

# PROJECT MANUAL

for

## GAYLORD COMMUNITY SCHOOLS

**SF3.8 – 2024 SINKING FUND PROJECTS  
BID PACKAGE NO. 3  
Board Office / Early Childhood Center (BOECC)  
Generator Pre-purchase**

**PROJECT NO. 0284-20H**

**November 29, 2024**



**ANTHONY P. ESSON  
ARCHITECT**

PO BOX 479

GAYLORD, MICHIGAN 49734

TELEPHONE:

(989) 732-0585

**DOCUMENT 00 01 01**

**PROJECT TITLE PAGE**

**PROJECT NAME:** GAYLORD COMMUNITY SCHOOLS  
PROJECT 3.8 – 2024 SINKING FUND PROJECTS  
BID PACKAGE NO. 3  
Board Office / Early Childhood Center (BOECC) – Generator Pre-purchase  
Generator Pre-purchase

**OWNER:** Gaylord Community Schools  
615 South Elm Street  
Gaylord, MI 49735  
Contact: David Parsell, Transportation and Maintenance Director  
Telephone: 989/731-5230

**ARCHITECT:** Anthony Esson, Architect

Mailing Address:  
P.O. Box 479  
Gaylord, MI 49734

Shipping Address:  
2111 Forester Drive  
Frederic, MI 49733

Contact: Anthony P. Esson, Architect, LEED AP  
PH: 989-350-1827  
tony@anthonyessonarchitect.com

**MEP ENGINEER** JLK Engineering  
795 Fairway Drive  
PH: 989-614-4225  
Gaylord, MI 49735  
jkowatch@jlkengineering.com

**CONSTRUCTION  
MANAGER:** Sugar Construction, Inc.  
2968 Venture Drive  
Midland, MI 48640  
Contact: Jerry Brown, Project Manager  
PH: 989-631-4154  
jerrybrown@sugarconstruction.com

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**INVITATION TO BID**

Project:

GAYLORD COMMUNITY SCHOOLS  
PROJECT SF3.8 – 2024 SINKING FUND PORJECTS  
BID PACKAGE NO. 3  
Board Office / Early Childhood Center (BOECC)  
Generator Pre-purchase

Owner:

Gaylord Community Schools  
615 South Elm Street  
Gaylord, MI 49735

Architect/Engineer:

Anthony P. Esson, Architect, PLLC  
PO Box 479  
Gaylord, MI 49734

Date: November 29, 2024

Gaylord Community Schools will receive Bids for pre-purchase of a Packaged Spark Ignited Engine-Driven Generator Set and Automatic Transfer Switch to be furnished and delivered to the Gaylord Community Schools Board Office / Early Childhood Center building located at 615 South Elm St., Gaylord, MI 49735.

Sealed Bids may be delivered in person to Gaylord Community Schools, c/o Joe Hart, Business Manager, 615 South Elm Street, Gaylord, MI 49735. Bids must be received prior to 10:30 AM local time on December 19, 2024. Bids will be opened publically and read aloud at 10:30 AM local time on December 19, 2024, in the Board Meeting Room in the BOECC building, 615 South Elm Street, Gaylord, MI 49735. The Owner will not consider or accept a bid received after the date and time specified for bid submission. Post Bid Interviews with the apparent low Bidder(s) will be scheduled following receipt of Bids. All Bids will be evaluated at a later date.

Bidding Documents will be available on or about December 2, 2024. Interested Bidders may view and download bidding documents at [www.sugarconstruction.com/current-bids](http://www.sugarconstruction.com/current-bids). Select Gaylord Community Schools, SF3.8 – 2024 Sinking Fund Projects; Bid Package No. 3; Board Office / Early Childhood Center Generator Pre-purchase.

Bidding Documents will also be on file at the following Plan Rooms.

Builders Exchange Traverse City, Grand Rapids, Lansing, and Saginaw

Each Bidder shall include with its Bid, a sworn and notarized statement disclosing any familial relationships that exist between the owner or any employee of the Bidder and any member of the Board of Education of the Superintendent of the School District.

Compliance with the Iran Economic Sanctions Act (PA 517 of 2012) is required. Each Bidder shall include a sworn and notarized certification that they are not an "Iran Linked Business" as the term is defined in the Act.

A Bid security in the amount of no less than 5 percent of the Bid Sum in the form of a Bid Bond, or certified check payable to the Owner shall accompany each Bid. A personal or company check does not constitute a Bid security.

Refer to other bidding requirements described in Document 00 21 13.

Bids shall be submitted on the Bid Form provided in the Bidding Documents. Bidders may supplement this form as appropriate.

Bidders will not be required to furnish Performance and Labor/Material Payment Bonds for this project.

Bids will be required to be submitted under a condition of irrevocability for a period of 60 days after submission.

The Owner reserves the right to accept or reject any or all Bids, either in whole or in part; to award the Contract to other than the lowest Bidder; to waive any irregularities and/or informalities; and in general to make awards in any manner deemed to be in the best interest of the Owner.

**END OF DOCUMENT**

**DOCUMENT 00 21 13**

**INSTRUCTIONS TO BIDDERS**

**1.1 SUMMARY**

**A. Document Includes:**

1. Bid submission.
2. Intent.
3. Work identified in contract documents.
4. Contract Time.
5. Definitions.
6. Contract Documents identification.
7. Availability of documents.
8. Examination of documents.
9. Inquiries and Addenda.
10. Product substitutions.
11. Site examination.
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13. Subcontractors.
14. Submission procedure.
15. Bid ineligibility.
16. Security deposit.
17. Performance Assurance.
18. Bid Form requirements.
19. Fees for changes in the Work.
20. Bid Form signature.
21. Familial Disclosure Statement
22. Iran Economic Sanctions Act Compliance Affidavit
23. Selection and award of alternates.
24. Bid opening.
25. Duration of offer.
26. Acceptance of offer.

**B. Related Documents:**

1. Document 00 11 16 - Invitation to Bid.
2. Document 00 41 13 - Bid Form - Stipulated Sum (Trade Contract).

**1.2 BID SUBMISSION**

- A. Bids signed and under seal, executed, and dated will be received by Gaylord Community Schools c/o Joe Hart, Business Manager, 615 S. Elm Street, Gaylord, MI 49735, until 10:30 AM local time on December 19, 2024.
- B. Bids submitted after the above time will be returned to Bidder unopened.
- C. Amendments to submitted Bids will be permitted when received in writing prior to bid closing and when endorsed by the same party or parties who signed and sealed the Bid.
- D. Bidders may withdraw their Bid by written request at any time before bid closing.

1.3 INTENT

- A. The intent of this Bid request is to obtain an offer to furnish and deliver a Packaged Spark Ignited Engine-Driven Generator Set and Automatic Transfer Switch as described in the Contract Documents.
- B. This is a “Construction Management as Constructor” project and there will be no “general contractor”. The Construction Manager will award trade contracts for each Bid Category as described below:
  - 1. Bid Category 1.0 – Material Supply

1.4 WORK IDENTIFIED IN CONTRACT DOCUMENTS

- A. Work of this proposed Contract comprises furnish and delivery of specified materials only as described in the specifications and Bid Category. Installation of materials will be bid and awarded separately at a later date.
- B. Materials included in this contract are to be furnished and delivered to:
  - 1. Gaylord Community Schools Board Office / Early Childhood Center, 615 South Elm St. Gaylord MI 49735.

1.5 CONTRACT TIME

- A. Include an anticipated delivery date for materials included in this contract on the Bid Form.

1.6 DEFINITIONS

- A. Bidding Documents: Contract Documents supplemented with Invitation To Bid, Instructions to Bidders, Information Available to Bidders, Bid Form, and bid securities, identified
- B. Contract Documents: As defined in AIA Document A201-2007 Article 1, including issued Addenda.
- C. Bid: Executed Bid Form and required attachments submitted in accordance with these Instructions to Bidders.
- D. Bid Price: Monetary sum identified by the Bidder in the Bid Form.

1.7 CONTRACT DOCUMENTS IDENTIFICATION

- A. The Contract Documents are identified as Project No. 284-20H Gaylord Community Schools Project SF3.8 – 2024 Sinking Fund Projects; Bid Package No. 3; Board Office / Early Childhood Center – Generator Pre-purchase, as prepared by Anthony P. Esson, Architect.

1.8 AVAILABILITY OF DOCUMENTS

- A. Bidding Documents may be obtained as stated in Invitation to Bid.
- B. Partial sets of Bidding Documents will not be issued to Bidders.
- C. Bidding Documents are made available only for the purpose of obtaining offers for this Project. Their use does not grant a license for other purposes.

1.9 EXAMINATION OF DOCUMENTS

- A. Bidders are responsible for full examination of the drawings, specifications, exhibits and any Addenda prior to submission of bids.
- B. Bidding Documents may be viewed at the office of the Owner
- C. Upon receipt of Bidding Documents verify documents are complete. Notify Architect/Engineer if documents are incomplete.
- D. Immediately notify Architect/Engineer upon finding discrepancies or omissions in Bidding Documents.

