Documents; and
  - (iii) such conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided by the Contractor,
- the Contractor shall promptly, but in no event later than three calendar days after first observance of the conditions, notify the Professional, if any, and the Owner before conditions are disturbed and give the Professional or the Owner opportunity to observe the condition in its undisturbed state.
- 16.1.1 The conditions will be promptly investigated and, if they differ substantially and cause a material increase or decrease in the Contractor's cost of, or time required for, performance of the Work, compensation for performance will be equitably adjusted, but the dates of Substantial Completion and Final Completion will not be altered..
- 16.1.2 All adjustments in compensation or extensions of time shall be by change order. Change order requests must be made within fourteen calendar days from the date of observation of the changed conditions.
- 16.1.3 The Contractor's failure to notify the Professional, if any, and the Owner as provided in this Article shall constitute a waiver of any claim arising out of or relating to such concealed or unknown condition.

**ARTICLE 17  
CONTRACTOR'S RECORDS**

- 17.1 **Preparation Of Records.** The Contractor shall, concurrently with performance of its services, prepare substantiating records regarding services rendered and goods furnished, and detailed records of activities on the Site, including but not limited to daily logs.
- 17.2 **As-Built Drawings.** The Contractor shall maintain at the Site one copy of all drawings, specifications, addenda, approved shop drawings, change orders, submittals, and other modifications in good order and accurately marked depicting all changes as they occur during construction. The as-built drawings shall be available at all times to the Owner, the Owner's consultants, and quality control and testing agency personnel. The drawings shall be neatly and clearly marked in color during construction to record all variations made during construction, and the Contractor shall include such supplementary notes and details necessary to clearly and accurately represent as-built construction.
- 17.3 **Retention Of Records.** The Contractor shall retain in its records copies of all:
- (i) written communications and memoranda of verbal communications;
  - (ii) accounting records (including original estimates and estimating work sheets, purchase orders and invoices);
  - (iii) job site notes, daily logs and reports, and notices;
  - (iv) all subcontract files (including proposals of successful and unsuccessful bidders);
  - (v) change order files (including documentation covering negotiated settlements);
  - (vi) written policies and procedures,
  - (vii) records necessary to evaluate and verify direct and indirect costs (including by way of example overhead allocations, payroll records, time sheets, rental receipts, fixed asset records); and
  - (viii) other documents such as plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, accounting records, documents reflecting the unit price of construction and other writings or things which document the Project, its design, its cost, and its construction.
- 17.3.1 The Contractor shall maintain its Project records for five years after the date of Final Completion or for any longer period of time as may be required by law or good construction practice. If the Contractor receives notification of a dispute or the commencement of litigation regarding the Project within this five-year period, the Contractor shall continue to maintain its Project records until final resolution of the dispute or litigation.
- 17.3.2 The Contractor shall, upon seven days' request from the Owner, secure from its subcontractors and suppliers copies of their documents of the type and categories described in Paragraph 17.3 (i) through (viii).
- 17.4 **Access To Records.** Upon the request of the Owner, the Contractor shall make its records available during normal business hours to the Owner, its authorized representative(s) or to any state, federal or other regulatory authority. Any such authority, the Owner and its authorized representative(s) shall be entitled to inspect, examine, review and copy the Contractor's records at the copying party's reasonable expense, within adequate work space at the Contractor's facilities. Failure by the Contractor to supply substantiating records from itself and its subcontractors and suppliers upon the request of the Owner shall be reason to exclude the related costs from amounts which might otherwise be payable by the Owner pursuant to this Contract For Construction.

**ARTICLE 18  
PROPRIETARY DOCUMENTS AND CONFIDENTIALITY**

**18.1 Nature, Ownership And Use Of Owner Information.**

- 18.1.1 All information, documents, and electronic media furnished by the Owner to the Contractor:
- (i) belong to the Owner;
  - (ii) are proprietary and confidential;
  - (iii) are furnished solely for use on the Owner's Project;
  - (iv) shall be kept confidential by the Contractor; and
  - (v) shall not be used by the Contractor on any other project or in connection with any other person or entity, unless disclosure or use thereof in connection with any matter other than services rendered to the Owner hereunder is specifically authorized in writing by the Owner in advance.
- 18.1.2 The Owner hereby grants to the Contractor a limited license to use and reproduce applicable portions of the Construction Documents necessary for execution of the Work. All copies made under this license shall bear the statutory copyright notice, if any, shown on the documents.