1.10 INQUIRIES AND ADDENDA

- A. Direct questions in writing to Anthony P. Esson, at the office of the Architect/Engineer; e-mail at [tony@anthonyessonarchitect.com](mailto:tony@anthonyessonarchitect.com).
- B. Verbal answers are not binding on any party.
- C. Submit questions not less than 7 days before date set for receipt of Bids. Replies will be made by Addenda.
- D. Addenda may be issued during bidding period. Addenda will be posted on the Construction Manager's website. Addenda become part of the Contract Documents. Include resultant costs in the Bid Price.

1.11 PRODUCT SUBSTITUTIONS

- A. Where Bidding Documents stipulate particular Products, substitution requests will be considered by Architect/Engineer up to 5 days before receipt of Bids.
- B. With each substitution request, provide sufficient information for Architect/Engineer to determine acceptability of proposed products.
- C. When a request to substitute a Product is made, Architect/Engineer may approve the substitution. Approved substitutions will be identified by Addenda.
- D. In submission of substitutions to Products specified, Bidders shall include in their Bid, changes required in the Work, changes to Contract Time and Contract Price to accommodate such approved substitutions. Later claims by the Bidder for an addition to the Contract Time or Contract Price because of changes in Work necessitated by use of substitutions will not be considered.



1.12 SITE EXAMINATION – Not used

1.13 PREBID CONFERENCE – Not used

1.14 SUBCONTRACTORS – Not used

1.15 SUBMISSION PROCEDURE

- A. Bidders shall be solely responsible for delivery of Bids in manner and time prescribed.
- B. Submit one copy of executed offer on Bid Form provided, signed and sealed with required security deposit in a closed opaque envelope, clearly identified with Bidder's name, Project name, Specific Bid Category and Owner's name on the outside.
- C. Bid Category must be bid in its' entirety. Bid qualifiers that omit portions of the work will be grounds for rejection.
- D. An abstract summary of submitted Bids will be made available to all Bidders following bid opening.

1.16 BID INELIGIBILITY

- A. Bids that are unsigned, improperly signed or sealed, conditional, illegible, obscure, contain arithmetical errors, erasures, alterations, or irregularities of any kind, will be declared unacceptable at Owner's discretion.
- B. Bid Forms, Appendices, and enclosures which are improperly prepared will be declared unacceptable at Owner's discretion.
- C. Failure to provide security deposit, bonds or insurance requirements will invalidate the Bid at the discretion of the Owner.
- D. Bidders that are "Iran Linked Businesses" as the term is defined in PA 517 of 2012, Iran Economic Sanctions Act are ineligible to Bid. Eligible Bidders must submit certification in accordance with the Act. Refer to Section 00 45 02.

1.17 SECURITY DEPOSIT

- A. Bids shall be accompanied by security deposit as follows:
  - 1. Bid Bond in the amount of not less than five percent (5%) of the Bid Price on standard surety company form or;
  - 2. Certified check payable to Owner in the amount of five percent (5%) of the Bid Price.
- B. Endorse Bid Bond in name of Gaylord Community Schools as obligee, signed and sealed by the principal (Contractor) and surety.
- C. Endorse certified check in name of Gaylord Community Schools.

1.18 PERFORMANCE ASSURANCE

- A. The Construction Manager will administer this project. All correspondence, submittals, changes to the contract, etc. shall be directed to the attention of the Project Manager: Jerry Brown

1.19 BID FORM REQUIREMENTS

- A. Complete requested information in the Bid Form and Bid Form Supplements.

1.20 FEES FOR CHANGES IN THE WORK

- A. Include in the Bid Form, the overhead and profit fees on Bidder's own Work and Work by Subcontractors, applicable for Changes in the Work, whether additions to or deductions from the Work on which the Bid Price is based.
  - 1. Overhead and profit fees may not exceed 10%.
  - 2. Overhead and profit fees will be applied to the net cost of additions to, or the net cost of deductions from the Work.

1.21 BID FORM SIGNATURE

- A. Sign Bid Form, as follows:
  - 1. Sole Proprietorship: Signature of sole proprietor in the presence of a witness who will also sign. Insert the words "Sole Proprietor" under the signature. Affix seal.
  - 2. Partnership: Signature of all partners in the presence of a witness who will also sign. Insert the word "Partner" under each signature. Affix seal to each signature.
  - 3. Corporation: Signature of a duly authorized signing officers in their normal signatures. Insert the officer's capacity in which the signing officer acts, under each signature. Affix the corporate seal. If the Bid is signed by officials other than the president and secretary of the company, or the president/secretary/treasurer of the company, submit a copy of the by-law resolution of their board of directors authorizing them to do so, with the Bid Form in the bid envelope.
  - 4. Joint Venture: Signature of each party of the joint venture under their respective seals in a manner appropriate to such party as described above, similar to requirements for Partnerships.

1.22 FAMILIAL DISCLOSURE STATEMENT

- A. Include Familial Disclosure Statement – 00 45 01.
- B. Complete all requested information in the affidavit.
- C. Signature of the affidavit shall be notarized.
- D. Failure of the Bidder to submit a fully executed affidavit will result in disqualification of the bidder.

1.23 IRAN ECONOMIC SANCTIONS ACT COMPLIANCE AFFIDAVIT

- A. Include Iran Economic Sanctions Act Compliance Affidavit – 00 45 02.
- B. Complete all requested information in the affidavit.
- C. Signature of the affidavit shall be notarized.
- D. Failure of the Bidder to submit a fully executed affidavit will result in disqualification of the bidder.

1.24 SELECTION AND AWARD OF ALTERNATES – Not used

1.25 BID OPENING

- A. Bids will be opened publicly as indicated in Document 001116 – Invitation to Bid. Bidders may be present.

1.26 DURATION OF OFFER

- A. Bids shall remain open to acceptance and shall be irrevocable for a period of 60 days after bid closing date.

1.27 ACCEPTANCE OF OFFER

- A. The Owner reserves the right to accept or reject any or all offers.
- B. After acceptance by the Owner, the Construction Manager, on behalf of the Owner, will issue to the accepted Bidder, a written Notice to Proceed.
- C. Notwithstanding delay in the preparation and execution of the Agreement, accepted Bidder shall be prepared, upon written Notice to Proceed, to commence work within (3) days following receipt of official written order of the Owner to proceed, or on date stipulated in such order.
- D. The accepted bidder shall enter into a Contract Agreement with the Construction Manager, and within (5) days following its presentation shall execute Agreement and return it to the Construction Manager.

**END OF DOCUMENT**

**BID CATEGORY 1.0 – MATERIAL SUPPLY**

**The contractor shall provide all materials and delivery expenses to ship to the owner the specified items as set forth in the documents and in this Bid Category description.**

**Specifications Included for This Bid Category:**

(Total responsibility for these sections in their entirety unless otherwise noted)

26 3213-Spark Ignited Engine-Driven Generator Sets

26 3623-Automatic Transfer Switch

**Reference Specifications for This Bid Category:**

(Include portions of these specifications as they apply to this bid category)

All sections under Division 1 General Requirements

**Inclusions for This Project: (but not limited to):**

**Any work that may be reasonably construed as part of this bid category's responsibility shall be included.**

1. This is a "furnish and deliver" price quote.
2. Include all sales tax in the price quote.
3. This equipment is being furnished for an upcoming project for 2025. The equipment warranty shall commence on the date of substantial completion for that project.
4. Price to include best delivery date to the site and shall include all shipping charges in the bid price.

**Exclusions:**

1. None

**END OF BID CATEGORY 1.0**

**DOCUMENT 00 41 13  
BID FORM – STIPULATED PRICE**

To: Gaylord Community Schools  
c/o Joe Hart, Business Manager  
615 South Elm Street  
Gaylord, Michigan 49735

Project: Gaylord Community Schools  
Project SF3.8 – 2024 Sinking Fund Projects  
Bid Package No. 3  
Board Office / Early Childhood Center – Generator Pre-purchase  
Project No. 284-20H

Date: \_\_\_\_\_

Submitted by: \_\_\_\_\_  
(full name)

\_\_\_\_\_  
(full address)

Estimator \_\_\_\_\_  
(name and telephone)

Bid Category: \_\_\_\_\_

1. OFFER

Having examined the Place of The Work and all matters referred to in the Instructions to Bidders and the Contract Documents prepared by Anthony Esson, Architect for the above mentioned project, we, the undersigned, hereby offer to enter into a Contract to perform the Work for the

Stipulated Sum of: \$ \_\_\_\_\_ (numerical)

\$ \_\_\_\_\_ dollars  
in lawful (written) money of the United States of America.

- We have included the required security deposit as required by the Instruction to Bidders.
- All applicable federal and/or State of Michigan taxes are included in the Bid Sum.
- We have included all allowances (if any) required in each respective Bid Category.

2. ACCEPTANCE

This offer shall be open to acceptance and is irrevocable for sixty (60) days from the bid closing date. If this bid is accepted by the Owner within the time period stated above, we will:

- a. Execute the Agreement within five (5) days of receipt of Notice of Award by the Construction Manager.

- b. Commence work within three (3) days after written Notice to Proceed by the Construction Manager.

If this bid is accepted within the time stated, and we fail to commence the Work or we fail to provide the required Bond(s), the security deposit shall be forfeited as damages to the Owner by reason of our failure, limited in amount to the lesser of the face value of the security deposit or the difference between this bid and the bid upon which a Contract is signed.