**18.2 Nature, Ownership And Use Of Contractor Information.**

- 18.2.1 All information, documents, and electronic media prepared by or on behalf of the Contractor for the Project are the sole property of the Owner free of any retention rights of the Contractor.
- 18.2.2 The Contractor hereby grants to the Owner an unconditional right to use, for any purpose whatsoever, any information, documents or electronic media prepared by or on behalf of the Contractor for the Project, free of any copyright claims, trade secrets or other proprietary rights with respect to such documents.

**18.3 Disclosure Of Information.** The Contractor, and its employees and agents, shall not disclose any information received from the Owner to any other person or entity except to the extent necessary to allow it to perform its duties under this Contract For Construction.

**18.4 Non-Publication.** Submission or distribution of documents to meet official regulatory requirements or for other required purposes in connection with the Project is not to be construed as publication in derogation of the Owner's common law copyrights or other reserved rights.

**18.5 Photographs And Images.** The Contractor may take photographs, videotapes or other types of images during the course of construction of the Project for its own use. The Contractor shall not print, publish, advertise or otherwise use any such photographs, videotapes or other types of images for any public or commercial use unless specifically authorized in writing by the Owner in advance.

**18.6 Logo Standards.** The Owner's logo consists of the "Circle G" (logomark) and the words "Grand Valley State University" (logotype). Both the logomark and the logotype are registered trademarks. The logomark may be used alone but the logo as a whole (mark and type) must be used somewhere else in the document. The logotype may never be used without the logomark. Appropriate depictions of Owner's logo may be downloaded from [www.gvsu.edu/index.cfm?fuseaction=standards\\_standards](http://www.gvsu.edu/index.cfm?fuseaction=standards_standards) and must be used in accordance with the Owner's guidelines, including use of the <sup>TM</sup> designation.

**ARTICLE 19  
GENERAL INSURANCE REQUIREMENTS**

**19.1 General Insurance Requirements.** Unless otherwise required, each insurance policy:

- (i) shall be issued by an insurance carrier acceptable to Owner;
- (ii) shall be kept in force throughout performance of the Contractor's services and for one year after the end of such performance;
- (iii) shall be an occurrence policy;
- (iv) shall name the Owner as an Additional Named Insured; and
- (v) shall be evidenced by a certificate of insurance acceptable to the Owner which provides that the coverage evidenced thereby shall not be substantially modified or canceled without thirty calendar days' prior written notice to the Owner.

**19.2 Certificates Of Insurance.**

- 19.2.1 Prior to performance of services on the Project, the Contractor shall:
- (i) have all required insurance coverage in effect;
  - (ii) confirm that its subcontractors, and suppliers have similar insurance coverage in effect; and
  - (iii) deliver to the Owner certificates of insurance for all its required minimum insurance coverage.
- 19.2.1 The Owner shall have no responsibility to verify compliance by the Contractor or its subcontractors and suppliers.

**19.3 Effect Of Insurance.** Compliance with insurance requirements shall not relieve the Contractor of any responsibility to indemnify the Owner for any liability to the Owner as specified in any other provision of this Contract For Construction,



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and the Owner shall be entitled to pursue any remedy in law or equity if the Contractor fails to comply with the contractual provisions of this Contract For Construction. Indemnity obligations specified elsewhere in this Contract For Construction shall not be negated or reduced by virtue of any insurance carrier's (i) denial of insurance coverage for the occurrence or event which is the subject matter of the claim; or (ii) refusal to defend any named insured.

- 19.4 **Waiver Of Subrogation.** The Contractor hereby releases and discharges the Owner and the Owner's Related Parties of and from all liability to the Contractor, and to anyone claiming by, through or under the Contractor, by subrogation or otherwise, on account of any loss or damage to tools, machinery, equipment or other property, however caused.

#### **ARTICLE 20 OWNER'S RIGHT TO STOP WORK**

- 20.1 **Cease And Desist Order.** If the Contractor fails or refuses to perform or fails to correct defective Work as required, or persistently fails to carry out the Work in accordance with the Contract For Construction, the Owner may, by written notice, order the Contractor to cease and desist in performing the Work or any portion of the Work until the cause for the order has been eliminated to the satisfaction of the Owner. Upon receipt of such instruction, the Contractor shall immediately cease and desist as instructed by the Owner and shall not proceed further until the cause for the Owner's order has been corrected, no longer exists, or the Owner instructs that the Work may resume.
- 20.1.1 The Contractor shall not be entitled to an adjustment in the time for performance or the Construction Price under this clause since such stoppages are considered to be the fault of the Contractor.
- 20.1.2 The right of the Owner to stop Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or others.
- 20.1.3 In the event the Owner issues instructions to cease and desist, and in the further event that the Contractor fails and refuses with seven calendar days to provide adequate assurance to the Owner that the cause of such instructions will be eliminated or corrected, then the Owner shall have the right, but not the obligation, to carry out the Work or any portion of the Work with its own forces, or with the forces of another Contractor, and the Contractor shall be responsible for the cost of performing such Work by the Owner.
- 20.1.4 The rights set forth herein are in addition to, and without prejudice to, any other rights or remedies the Owner may have against the Contractor.

#### **ARTICLE 21 TERMINATION OR SUSPENSION OF CONTRACT FOR CONSTRUCTION**

21.1 **Termination For Cause By Owner.**

- 21.1.1 The Owner may terminate this Contract For Construction for cause if the Contractor materially breaches this Contract For Construction by:
- (i) refusing, failing or being unable to properly manage or perform on any Project;
  - (ii) refusing, failing or being unable to supply the Project with sufficient numbers of workers, properly skilled workers, proper materials, or maintain applicable schedules;
  - (iii) refusing, failing or being unable to make prompt payment to subcontractors or suppliers;
  - (iv) disregarding laws, ordinances, rules, regulations or orders of any public authority or quasi-public authority having jurisdiction over the Project;
  - (v) refusing, failing or being unable to substantially perform in accordance with the terms of the Contract For Construction as determined by the Owner, or as otherwise defined elsewhere herein, or
  - (vi) refusing, failing or being unable to substantially perform in accordance with the terms of any other agreement between the Owner and Contractor.
- 21.1.2 Upon the occurrence of any of the events described in Paragraph 21.1.1, the Owner may give written notice to the Contractor setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. At any time thereafter, if the Contractor fails to initiate the cure or if the Contractor fails to expeditiously continue such cure until complete, the Owner may give written notice to the Contractor of immediate termination, and the Owner, without prejudice to any other rights or remedies, may take any or all of the following actions:
- (i) complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
  - (ii) contract with others to complete all or any part of the Work, including supplying workers, material and equipment which the Owner deems expedient to complete the Work;
  - (iii) take such other action as is necessary to correct such failure;
  - (iv) take possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Contractor;
  - (v) directly pay the Contractor's subcontractors and suppliers compensation due to them from the Contractor;
  - (vi) finish the Work by whatever method the Owner may deem expedient; and,
  - (vii) require the Contractor to assign the Contractor's right, title and interest in any or all of Contractor's subcontracts or orders to the Owner.

- 21.1.3 If the Owner terminates the Contract For Construction for cause, and the Owner takes possession of all materials, tools, construction equipment and machinery on the Site owned or leased by the Contractor, the Contractor's compensation shall be increased by fair payment, either by purchase or rental at the election of the Owner, for any materials, tools, construction equipment and machinery items retained, subject to the Owner's right to recover from the Contractor the Owner's damages resulting from the termination.
- 21.1.4 If the Owner terminates this Contract For Construction for cause, and it is subsequently determined by a court of competent jurisdiction that such termination was without cause, then in such event, said termination shall be deemed a termination for convenience as set forth in Paragraph 21.3.