In the event our bid is not accepted within the time stated above, the required security deposit shall be returned to the undersigned, in accordance with the provisions of the Instructions to Bidders; unless a mutually satisfactory arrangement is made for its retention and validity for an extended period of time.

3. CONTRACT TIME

- a. Anticipated lead time to supply 250 kW generator set (after Shop Drawing approval):

Calendar Days \_\_\_\_\_.

- b. Anticipated lead time days to supply 800 amp ATS (after Shop Drawing approval):

Calendar Days \_\_\_\_\_.

4. CHANGES TO THE WORK

When the Architect establishes that the method of valuation for Changes in the Work will be net cost plus a percentage fee in accordance with General Conditions, our percentage fee will be:

\_\_\_\_\_ percent (may not to exceed 10%) overhead and profit on the net cost of our own Work;

5. ADDENDA

The following Addenda have been received. The modifications to the Bid Documents noted below have been considered and all costs are included in the Bid Sum.

Addendum # \_\_\_\_\_ Dated \_\_\_\_\_

Addendum # \_\_\_\_\_ Dated \_\_\_\_\_

6. BID FORM SIGNATURE(S)

---

(Bidder - print the full name of firm)  
was hereunto affixed in the presence of:

---

(Authorized signing officer Title)

**END OF BID FORM - STIPULATED PRICE**

**DOCUMENT 00 45 01**

**FAMILIAL DISCLOSURE STATEMENT**

The undersigned, as owner or authorized officer of the Bidder, and pursuant to the familial disclosure requirement provided in the advertisement for construction bids, hereby represent and warrant, except as provided below, that no familial relationships exist between the owner(s) or any employee of \_\_\_\_\_ (the Bidder) and any member of the Board of Education or the Superintendent of Gaylord Community Schools (the School), except as indicated below:

List any Familial Relationships:

BIDDER:

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

State of Michigan        )  
                                  ) SS  
County of                )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_, Notary Public

\_\_\_\_\_, County, Michigan

My Commission Expires: \_\_\_\_\_

Acting in the County of: \_\_\_\_\_

**END OF FAMILIAL DISCLOSURE STATEMENT**



**DOCUMENT 00 45 02**

**IRAN ECONOMIC SANCTIONS ACT COMPLIANCE AFFIDAVIT**

Effective April 1, 2013, all Bids and/or Proposals received by public entities in the State of Michigan must comply with the Iran Economic Sanctions Act, Act 517 of 2012. As a condition to compliance with the Act, the following certification must be submitted with the Bid.

The undersigned, as owner or authorized officer of \_\_\_\_\_ (the Bidder), pursuant to the requirements of the Iran Economic Sanctions Act, Act 517 of 2012, hereby certifies under civil penalty for false certification, that the Bidder is not an "Iran Linked Business", as defined in the Act, and is eligible to submit a Bid.

By: \_\_\_\_\_

Its: \_\_\_\_\_

State of Michigan        )  
                                      ) SS  
County of                 )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by  
\_\_\_\_\_.

\_\_\_\_\_  
, Notary Public

\_\_\_\_\_, County, Michigan

My Commission Expires: \_\_\_\_\_

Acting in the County of: \_\_\_\_\_

**END OF IRAN ECONOMIC SANCTIONS ACT COMPLIANCE AFFIDAVIT**

**DOCUMENT 00 52 14**

**AGREEMENT FORM**

1.1 SUMMARY

A. Document Includes:

1. Agreement.

B. Related Documents:

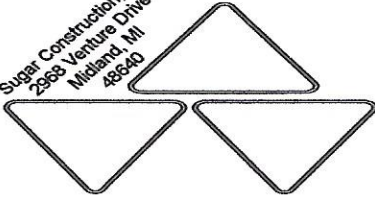
1. Document 00 72 14 - General Conditions.

1.2 AGREEMENT

- A. The Purchase Order included in this section (see following Purchase Order) forms the basis of Agreement between the Construction Manager and Supplier.

**END OF DOCUMENT**

Sugar Construction, Inc.  
2968 Venture Drive  
Midland, MI  
48640



### Sugar Construction, Inc.

2968 Venture Drive  
Midland MI 48640  
989 631-4154

# Purchase Order

**Purchase Order#: 230**

**Taxable: Yes**

**Job #: 1007**

**Date: 11/26/2024**

**Billed To: Material Supplier**

**Project: Bid Package 3 BOECC Generator and ATS**

You are hereby requested to provide the following materials/services to the above named project for the price listed below.

**Ordered By: Jerry A Brown**

Accepted By: \_\_\_\_\_ Date: \_\_\_\_\_

Part #	Description	Unit	Quantity	Price	Amount
1900	Allowance	LS	1.00	50,000.00	50,000.00
				<b>Subtotal:</b>	<b>50,000.00</b>

**Notes**

Furnish and deliver materials specified in the documents under Bid Category 1.0 Material Supply and under the conditions quoted on the bid form with regard to delivery date.

*Terms: All changes to quantity, specification or price must be approved in writing. All materials/services must be delivered to job site unless otherwise instructed in writing. Failure to deliver materials or services in a timely fashion will release contractor from any obligation to purchase implied by this order.*

**ALL ACCOUNTS PAYABLE INVOICES MUST INCLUDE PURCHASE ORDER # AND JOB NUMBER (TOP RIGHT).**

Subtotal:	50,000.00
Sales Tax:	3,000.00
<b>Total Order</b>	<b>53,000.00</b>

**DOCUMENT 00 72 14**

**GENERAL CONDITIONS**

1.1 SUMMARY

A. Document Includes:

1. General Conditions.

B. Related Documents:

1. Document 00 52 14 - Agreement Form.

1.2 GENERAL CONDITIONS

- A. AIA Document A201-2007 General Conditions of the Contract for Construction as modified, included herein, is the General Conditions of the Contract.

**END OF DOCUMENT**



# AIA® Document A201® – 2007

## General Conditions of the Contract for Construction

**for the following PROJECT:**

*(Name and location or address)*

Gaylord Community Schools

Sinking Fund Projects on a Project-by-Project basis or other projects as authorized by the Owner

**THE OWNER:**

*(Name, legal status and address)*

Gaylord Community Schools

615 S. Elm Avenue

Gaylord, Michigan 48735

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

**THE ARCHITECT:**

*(Name, legal status and address)*

Anthony Esson, Architect, PLLC

2111 Forester Drive

Frederic, Michigan 49733

(989) 732-0585

**THE CONSTRUCTION MANAGER:**

*(Name, legal status and address)*

Sugar Construction Inc.

2968 Venture Drive Midland, Michigan 48640 (989) 631-5154

The term "Contractor" shall also mean the Construction Manager, as that term is defined in the Contract.

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(Numbers and Topics in Bold are Section Headings)

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the ~~Agreement-Contract~~ between the Owner and Contractor (hereinafter the ~~Agreement-Contract~~) and consist of the ~~Agreement, Contract, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement-Contract and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect, Architect or Owner.~~ Unless specifically ~~enumerated-excluded~~ in the ~~Agreement, Contract,~~ the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the ~~Contractor's bid or proposal, Project Manual, the Contractor's bid or proposal (to the extent it does not conflict with Owner's Bid Documents),~~ or portions of Addenda relating to bidding requirements.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 THE WORK

The term "Work" means ~~the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations.~~ consists of all goods and services, such as labor, transportation, materials, tools, and equipment (1) to be incorporated into the Project (or the Contractor's portion of the Project if the Contractor is not responsible for the entire Project), (2) required of the Contractor under the Contract Documents, or (3) necessary or appropriate to fully construct, fixture, operate and maintain the Project (or the Contractor's portion of the Contract if the Contractor is not responsible for the entire Project). The Work shall be performed in accordance with the Contract Documents. The Work may constitute the whole or a part of the Project. The term "Work" shall also include labor, materials, equipment and services provided or to be provided by subcontractors, sub-subcontractors, material suppliers or any other entity for whom the Contractor is responsible under or pursuant to the Contract Documents.

#### § 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

#### § 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

#### § 1.1.6 THE SPECIFICATIONS

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

#### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement shall be the Architect, unless otherwise identified in the Contract to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2. Contract under Section 14.2.2.

### **§ 1.1.9 THE PROJECT MANUAL**

The Project Manual is a volume of documents assembled for the Work which may include the bidding requirement, sample forms, Conditions of the Contract, Specifications, Drawings, the Contract and other information furnished by the Owner.

### **§ 1.1.10 APPLICABLE LAWS**

Applicable Laws means all applicable federal, state and local codes, statutes, ordinances, laws including, but not limited to, the Americans with Disabilities Act ("ADA"), the Revised School Code, MCL 380.1 et seq., the School Building Construction Act, MCL 388.851 et seq., the Stille-Derose-Hale Single State Construction Code Act, MCL 125.1501 et seq., the Michigan Building Code, and the rules and regulations, and lawful orders of all public authorities having jurisdiction over the Project, the Work site, the Work or the prosecution of the Work.

### **§ 1.1.11 CONSTRUCTION SCHEDULE**

The Construction Schedule is the Critical Path Method ("CPM") schedule for construction of the Work submitted as part of the Contractor's Proposal, prepared by the Contractor and approved by the Owner in writing in accordance with Section 3.10. The Construction Schedule can be modified only by Change Order. Following any such modification, the term "Construction Schedule" shall mean the most recent Owner-approved version. The initial agreed upon Construction Schedule is attached to the Contract as an Exhibit and is referred to as the Project Schedule. Sometimes in these General Conditions the term "Project Schedule" is used. It shall have the same meaning as the Construction Schedule.

### **§ 1.1.12 MILESTONE DATES**

The Milestone Dates are those dates included in the Construction Schedule that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

### **§ 1.1.13 CONSTRUCTION TEAM**

The Construction Team includes the Contractor, Subcontractors, Sub-subcontractor at any tier and suppliers and (1) all other persons in privity of contract with any of them in connection with the Work (except the Owner), (2) anyone else providing labor, materials, supplies, equipment or services as part of or in connection with the Work (except those, if any, hired directly or indirectly by the Owner) and (3) all of their officers, employees, agents, and independent contractors.

### **§ 1.1.14 CONTRACT TIME**

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

### **§ 1.1.15 EXTRAORDINARY MEASURES**

Extraordinary Measures are corrective measures necessary to expedite the progress of the Work, including (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, (3) expediting the delivery of materials, and (4) other similar measures. The Owner shall have the right to order the Contractor to take Extraordinary Measures when it determines that the performance of the Work, as of a Milestone Date, has not progressed to or reached the level of completion required by the Contract Documents, at Contractor's sole cost and expense.

### **§ 1.1.16 MASTER DESIGN AND CONSTRUCTION SCHEDULE**

The Master Design and Construction Schedule is the preliminary schedule for the Work to be developed by the Owner or Contractor during the bidding and negotiation process and which shall, at a minimum, provide for major elements such as preparation of the design, phasing of construction, the time of commencement and completion required for each anticipated Bid Package.

### **§ 1.1.17 PUNCHLIST**

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Punchlist means a list of uncompleted or unacceptable items of Work which do not interfere with the use or occupancy of any part of the Work for its intended purpose and which, unless delayed by a need to order materials that could not reasonably have been anticipated by the Contractor, collectively are capable of being completed within sixty (60) days.

§ 1.1.18 The term "Product(s)" as used in the Contract Documents refers to the materials, systems and equipment provided by the Contractor for use in the Work of the Project.

§ 1.1.19 The terms "Warranty" and "Guarantee" as used in the Contract Documents shall have the same meaning and shall be defined as "legally enforceable assurance of satisfactory performance or quality of a product or "Work."

§ 1.1.20 Where materials, systems and equipment items are referred to in the singular, such reference shall not serve to limit the quantity required. The Contractor shall furnish quantities as required by the Contract Documents to complete the Work.

§ 1.1.21 Unless specifically limited in the Contract, the words "furnish," "install," and "provide," or any combination thereof mean to furnish and incorporate into the Work, including all necessary labor, materials, and equipment and other items required to perform the Work indicated.

§ 1.1.22 HAZARDOUS MATERIALS. Hazardous Materials shall mean and include any toxic or hazardous materials or substances as defined or regulated by in any U.S. environmental law or any Applicable Laws.

§ 1.1.23 PERMITTED MATERIALS. Permitted Materials shall mean materials that are general supplies and equipment that have a hazardous or potentially hazardous nature and are or will be used for their intended purpose and which do not pose any significant threat of contamination to the Project Site or neighboring properties.

#### § 1.1.22 VALUE ENGINEERING

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

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

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

§ 1.1.25 The terms "known," "knowledge," "recognize," "believe," and "discover," and any derivatives thereof and similar terms, when used in reference to the Contractor, shall mean that which the Contractor knows or should reasonably know, recognized or should reasonably recognize, and discovers or should reasonably discover in exercising the care, skill, and diligence required of the Contractor by the Contract. The expression "reasonably inferable" and similar terms mean reasonably inferable by a Contractor familiar with the Work an exercising the care, skill and diligence required of the Contractor by the Contract.

§ 1.1.26 The word "including" shall not be a word of limitation, but instead shall be construed as introducing one or more nonexclusive examples.

§ 1.1.27 Words or abbreviations that are not defined but have well-known technical, trade or construction industry meanings, shall have those meanings ascribed to them. The singular shall include the plural and vice versa. Pronouns are interchangeable. The word "person" includes human beings and recognized legal entities. Unless the context clearly requires otherwise, reference to a section shall include all subsections beneath it bearing identical introductory numbers.

## § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 ~~The intent of the Contract Documents is to include all items everything necessary for the proper execution and completion of the Work by the Contractor. Work.~~ The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Work called for on the Drawings and not mentioned in the specifications, or vice versa, shall be performed as though fully set forth in both. Nothing in this Section 1.2, however, shall relieve the Contractor of any of its obligations under the Contract Documents. Other conflicts between or among the Contract Documents shall be resolved under the following rules of construction:

- .1 The specific shall govern over the general;
- .2 Specified dimensions shown on the Drawings shall govern, even though they may differ from dimensions scaled on the Drawings, if any;
- .3 Drawings of larger scale shall govern over those of smaller scale; any special Drawing details shall govern over standard detail;
- .4 Specifications shall govern over Drawings in matters of material or equipment specified; Drawings shall govern over Specifications in matters of construction or installation detail;
- .5 Documents of later date shall always govern; except that
- .6 the Owner's Bidding Documents shall govern over Contractor's Proposal; and
- .7 the Contract shall govern over all other documents, regardless of their dates.

§ 1.2.2 ~~Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.~~ Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified. On certain Contract Documents, only a portion of the detail may be fully shown and the remainder indicated in outline, in which case the general detail shall be understood as applying also to other like portions of the Work. For example, if case carving, ornament, facing, veneer or similar treatment is indicated by starting of the detail, such detail must be continued throughout the course of parts in which it occurs, and to all similar parts in the Work wherever such general detail shall apply unless otherwise specifically provided in the Contract Documents.

§ 1.2.3 ~~Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.~~ The organization of the specifications into divisions, selections, and/or articles, and the arrangement of the Drawings, shall not dictate to the Contractor in any way how the Work is to be divided among subcontractors, or establish the extent of Work to be performed by any trade. Similarly, the organization of the Contractor's duties into different phases or categories in the Contract is for convenience only and shall not limit the generality of the Contractor's obligation to provide all of the services whenever necessary.

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

§ 1.2.5 Whenever a provision of the Contract Documents conflicts with agreements or regulations in force among members of trade associations, unions or councils, which regulate or distinguish the portions of the Work which shall or shall not be performed by a particular trade, the Contractor shall make necessary arrangements to reconcile the conflict without delay, damage, cost or recourse to the Owner. Delays in the Work resulting from the failure of the

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Contractor to use its best efforts to reconcile any such conflicts shall not result in an extension of the Contract Time and shall not result in the increase of the Contract Sum or Guaranteed Maximum Price.

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

### § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### § 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights. Drawings, Specifications, Project Manual and all other documents, electronic or otherwise, and all data used in compiling, and the results of, any tests, surveys or inspections at the Project Site, as well as all photographs, drawings, specifications, schedules, data processing output, building information modeling (BIM), integrated project delivery (IPD) and/or computer-aided design/drafting (CADD) system disks/tapes, computations, studies, audits, reports, models and other items of like kind, and all intellectual property, prepared or created for or in connection with the Project, regardless of whether they were prepared by the Owner, the Contractor, the Architect, or a third party, shall constitute the Project Documents, and shall belong to the Owner.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work Service, or any other documents prepared for or in connection with the Project, or any concepts or ideas developed in connection with the Project, for any purpose other than the Project without the specific written consent of the Owner, Architect and the Architect's consultants. Owner. The Owner shall at all times have access to and control over the disposition of any Drawings, Specifications, and other documents pertaining to the Project.

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Project Documents or Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement Contract or the Contract Documents.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement Contract and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.