**21.2 Termination For Cause By Contractor.**

- 21.2.1 The Contractor may terminate this Contract For Construction for cause if the Owner materially breaches this Contract For Construction by:
- (i) refusing, failing or being unable to make prompt payment to the Contractor without just cause; or,
  - (ii) disregarding laws, ordinances, rules, regulations or orders of any public authority of quasi-public authority having jurisdiction over any Project; or refusing, failing or being unable to substantially perform in accordance with the terms of this Contract For Construction or any other agreement between the Owner and the Contractor.
- 21.2.2 Upon the occurrence of any of the events described in Paragraph 21.2.1, the Contractor may give written notice to the Owner setting forth the nature of the default and requesting cure within seven calendar days from the date of notice. If the Owner fails to cure the default within seven calendar days, the Contractor, without prejudice to any rights or remedies, may give written notice to the Owner of immediate termination.

- 21.3 Termination Or Suspension For Convenience.** The Owner may at any time give written notice to the Contractor terminating this Contract For Construction or suspending the Project, in whole or in part, for the Owner's convenience and without cause. If the Owner suspends the Project for convenience, the Contractor shall immediately reduce its staff, services and outstanding commitments in order to minimize the cost of suspension.

- 21.4 Contractor's Compensation When Contractor Terminates For Cause Or Owner Terminates For Convenience.** If this Contract For Construction is:
- (i) terminated by the Contractor pursuant to Paragraph 21.2; or,
  - (ii) terminated or suspended more than three months by the Owner pursuant to Paragraph 21.3,

the Owner shall pay the Contractor specified amounts due for Work actually performed prior to the effective termination date and reasonable costs associated with termination. The Owner may agree to additional compensation, if any, due to the Contractor.

Absent agreement on the additional amount due the Contractor, the Owner shall pay the Contractor:

- (i) reasonable costs incurred in preparing to perform the terminated portion of the Work, and in terminating the Contractor's performance, plus a fair and reasonable allowance for overhead and profit thereon (such profit shall not include anticipated profit or consequential damages); provided, however, that if it appears that the Contractor would not have profited or would have sustained a loss if the Work had been completed, no profit shall be allowed or included, and the amount of compensation shall be reduced to reflect the anticipated rates of loss, if any; and
  - (ii) reasonable costs of settling and paying claims arising out of the termination of subcontracts or supplier orders. These costs shall not include amounts paid in accordance with other provisions hereof.
- 21.5 Contractor's Compensation When Owner Terminates For Cause.** If this Contract For Construction is terminated by the Owner for cause pursuant to Paragraph 21.1, no further payment shall be made to the Contractor until Final Completion of the Project. At such time, the Contractor shall be paid the remainder of the Construction Price less all costs and damages incurred by the Owner as a result of the default of the Contractor, including liquidated damages applicable thereto. The Contractor shall additionally reimburse the Owner for any additional costs or expenses incurred.

- 21.6 Limitation On Termination Compensation.** Irrespective of the reason for termination or the party terminating, the total sum paid to the Contractor shall not exceed the Contract Construction Price, as properly adjusted, reduced by the amount of payments previously made and penalties or deductions incurred pursuant to any other provision of this Contract For Construction, and shall in no event include duplication of payment.

- 21.7 Contractor's Responsibility Upon Termination.** Irrespective of the reason for termination or the party terminating, if this Contract For Construction is terminated, the Contractor shall, unless notified otherwise by the Owner:
- (i) immediately stop work;
  - (ii) terminate outstanding orders and subcontracts;
  - (iii) settle the liabilities and claims arising out of the termination of subcontracts and orders; and
  - (iv) transfer title and deliver to the Owner such completed or partially completed Work, and, if paid for by the Owner, materials, equipment, parts, fixtures, information and such contract rights as the Contractor has.

- 21.8 **Lack Of Duty To Terminate.** The right to terminate or suspend the Work shall not give rise to a duty on the part of either the Owner or the Contractor to exercise that right for the benefit of the Owner, the Contractor or any other persons or entities.
- 21.9 **Limitation On Termination Claim.** If the Contractor fails to file a claim within one year from the effective date of termination, the Owner shall pay the Contractor only for services actually performed and expenses actually incurred prior to the effective termination date.