~~§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein may at any time and from time to time designate a third-party, such as an architect or engineer or other professional consultant, to perform any of its duties under the Contract. In the event of any such designation, the Owner shall provide written notice to the Contractor. The duties, responsibilities and limitations of authority of any third party designated by the Owner pursuant to Section 2.1.1, shall not be restricted, modified or extended without written consent of the Owner.~~

## **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

~~§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; or (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The increases the Contract Sum. If requested in writing by the Contractor, the Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

~~§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. All permits, fees, licenses and approvals not specifically identified in the Contract or Contract Documents as the responsibility of the Owner shall be the responsibility of the Contractor.~~

~~§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall immediately notify Owner and Architect of any errors, inaccuracies or problems which Contractor becomes aware of in the course of its use of the survey.~~

~~§ 2.2.4 Upon written request, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.~~

~~§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.~~

## **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

~~If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. This right shall be in addition to and not in limitation of Owner's rights under any provision of the Contract Documents, and Owner's right to stop Work shall not relieve Contractor of any of its obligations under the Contract Documents.~~

## **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such~~

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action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. § 2.4.1 If the Contractor fails or defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a five-day period after receipt of written notice from the Owner or the Owner's designee to commence and continue correction of such failure, default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies, including any claim against the Contractor's Performance Bond, correct such deficiencies. In the event the Contractor's failure, default or neglect results in a threat to the safety of persons or property, the Contractor shall immediately correct such failure, default or neglect; otherwise, the Owner may undertake the same actions as permitted in the prior sentence. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including any and all legal expenses incurred to effectuate and enforce this provision, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. In the event the Owner directs another entity to perform Work pursuant to this Section that otherwise is the obligation of the Contractor, including correction of safety violations, either at the Contractor's request or as a result of the Contractor's failure to perform such Work, that other entity shall charge the Contractor all costs for labor, material and equipment plus that other entity's administrative, profit and overhead costs. The Contractor shall pay that other entity within ten (10) days of the date of invoice. If not paid within ten (10) days, the Contractor authorizes the Owner to withhold that amount from the Contractor and to pay the same to that other entity from the next payment due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.4.2 Upon notification to the Contractor, the Owner shall have the right to place and install equipment and machinery during the progress of the Work before the completion of the various parts of the Work. Such placing and installing of equipment and machinery shall not in any way evidence the completion of the Work or any portion thereof by the Contractor, nor signify the Owner's acceptance of the Work or any portion thereof. If the Owner places or installs such equipment and machinery with its own forces, the Owner shall be responsible for any damage to Work of the Contractor caused by the Owner's workers. If the Owner engages another contractor for such placement or installation, the Owner shall require said contractor to be responsible for such damages caused by its work, its workers, or its subcontractor(s). Upon discovery of any such damage, Contractor shall immediately notify Owner in writing.

## **§2.5 LIMITATION ON OWNER'S RESPONSIBILITY**

§2.5.1 The Owner and Architect will not, under any circumstances, have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. Owner and Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents except the Architect shall provide services at no additional cost, made necessary by major defect or deficiencies in the Work of the Contractor(s) which, through reasonable care, should have been discovered by the Architect and promptly reported to the Owner and the Contractor(s), but which the Architect failed to so discover and/or report. Additionally, any design or Specification error furnished by the Architect shall be promptly corrected by the Architect at no cost to the Owner.. The Owner will not have control over or charge of and will not be responsible for acts or omissions of any member of the Construction Team.

§2.5.2 The Contractor shall only be entitled to rely upon instructions and directions provided by the Owner's authorized representative(s).

§2.5.3 The Owner may, in addition to delivering them to the Architect, from time to time review and approve or take other appropriate action upon the Contractor's submittals, such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with the Owner's objectives and goals. Review of such submittals will not be conducted for the purpose of determining their accuracy and completeness of details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor. The Owner's review and approval of or taking other appropriate action on the Contractor's submittals shall not relieve the Contractor or the Architect of any of their obligations. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Owner's receipt of any informational submittals, of any submittals relating to equipment or system

designed by the Contractor, or of any submittals relating to alternatives proposed by any member of the Construction Team shall not constitute approval of or action by the Owner on such submittals. All such submittals will be received by the Owner for record purposes only.

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

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement-Contract and is referred to throughout the Contract Documents as if singular in number. The Contractor is the primary (main) contractor who oversees and is responsible for all the Work performed on the Project, and to whom any and all subcontractors on the Project are responsible. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 These General Conditions refer to the relationship between the Owner and Contractor. As to the contract between the Contractor and its Sub-Contractors, the General Conditions shall be read as the Contractor having the position of the Owner and the Sub-Contractors having the position of the Contractor. The Sub-Contractors are bound to the Contractor just as the Contractor is bound to the Owner. The Sub-Contractor shall have all the rights, duties and obligations to the Contractor as the Contractor has rights, duties and obligations to the Owner. The Sub-Contractors shall agree to and accept the same responsibility to the Owner as the Contractor. In the event any failure of a Sub-Contractor causes any type of injury or loss to the Owner, direct or indirect, the Contractor shall be jointly and severally liable to the Owner for such injury or damage in addition to any responsibility or liability of the Sub-Contractor.

### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions (including weather conditions) under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Documents. The Contractor shall promptly report to the Owner and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Failure by the Contractor to report to, or request clarification from, the Owner and Architect of any errors, omissions or inconsistencies shall result in interpreting and resolving such errors, omissions or inconsistencies in favor of the Owner and with no additional compensation to the Contractor.

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**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with ~~applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, Applicable Laws,~~ but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. ~~If the Contractor performs those obligations, permits any construction activity to be performed that involves an error, inconsistency or omission in the Contract Documents or a physical condition at the Project Site it recognized or should, employing the degree of diligence required of that Contractor under the Contract Documents, have recognized without providing notice to the Owner and receiving authorization to proceed, the Contractor shall assume responsibility for such performance and bear all costs attributable to correction, without recovery, whether under the Contract Sum, Guaranteed Maximum Price or otherwise. If the Contractor performs the obligations of Sections 3.2.2 and 3.2.3, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, Documents or for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.~~ Construction Documents unless the Contractor recognized such errors, inconsistency, omission or difference and knowingly failed to report such to the Owner and Architect.

**§ 3.2.5** Except and only to the extent otherwise provided in Section 2.2.3, by signing the Contract, the Contractor agrees: (1) to bear the risk of concealed or unknown conditions, if any, which may be encountered in performing the Work; and (2) that the established Contract Sum or Guaranteed Maximum Price accepted this responsibility with full knowledge of this risk. In agreeing to bear the risk of concealed or unknown conditions to the extent herein provided, the Contractor understands that, except and only to the extent provided otherwise in Section 2.2.3 or Section 4.3.4, concealed and/or unknown conditions shall not excuse the Contractor from its obligation to achieve full completion of the Work within the Contract Time, and shall not entitle the Contractor to an adjustment of the Contract Sum or Guaranteed Maximum Price. Except as provided in Section 2.2.3: (1) the Owner has not determined the accuracy or completeness of any information it may provide concerning physical conditions at the Project site, and all such information is made available to the Contractor, and shall by the Contractor be made available to bidders without any representation or warranty by the Owner whatsoever as to its accuracy, completeness, or relevancy; (2) the Contractor and the bidders shall independently evaluate such information for their use and shall be solely responsible for use or interpretation of such information; (3) any such use or interpretation shall not be the basis of any claim whatsoever against the Owner.

**§ 3.2.6** If the Contractor encounters concealed or unknown conditions that differ materially from those anticipated or expected, the Contractor shall promptly notify the Owner, in writing of such conditions so that the Owner can determine if such conditions require design details, which differ from those design details shown in the Design or some other remedial action. The Contractor shall be liable to the Owner for any extra costs incurred as the result of the Contractor's failure to give such required notice.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed in writing to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and Sub-subcontractors at any tier, and their respective agents and employees, and any other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. Subcontractors or Sub-subcontractors at any tier. References in the Contract Documents to the Work, obligations or acts or omissions of Contractor shall be interpreted to apply to the Subcontractors, Sub-subcontractors at any tier, suppliers, materialmen, and those employees and agents, irrespective if they are identified.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

#### § 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Such provision of labor and materials shall occur in sufficient time to satisfy the existing Project Schedule. The Contractor bears the risk of any failure to timely provide such labor and materials for any reason. The Contractor agrees to execute the appropriate UCC forms to effectuate the Owner's ownership of the material and equipment furnished pursuant to this Contract to the extent the Owner has paid for services rendered.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 By making requests for substitutions based on Subparagraph 3.4.2 above, the Contractor:

- (1) Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified.
- (2) Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified.
- (3) Certifies that the cost data presented is complete and includes all related costs, including but not limited to the Architect's redesign costs; and waives all claims for additional costs related to the substitution which subsequently became apparent; and
- (4) Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.3.1 The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other contractors and individuals associated with the Project. The Contractor shall also minimize the likelihood of any strike, work stoppage or other labor disturbance.

§ 3.4.3.2 If the Work is to be performed by Trade Unions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Architect or the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind which regulate, control or distinguish what activities shall or shall not be included in the Work of any particular trade.

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



§ 3.4.3.4 To the extent practicable, materials and equipment will be delivered to the Project site in original containers or wrappings. Used materials or equipment will not be permitted to be incorporated into the Work without the written approval of the Architect and the Owner or unless specifically permitted or required by the Contract Documents. The Architect and the Owner shall have the right to have any such improperly used materials or equipment removed from the Project site or completed Work whenever detected. The Architect's or Owner's failure to detect such used materials or equipment shall not relieve the Contractor of its obligations under this paragraph. Neither the Architect nor the Owner shall have any obligation to inspect for or improperly detect used materials or equipment.

§ 3.4.5 ASBESTOS, PCB, and Urea Formaldehyde-Free Product Installation.

§ 3.4.5.1 It is hereby understood and agreed that no product, substance, or material containing or treated with asbestos, including chrysolite, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestos in vermiculite, erionite, and taconite (hereinafter collectively "asbestos"), polychlorinated biphenyls (PCB), or urea formaldehyde and any combination of these substances shall be installed or introduced into the Work by the Contractor, its employees, Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors or Sub-subcontractors at any tier or other individuals or entities over whom the Contractor has control. The Contractor shall be required to provide a signed certification statement ensuring that all products or materials installed or introduced into the Work all be asbestos, PCB, and Urea Formaldehyde-free.

§3.4.5.2 The Contractor shall also be required to furnish certified statements from the manufacturers of supplied materials used during construction verifying their products or materials to be asbestos, PCB, and Urea-Formaldehyde-free in accordance with the requirements of Section 3.4.5.1.

§3.4.5.3 The Contractor shall complete and submit to the Owner a certification evidencing asbestos, PCB, and Urea Formaldehyde-free product and material installation prior to issuance of the final Certificate for Payment, in a form acceptable to the Owner.

**§ 3.5 WARRANTY**

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, ~~except for those inherent in the quality of the Work the Contract Documents require or permit.~~ Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All warranties shall be in the form and substance required by the Owner and/or Contract Documents.

In addition to any other warranties, guarantees or obligations set forth in the Contract Documents or applicable as a matter of a law and not in limitation of the terms of the Contract Documents, the Contractor warrants and guarantees that:

- .1 The Owner will have good title to the Work and all materials and equipment incorporated into the Work and, unless otherwise expressly provided in the Contract Documents, will be new;
- .2 The Work and all materials and equipment incorporated into the Work will be free from all defects, including any defects in workmanship or materials;
- .3 The Work and all equipment incorporated into the Work will be fit for the purpose for which they are intended;
- .4 The Work and all materials and equipment incorporated into the Work will be merchantable; and
- .5 The Work and all materials and equipment incorporated into the Work will conform in all respects to the Contract Documents.

Upon notice of the breach of any of the foregoing warranties or guarantees or any other warranties or guarantees under the Contract Documents, the Contractor, in addition to any other requirements in the Contract Documents, will commence to correct such breach within seventy-two (72) hours after written notice thereof and thereafter will use its best efforts to correct such breach to the satisfaction of the Owner; provided that if such notice is given after final

payment hereunder, such seventy-two (72) hour period shall be extended to seven (7) days. The foregoing warranties and obligations of the Contractor shall survive the final payment and/or termination of the Contract.

**§ 3.5.1** The Contractor shall assign to the Owner at the time of Substantial Completion any and all manufacturer's warranties relating to materials and labor used in the Work. Contractor shall perform the Work in a manner that will preserve any and all manufacturer's warranties.

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

### **§ 3.6 TAXES**

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contract Sum includes all such applicable taxes and the Contract Sum shall not be modified as a result of Contractor's failure to include all applicable taxes, or a change in Contractor's tax liability. The Contractor shall pay all state and federal taxes levied on its business, income or property and shall make all contributions for social security and other wage or payroll taxes. The Contractor shall be solely responsible for such payments and shall indemnify the Owner and hold it harmless from any assessment and payment of the same. Notwithstanding the foregoing, in the event any federal, state or local taxes are revised, changed or amended, the Contractor shall comply with all such revised, changed or amended taxes, provided however, to the extent such revisions, changes or amendments to such applicable taxes cause a material increase to Contractor's Contract Sum, the Owner and Contractor agree to negotiate in good faith a mutual agreeable reasonable adjustment, if any, to the Contractor's Contract Sum hereunder.

### **§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded and other permits, governmental fees, licenses and inspections by governmental agencies necessary for the proper execution, completion and occupancy of the Work, including without limitation, all connection charges, assessments and inspection fees imposed by the Michigan Bureau of Construction Codes, the Michigan Bureau of Fire Safety, any municipal agency or utility company. All such permit fees and charges are included in the Contractor's Contract Sum or Guaranteed Maximum Price.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to Applicable Laws regarding the performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, Applicable Laws, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article

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

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify by providing written and dated notification the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or ~~features.~~ features, as needed. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 ~~Allowances~~ allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 ~~Whenever~~ whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness.~~ in sufficient time to avoid delay in the Work.

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent shall be satisfactory to the Owner in all respects, and the Owner shall have the right to require the Contractor to remove any superintendent from the Project whose performance is not satisfactory to the Owner and to replace such superintendent with a superintendent who is satisfactory to the Owner; provided the request is made in good faith and for cause.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and Architect through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's prior written consent, which shall not unreasonably be withheld or delayed. ~~delayed except with another superintendent who is satisfactory to the Owner.~~

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, as part of its Contract Sum or Guaranteed Maximum Price, promptly after being awarded the Contract or at other times requested by Owner or set forth in the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's proposed construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the

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conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the ~~Work~~Work in accordance with Project Manual or Bid Documents.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

Except with the Owner's prior written approval, the Construction Schedule shall contain any Milestones and deadlines established in the Project Manual or Bid Documents. Once approved by the Owner, the Construction Schedule shall be reviewed monthly or at appropriate intervals as required by the conditions of the Work. **§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. Construction Schedule shall be in a detailed format satisfactory to the Owner which shall also: (1) provide a graphic representation coordinating and sequencing all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; (3) set forth Milestone Dates and manpower loading.

**§ 3.10.4** The Construction Schedule shall allow for and depict the following:

- .1 Local weather conditions;
- .2 Local jurisdictional or other work restrictions;
- .3 Specific restrictions, constraints and Contract completion dates stipulated in the Contract Documents;
- .4 Intermediate completion dates stipulated in the Contract Documents;
- .5 Time for needed submittals by the Contractor and needed approvals by the Owner, Architect, or other agency or authority;
- .6 Owner, Architect, or other agency or authority inspections and/or tests where required by the Contract Documents;
- .7 The work of separate contractors or the Owner;
- .8 Necessary resources to accomplish the Work within the Contract Time;
- .9 Other information that may be provided by the Architect or the Owner; and
- .10 A legend for each report or chart which clearly identifies how to interpret each.

**§ 3.10.5** Upon review and acceptance by the Owner, the Construction Schedule shall be deemed part of the Contract Documents and shall not be subject to change except in accordance with Section 8.3 and Article 7. If it is not approved, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and Architect and resubmitted for approval.

- .1 the Construction Schedule, subject to any modification granted in accordance with the Contract, shall constitute the Contractor's scheduling commitment to the Owner. It shall also serve as the basis for the Contractor's Contract Sum or Guaranteed Maximum Price.
- .2 The Contractor shall meet at least bi-weekly with the persons providing labor or materials under each trade package to review their progress and take appropriate action to maintain the Construction Schedule.



- .3 The accepted Construction Schedule shall be updated (1) monthly to compare actual progress with projected progress and (2) at any other time if requested by the Owner. The updated Construction Schedule shall reflect the status of the Project's progress at the date of update and the Contractor's planned progress of remaining portions of the Work.
- .4 The Contractor shall develop recovery schedules when milestone dates are or may be at risk.
- .5 The Contractor is responsible for the completeness of the Construction Schedule. The Contractor shall confirm in writing, with each submission of the Construction Schedule, that the Contractor has reviewed the Construction Schedule with Subcontractors and Suppliers and has coordinated and allowed for the lead times associated with the delivery of materials or equipment required for the proper progress of the Work.
- .6 The sequence of activities in the Construction Schedule will reflect the Contractor's intended approach to the execution of and completion of the Work. The Construction Schedule shall be broken into work areas to provide for a clear identification of the Planned Progress of the Work.
- .7 The Owner's or the Architect's review of Construction Schedule shall not constitute or imply the acceptance of or relieve the Contractor of the responsibility for the means, methods, sequences, techniques or procedures used in the performance of the Work.
- .8 The Construction Schedule shall represent the Contractor's plan for organizing, directing, managing, controlling, staffing and executing the Work required by the Contract Documents. The Owner shall have the right to rely on such Construction Schedule to coordinate and otherwise plan the work of the Owner, Architect, or other separate contractors, and to evaluate progress for payment purposes or other purposes as described in the Contract Documents.
- .9 At the completion of the Work and as a condition precedent to final payment to the Contractor, the Contractor shall submit two (2) copies of the final updated Construction Schedule to the Owner.

§ 3.10.6 The Contractor shall proceed strictly (not substantially) in accordance with the Construction Schedule. The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delay or potential delays. If any progress report indicates any delays, the Contractor shall, at no cost to the Owner, propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment of the Contract Time or any Milestone Date or the Construct Sum or Guaranteed Maximum Price unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order. The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect and incorporated into the approved Project Schedule.

§ 3.10.7 The Contractor shall cooperate in scheduling and performing its Work to avoid conflict or interference with the Work of others, and shall be responsible for any such conflict or interferences caused. The Contractor acknowledges and understands that the work schedule will be modified from time-to-time to work around the work of other contractors, in an effort to avoid conflicts or interference in the work of the Contractor or other contractors, and that such schedule changes do not give rise to a claim for damages by the Contractor for delay or otherwise. If the schedule for the Work is revised, the Contractor shall conform to the most recent schedule. The Contractor acknowledges that the schedule may change during the duration of the Project and that fact was taken into account by the Contractor when it agreed to the Contract Sum and entered into this Contract under the terms of the conditions set forth herein. As a result, the Contractor shall not be entitled to any additional monies or damages as a result of such schedule changes and the Contractor agrees that the Project Schedule, as modified, shall be an accepted term and contractual requirement. The Contractor shall complete work in accordance with the Project Schedule and Milestone Schedule(s).