## ARTICLE 22 APPLICABLE LAW AND DISPUTE RESOLUTION

- 22.1 **Applicable State Law.** This Contract For Professional Services has been entered into in, and shall be interpreted under the laws of, the state of Michigan.
- 22.2 **Court Actions.** Except as expressly prohibited by law:
- (i) all legal actions hereunder shall be conducted only in state court or federal court districts where the Project is located and having subject matter jurisdiction over the matter in controversy; except that any final judgment may be enforced in other jurisdictions in any manner provided by law;
  - (ii) the choice of jurisdiction and venue described in the preceding paragraph shall be mandatory and not permissive in nature, thereby precluding the possibility of litigation or trial in any jurisdiction or venue other than that specified herein;
  - (iii) the parties waive any right to assert the doctrine of forum *non conveniens* or to object to venue; and
  - (iv) the parties waive any right to a jury trial, and agree that all legal actions shall be tried, both as to factual and legal issues, only to the Court.
- 22.3 **Mutual Discussion.** In case of any dispute, claim, question or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof, the parties shall first attempt resolution through mutual discussion.
- 22.4 **Facilitative Mediation.** If the parties cannot resolve any dispute, claim, question, or disagreement arising from or relating to the Project or arising out of this Contract For Construction or the breach thereof through mutual discussion, as a condition precedent to any litigation, the parties shall in good faith participate in private, non-binding facilitative mediation seeking a just and equitable solution satisfactory to all parties.
- 22.4.1 All parties to a mediation shall promptly provide all other parties to the mediation with copies of essential documentation relevant to the support or defense of the matter being mediated.
- 22.4.2 The parties shall not be required to mediate for a period greater than ninety-one calendar days unless otherwise agreed to in writing by the parties. The parties shall share equally any administrative costs and fees of such proceedings, but shall each be responsible for their own expenses otherwise incurred.
- 22.4.3 In the event that the statute of limitations would run during the required mediation period, either party may institute litigation so as to avoid the running of such statute upon the condition that such party immediately seek a stay of such litigation pending the conclusion of the mediation period.
- 22.4.4 During the course of mediation, any party to the mediation may apply for injunctive relief from any court of competent jurisdiction until the mediation period expires or the dispute is otherwise resolved.
- 22.4.5 The Owner, the Professional, if any, the Contractor, and any other parties involved in any way in the design or construction of the Project are bound, each to each other, by this requirement to mediate prior to commencement of any litigation, provided that they have signed this Contract For Construction or an agreement that incorporates this Contract For Construction by reference or signed any other agreement which binds them to mediate. Each such party agrees that it may be joined as an additional party to a mediation involving other parties under any such agreement. In the case where more than one mediation is begun under any such agreement and any party contends that the mediations are substantially related, the mediations may be conducted by the mediator selected in the first mediation which was commenced.
- 22.5 **Conflicting Dispute Resolution Provisions.** Neither party to this Contract For Construction shall enter into any contract with regard to the Project which directly or indirectly gives the right to resolve any dispute with, involving, or affecting the other to any other person or legal entity which is in conflict with the dispute resolution procedures required by this Article.
- 22.6 **Arbitration Preclusion.** In case of a dispute relating to the Project, or arising out of this Contract For Construction, no party to this Contract For Construction shall be required to participate in or be bound by, any arbitration proceedings.
- 22.7 **Performance During Dispute Resolution.** The Owner and the Contractor agree that pending the resolution of any dispute, controversy, or question, the Owner and the Contractor shall each continue to perform their respective obligations without interruption or delay, and the Contractor shall not stop or delay the performance of the Work.

## ARTICLE 23 DAMAGES AND REMEDIES

- 23.1 **Contractor's Repair.** The Contractor shall, at its expense, promptly correct, repair, or replace all goods, products, materials, systems, labor and services which do not comply with the warranties and guarantees set forth in this Contract



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For Construction, or any other applicable warranty or guarantee.

- 23.2 **Contractor's Reimbursement.** The Contractor shall promptly reimburse the Owner for any expenses or damages incurred by the Owner as a result of:
- (i) the Contractor 's failure to substantially perform in accordance with the terms of this Contract For Construction;
  - (ii) deficiencies or conflicts in the Construction Documents attributable to the Contractor or of which the Contractor was or should have been aware;
  - (iii) breach of the warranties and guarantees set forth in this Contract For Construction or any other applicable warranty or guarantee; or
  - (iv) other acts or omissions of the Contractor.
- 23.3 **General Indemnity.** To the fullest extent permitted by law the Contractor shall secure, defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, and regardless of the legal theories upon which premised, including, but not limited to, those actually or allegedly arising out of bodily injury to, or sickness or death of, any person, or property damage or destruction (including loss of use), which may be imposed upon, incurred by or asserted against the Owner or the Owner's Related Parties allegedly or actually arising out of or resulting from the Contractor's services, including without limitation any breach of contract or negligent act or omission:
- (i) of the Contractor;
  - (ii) of the Contractor's subcontractors or suppliers, or
  - (iii) of the agents, employees or servants of the Contractor or its subcontractors or suppliers.
- 23.3.1 To the fullest extent permitted by law, the Contractor, for itself and for its subcontractors and suppliers, and the respective agents, employees and servants of each, expressly waives any and all immunity or damage limitation provisions available to any agent, employee or servant under any workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts, to the extent such statutory or case law would otherwise limit the amount recoverable by the Owner or the Owner's Related Parties pursuant to the indemnification provision contained in Paragraph 23.3.
- 23.4 **Intellectual Property Indemnity.** To the fullest extent permitted by law, the Contractor shall defend, protect, hold harmless, and indemnify the Owner and the Owner's Related Parties from and against any and all liability, loss, claims, demands, suits, costs, fees and expenses (including actual fees and expenses of attorneys, expert witnesses, and other consultants), by whomsoever brought or alleged, for infringement of patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the Owner or Professional(s) in writing. If the Contractor has reason to believe the use of a required design, process or product is an infringement of a patent, the Contractor shall be responsible for such loss unless such information is promptly given to the Owner.
- 23.5 **Non-Exclusivity Of Owner's Remedies.** The Owner's selection of one or more remedies for breach of this Contract For Construction contained herein shall not limit the Owner's right to invoke any other remedy available to the Owner under this Contract For Construction or by law.
- 23.6 **Waiver Of Damages.** The Contractor shall not be entitled to, and hereby waives any monetary claims for or damages arising from or related to, lost profits, lost business opportunities, unabsorbed overhead or any indirect consequential damages.
- 23.7 **Interest.** The Owner is entitled to interest on all amounts due from the Contractor that remain unpaid thirty days after the amount is deemed due, whether as a result of a resolution of a dispute or otherwise. Any such interest shall be calculated by the same method as set forth in Paragraph 14.7.

#### ARTICLE 24 MISCELLANEOUS PROVISIONS

- 24.1 **Severability.** If any provision of this Contract For Construction, or the application thereof, is determined to be invalid or unenforceable, the remainder of that provision and all other provisions shall remain valid and enforceable.
- 24.2 **Waiver.** No provision of this Contract For Construction may be waived except by written agreement of the parties. A waiver of any provision on one occasion shall not be deemed a waiver of that provision on any subsequent occasion, unless specifically stated in writing. A waiver of any provision shall not affect or alter the remaining provisions of this Contract For Construction.
- 24.3 **Strict Compliance.** No failure of the Owner to insist upon strict compliance by the Contractor with any provision of this Contract For Construction shall operate to release, discharge, modify, change or affect any of the Contractor's obligations.
- 24.4 **Third-Party Beneficiaries.** This Contract For Construction shall inure solely to the benefit of the parties hereto and their successors and assigns, and, except as otherwise specifically provided in this Contract For Construction, nothing contained in this Contract For Construction is intended to or shall create a contractual relationship with, or any rights or cause of action in favor of, any third party against either the Owner or the Contractor.

- 24.5 **Survival.** All provisions of this Contract For Construction which contain continuing obligations shall survive its expiration or termination.
- 24.6 **Assignment.** Except as prohibited by applicable law, neither party shall assign any or all of its benefits or executory obligations under this Contract For Construction without the approval of the other party, except in case of assignment solely for security or assignment by the Owner to a Related Party of the Owner, or except as otherwise specifically provided for in this Contract For Construction in case of default. The Owner and the Contractor bind their successors and assigns to the other party to this Contract For Construction.
- 24.7 **Execution Of Documents.** Upon the request of the Owner, the Contractor shall execute documents required by the Owner's lender whereby the Contractor agrees that in the event of the Owner's default under, or the termination of, any construction loan agreement, the Contractor will complete the services required by this Contract For Construction under the terms and conditions contained herein so long as the lender fulfills the obligations of the Owner toward the Contractor as set forth in this Contract For Construction.