§ 3.10.8 The Contractor shall cooperate in working out the proper sequence of operations between the Work of the Contractor and that of other trades on the Project site. The Contractor acknowledges that the schedule for the Work may change during the duration of the Project and the Contractor took that fact into account when it entered into the

Contract. As a result, the Contractor shall not be entitled to any additional monies or damages as a result of such schedule changes.

**§ 3.10.9** Contractor shall prosecute the Work undertaken in a prompt and diligent manner whenever such Work, or any part of it, becomes available, or at such other time or times as the Owner or Architect may direct so as to promote the general progress of the entire construction. The Contractor shall not, by delay or otherwise, interfere with or hinder the Work or the work of any other Contractor. Any materials that are to be furnished by the Contractor shall be furnished in sufficient time to enable the Contractor to perform and complete its Work within the time or times provided in the schedule. If the Contractor shall, through its action or inactions, including the actions or inactions of its' subcontractors or suppliers, fall behind in furnishing necessary labor and/or materials to meet the construction needs in accordance with the established schedule, then it shall increase its forces or work such overtime as may be required, at its own expense, to bring its part of the work up to the proper schedule. In the event that Contractor does not take such action necessary to bring its part of the work up to schedule within twenty-four (24) hours of receiving notice from the Owner or Architect, then, as allowed by, the Owner may supplement Contractor's forces or remove Contractor from the Project and retain others to complete part or all of the remainder of Contractor's Work. Contractor shall be responsible for any and all costs of performing or completing the Work. Contractor shall pay any such sums within ten (10) days of date of invoice. If not paid within ten (10) days, the amount will be withheld from Contractor and paid to the relevant parties from next payment due Contractor.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as ~~constructed~~-constructed together with a certification that they are "as-built" documents.

### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work. All Work shall be furnished and installed in accordance with the Drawings, Specifications and as additionally required by the manufacturer's printed instructions. The Contractor shall review the manufacturer's instructions, and where conflict occurs between the Drawings or Specifications and the manufacturer's instructions, the Contractor shall request clarification from the Architect prior to commencing the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence Construction Schedule as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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§ 3.12.5.1 The Contractor shall check thoroughly all such submittals, including those it prepares itself, as to measurements, sizes of members, materials and all other details, to assure that they conform to the intent of the Contract Documents.

§ 3.12.5.2 The Contractor shall promptly return to the Subcontractors and/or Suppliers, for correction, any of the submittals that are found inaccurate or otherwise erroneous be corrected.

§ 3.12.5.3 After the Contractor has checked and approved such submittals, the Contractor shall place thereon the date of its approval and the legible signature of the individual who reviewed them and shall then submit them to the Architect for review. The Architect may refuse to check or review any submittals, which are not submitted in compliance with these requirements.

§ 3.12.5.4 Submittals describing manufactured equipment must be "Project Specific." Every submission copy must be clearly marked to fully define the intended model number, configuration and other applicable product information.

§ 3.12.5.5 Among other things, the Contractor shall be responsible for the constructability, content, completeness and consistency of all submittals.

§ 3.12.5.6 The Contractor shall notify the Owner when submittals are received. It shall deliver copies to the Owner upon request.

§ 3.12.5.7 The Contractor shall notify the Owner and the Architect in writing if any submittals appear to modify the requirements of the Contract Documents. This notice shall identify each and every change.

§ 3.12.5.8 The Contractor shall furnish to the Architect for review when requested, or when required by the Contract Documents, samples of all materials and finishes to be used in the execution of the Work. Such samples shall be of sufficient size to be representative and the required number of them shall be submitted before the Work utilizing the materials they exemplify is commenced and in ample time to permit examination thereof. In all cases, samples shall be submitted at least three (3) weeks prior to when approval is needed to maintain the progress required by the Construction Schedule. All materials furnished and finishes applied to the Work shall be fully equal to the submitted samples.

- .1 Samples shall be forwarded to the Architect with all shipping charges prepaid. Unless otherwise directed, samples shall be submitted in triplicate, boxed or wrapped properly, each labeled with the name, type or brand of the materials, its place of origin, the names of its producer, Contractor and the Project.
- .2 The approval of Samples is generally directed towards establishing quality, color and finish criteria, and does not modify the requirements of the Contract Documents at to dimensions or design.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.6.1 The Architect will check and review the submittals with reasonable promptness and within any time limits agreed upon in writing and will return them as hereinafter described, indicating by notation, or by written instructions, or other directions, any corrections, which in the judgment of the Architect, may be necessary to meet the requirements of the Contract Documents. The Contractor shall then review such notations, instructions, or directions, and if the Contractor concurs therein, shall make or have made such corrections, and shall, when so noted on the submittals or requested by the Architect, resubmit corrected submittals to the Architect as soon as possible, for final check and review. Such final check and review by the Architect of submittals so corrected and resubmitted will be limited to the corrections only, and the Contractor, by such resubmission shall be held to have represented that such submittals contain no other alterations, additions, or deletions, unless the Contractor, in writing, directs the Architect's specific attention to same. Should the Contractor question or disagree with such notations, instructions, or directions, the Contractor shall direct the Architect's attention to same for further clarification before resubmitting them.



Corrections or changes indicated on submittals shall not be construed as an order for a change in the Work or to perform extra work.

§ 3.12.6.2 The Architect's review of submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment of systems, all of which remain the responsibility of the Contractor. The Architect does not assume responsibility for errors, omissions or deviations from the Contract Documents contained in such submittals. Any such errors, omissions or deviations from the Contract Documents must be corrected by the Contractor, irrespective of the receipt and review of the submittals by the Architect, and even through the Work is done in accordance with such submittals, unless such error, omission or deviation from the Contract Documents is specifically called to the Architect's attention by the Contractor in a separate written letter of communication, at the time of submittal, and the Architect has given written approval of such error, omission or deviation.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### § 3.13 USE OF SITE

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ § 3.13.1 The Contractor shall confine operations at the site to areas permitted by Applicable Laws, and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment. Only materials and equipment which are to be used for the Project or carry out the Work shall be stored at the Project site. Protection of such materials and equipment shall be the sole responsibility of the Contractor. No off-site storage is permitted without the Owner's prior written consent.



§ 3.13.2 No member of the Construction Team shall erect any sign on the Project Site without the Owner's prior written consent.

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

§ 3.13.4 The Contractor shall not, without the Owner's prior written approval, permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and eating and parking areas, other than those designated by the Owner. Without limiting any other provision of the Contract, the Contractor shall enforce compliance with all policies, procedures, rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the surrounding area. Existing Construction Team to comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project site and the surrounding area. However, the Contractor shall not be responsible to regulate the workers' conduct outside of work hours except as may be permitted under applicable laws and collective bargaining agreements.

- .1 Should any room or part of an existing building or facility be temporarily used by any member of the Construction Team as a shop, storeroom, locker room, an office, or for any other purpose, such room or part shall, prior to completion and when so directed, be thoroughly cleaned and returned to its original condition. All damage to any such room or part of an existing building or facility arising therefrom shall be corrected, and the whole left in a condition acceptable to the Owner by the Contractor. No room or part of an existing structure shall be so used without the prior written consent of the Owner.

§ 3.13.5 Anything contained in the Contract Documents to the contrary notwithstanding, no one except the Owner shall be permitted to disrupt the operation of any building system, utilities, or any other services without the Owner's prior written consent. Any request to perform such work shall be in writing, received by the Owner no less than five (5) days prior to the commencement of the requested disruption, and shall detail (1) the exact nature and duration of such interruption, (2) the area affected, and (3) any impact upon the Construction Schedule caused by such proposed temporary disruption. Except in the case of extraordinary measures, all Work shall be performed during the hours and on the days set forth in the Specifications. The Contractor's failure to comply with the notice provisions of this section shall constitute a waiver by the Contractor of any right it may have to an adjustment of its Contract Sum, or the Contract Time, on account of any postponement, rescheduling, or other delays ordered by the Owner in connection with any Work affecting a critical service for which appropriate notice was furnished.

§ 3.13.6 The Contractor will consult with the Owner concerning any necessary operations at the Project site, including staging area limits, office or storage trailer locations, dumpster operations, equipment and material deliveries, hoisting areas and any other construction impacts on the Owner's grounds.

§ 3.13.7 The Contractor shall provide suitable toilet facilities, at locations approved by the Owner, for the use of all its employees and those of the Construction Team and shall maintain same in proper sanitary condition acceptable to the Owner. All temporary toilet facilities shall be removed upon completion of the Work. The Contractor or any of its employees, agents or Subcontractors shall not use any toilet facilities of Owner's buildings without the Owner's prior written consent.