## ARTICLE 25 DEFINITIONS

When one of the following capitalized words, terms or phrases is used in this contract, it shall be interpreted or construed first as defined below, second according to its generally accepted meaning in the construction industry, and third according to its common and customary usage.

**Construction Price:** The dollar amount for which a Contractor agrees to perform the Work set forth in a Contract For Construction.

**Construction Documents:** Plans, specifications, change orders, revisions, addenda, and other information which set forth in detail the Work.

**Construction Schedule:** The timetable which sets forth pertinent dates for timely completion of the Work.

**Contract For Construction:** A written agreement between the Owner and a Contractor for provision of goods, products, materials, equipment, systems, management, supervision, labor and services required to construct all or part of a Project.

**Contract For Professional Services:** A written agreement between the Owner and a Professional for provision of services and related items required to design or engineer all or part of a Project.

**Contractor:** An entity, including but not limited to a general contractor, a trade contractor or a construction manager, engaged directly by the Owner pursuant to a Contract For Construction.

**Declaration Of Substantial Completion:** Document declaring the Work substantially complete and suitable for occupancy or beneficial use by the Owner.

**Final Completion:** The stage of construction when the Work has been completed in accordance with the Contract For Construction and the Owner has received all documents and items necessary for closeout of the Work.

**Hazardous Substances:** The term "Hazardous Substance" shall have the same meaning and definition as set forth in the Comprehensive Environmental Response Compensation and Liability Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively "CERCLA") and any corresponding state or local law or regulation, and shall also include: (a) any Pollutant or Contaminant as those terms are defined in CERCLA; (b) any Solid Waste or Hazardous Constituent as those terms are defined by, or are otherwise identified by, the Resource Conservation and Recovery Act as amended, 42 U.S.C. § 6901 *et seq.*, and regulations promulgated thereunder (collectively "RCRA") and any corresponding state or local law or regulation; (c) crude oil, petroleum and fractions of distillates thereof; (d) any other material, substance or chemical defined, characterized or regulated as toxic or hazardous under any applicable law, regulation, ordinance, directive or ruling; and (e) any infectious or medical waste as defined by any applicable federal or state laws or regulations.

**Owner:** The Board of Control of Grand Valley State University or its expressly authorized representative.

**Owner's Related Parties:** Any parent, subsidiary or affiliated entities of the Owner, including the respective officers, trustees, office holders, directors, shareholders, partners, and employees of each.

**Professional:** An entity, including but not limited to an architect, civil engineer or geotechnical engineer, engaged directly by the Owner to provide design or engineering services.

**Project:** A planned construction undertaking as more specifically described immediately preceding the recitals in Chapter 1 of a Contract For Professional Services or in a Contract For Construction.

**Project Design Schedule:** The timetable which sets forth the required relationships between, and pertinent dates for, required completion of design and engineering services, documents and related activities.

**Site:** The geographical location of a Project, usually defined by legal boundary lines, and the location characteristics including, but not limited to, grades and lines of streets, alleys, pavements and adjoining structures, rights-of-way, restrictions, easements,



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encroachments, zoning, deed restrictions, existing buildings and improvements, and service and utility lines.

**Substantial Completion:** The stage of construction when the Owner can occupy or beneficially use satisfactorily completed Work for its intended purpose.

**Total Project Construction Cost:** The total cost to the Owner to complete construction of the Project, including, without limitation, the Work, the cost of utilities, the cost of fees for permits and licenses, and modifications necessitated by local conditions.

**Work:** Any and all computers, construction machinery, documents, equipment, facilities, fixtures, furnishings, goods, heat, items, labor, licenses, management, materials, permits, products, services, supervision, supplies, systems, taxes, testing, tools, utilities, transportation, vehicles, and water, required to be performed or supplied and/or necessary for proper execution and completion of the Project, or some portion thereof, whether or not incorporated or to be incorporated into the Project; provided, however, that Work does not include performance of pre-construction services by a Construction Manager.

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