### **§ 3.14 CUTTING AND PATCHING**

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents. Only skilled tradespersons shall perform any cutting, fitting or patching work.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by

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excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### § 3.15 CLEANING UP

~~§ 3.15.1 The Contractor shall keep the premises Contractor, its employees, Subcontractors, Sub-subcontractors at any tier, and their respective agents and employees, and other persons performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors or Sub-subcontractors at any tier shall keep the Project site and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.~~

~~§ 3.15.2 If the Contractor fails to clean-up as provided in the Contract Documents, keep the Project site clean as required by the Owner or as provided in the Contract Documents or fails to clean up the Project site upon completion, the Owner may do so and Owner shall be entitled to reimbursement for all costs and expenses for clean-up from the Contractor.~~

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify and hold harmless the Owner and Architect harmless from any and all costs, damages and losses, including, but not limited to, actual attorneys' fees, loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

### § 3.18 INDEMNIFICATION

~~§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. Contractor shall indemnify, defend and hold harmless the Owner, its Board and its Board Members in their official and individual capacities, its administrators, employees and agents, from and against all claims, counter-claims, suits, debts, demands, actions, judgments, liens, injuries, liabilities, costs, expenses, damages, and actual attorney fees and actual expert witness fees arising out of or in connection with Contractor's performance of the Work pursuant to the Contract Documents and/or from Contractor's violation of any of the terms of the Contract, including, but not limited to: (1) the negligent acts or willful misconduct of the Contractor, its officers, directors, employees, agents and Subcontractors; (2) any breach of the terms of the Contract by the Contractor, its officers, directors, employees, agents and Subcontractors; (3) any violation of applicable state and/or federal law, rule, ordinance, policy or regulations and/or licensing and permitting requirement applicable to providing the Work by its officers, directors, employees, agents and Subcontractors; or (4) any breach of any representation or warranty by the Contractor under the Contract by its officers, directors, employees, agents and Subcontractors. The Contractor shall notify the Owner by certified mail, return receipt requested, immediately upon knowledge of any claim, suit, action, or proceeding for which it may be entitled to indemnification under the Contract. This paragraph shall survive the expiration or earlier termination of the Contract and shall not be limited by the Contractor's insurance obligations contained in this Contract. In addition to and not in limitation of the Contractor's other indemnity obligations, the Contractor hereby accepts and assumes~~

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exclusive liability for and shall indemnify, protect and save harmless the Owner and Architect from and against the payment of the following:

All contributions, taxes or premiums (including interest and penalties thereon) which may be payable under the unemployment insurance law of any state, the federal Social Security Act, federal, state, county and/or municipal tax withholding laws, or any other law, measured upon the payroll of or required to be withheld from employees by whomsoever employed, engaged in the Work to be performed and furnished under the Contract;

All sales, use, personal property and other taxes (including interest and penalties thereon) required by any federal, state, county, municipal or other law to be paid or collected by the Contractor or any of its Subcontractors or vendors or any other person or persons acting for, through or under it or any of them, by reason of the performance of the Work or the acquisition, ownership, furnishing, or use of any materials, equipment, supplies, labor, services or other items for or in connection with the Work; and

All pension, welfare, vacation, annuity and other benefit contributions payable under or in connection with respect to all persons by whomsoever employed, engaged in the Work to be performed and furnished under the Contract.

The Contractor shall indemnify, defend and hold the Owner harmless from any claim, damage, loss or expense, including but not limited to actual attorney fees, incurred by the Owner related to any hazardous material or waste, toxic substance, pollution or contamination brought into the Project site or caused by the Contractor or used, handled, transported, stored, removed, remediated, disturbed or dispersed of by Contractor.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

### **§ 3.19 RECORD DOCUMENTS**

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

**§ 3.19.2** The Record Drawings shall be prepared and updated during the prosecution of the Work. The prints for Record Drawing use will be a set of blackline prints provided by the Architect to the Contractor at the start of construction. The Contractor shall maintain said set in good condition and shall use colored pencils or other methods reasonably acceptable to the Owner to mark up said set with "record information" in a legible manner to show: (1) deviations from the Drawings made during construction; (2) details in the Work not previously shows; (3) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (4) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings and stub-outs; and (5) such other information as the Owner may reasonably request.

**§ 3.19.3** The Contractor shall keep note of all the deviations and discrepancies in the underground, concealed conditions and other items of construction and the Work on field Drawings. At the completion of the Project the

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Contractor's notes on the record field Drawings shall be neatly transcribed onto a clean set of Drawings furnished by the Architect. The Contractor shall submit the final Record Drawings to the Architect for review.

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

§ 3.19.5 Upon substantial completion of the Project, the Contractor shall submit to the Owner the Contractor's mechanical and electrical coordination Record Drawings prepared during construction by the Contractor. Examples of such drawings include sheet metal ductwork drawings, piping drawings, fire protection piping drawings, electrical raceway drawings, and the like. When the Contractor produces drawings by computer aided drafting, the Contractor shall also submit their coordination drawings on electronic data files compatible with AutoCAD computer software. All such documents shall contain the Owner's Project Number for identification purposes.

### **§ 3.20 WARRANTIES AND MANUALS**

§ 3.20 Unless the Contract Documents require otherwise, the Contractor shall bind and turn over to the Owner two (2) sets of manufacturers' warranties and operating and/or maintenance manuals, instructions, or schedules for all equipment and special materials requiring such. Such binders will clearly categorize and index each piece of equipment and material included, and shall be clearly marked noting "Project Specific" equipment, model numbers, and other applicable information. Such manuals will be collected and organized by the Contractor and submitted to the Owner at one time, prior to the issuance of the certificate of substantial completion.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement-Contract and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

### **§ 4.2 ADMINISTRATION OF THE CONTRACT**

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate ~~for~~ For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. The Contractor

shall reimburse Owner for all costs and expenses for the Architect's time to interpret and decide matters it deems clear and unambiguous.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith. The Contractor shall, and shall cause all Subcontractors to comply with an interpretation and decisions of the Architect.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. ~~Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.~~

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 SUBCONTRACTUAL RELATIONS

~~By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and~~

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

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.1.1 Work performed for the Contractor by a Subcontractor shall be performed pursuant to a written subcontract, which shall (in addition to the requirements of Sections 5.3 and 5.4) contain provisions that:

- (1) Requires that such portion of the Work be performed in accordance with the requirements of the Contract Documents;
- (2) Requires timely submission of Subcontractor's applications for payment and ancillary materials in order to enable the Contractor to apply for payment in accordance with the provisions of Article 9;
- (3) Waives all rights to contracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the property insurance described in Article 11;
- (4) Recognizes the rights of the Owner pursuant to the Contingent Assignment of Subcontracts contained in these General Conditions and require the Subcontractor (upon notice by the Owner that the Owner has terminated the Contract with the Contractor pursuant to the terms of Article 14, and that the Owner has elected to retain the Subcontractor pursuant to the terms of its Subcontract with the Contractor) to complete the unperformed obligations under such Subcontract and, if requested by the Owner, to enter into an appropriate agreement evidencing the fact that the Subcontractor is bound to the Owner under its Subcontract in the manner in which it had been bound to the Contractor;
- (5) Requires the Subcontractor performing labor at the Project site to carry and maintain the insurance described in Article 11, unless otherwise approved by the Owner, and to deliver certificates of insurance to the Contractor prior to commencement of its portion of the Work;
- (6) Includes the following sentence: "Owner is an intended third-party beneficiary of this Subcontract.";
- (7) Requires each Subcontractor to make all claims for changes or extensions of time to the Contractor strictly (not substantially) in the manner provided in the Contract;
- (8) Limits claims and damages in the manner provided in the Contract; and

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(9) Are in no way inconsistent with any provision of the Contract;

(10) Requires the Subcontractor to indemnify the Owner the same extent required under Section 3.18.

Sub-subcontracts and supply contracts shall be subject to identical conditions, except: (1) suppliers that are not performing any Work on the Project site are not subject to the insurance requirements described in Article 11; and (2) Subcontractors and Sub-subcontractors may satisfy the insurance requirements described in Article 11 by being named as an additional insured under the Contractor's insurance policies or, in the case of a Sub-subcontractor, by being named as an additional insured under a Subcontractor's insurance policies.

**§ 5.3.1.2** Upon request, the Contractor shall deliver a copy of any Subcontract, Sub-subcontract or Supply Contract to the Owner.

### **§ 5.3.2 COORDINATION OF SUBCONTRACTORS**

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

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

**§ 5.3.2.3 Schedule of Subcontractors' Work.** The Contractor shall require each Subcontractor to agree to be contractually bound to the requirements of the Construction Schedule. The Contractor shall require each Subcontractor to agree to cooperate with the Contractor in developing a detailed schedule applicable to its portion of the Work within fourteen (14) days after award of contract unless otherwise specified. The Contractor shall assist in the development of all Subcontractor schedules and shall prepare such schedules if any Subcontractor fails to do so. The Contractor shall require all Subcontractors to meet as often as necessary with the Contractor to complete their detailed schedules. However, the Construction Schedule will take precedence over any schedules prepared by Subcontractors with respect to time of completion for each bid package. If any such schedule indicates that additional time or effort will be required to maintain these schedules, the Contractor, Subcontractor shall agree to work additional time, including weekends if necessary, or to add manpower, all at no extra cost to the Owner. The Contractor will require all their subcontractors to include the requirements in Sections 5.3.2.3 and 5.3.2.4 in their sub-subcontractor contracts.

**§ 5.3.2.4 Subcontractors' Performance.** The Contractor shall ensure satisfactory and timely (with reference to both Milestone and Substantial Completion Dates) performance from each of the Subcontractors. The Contractor shall take appropriate measures when any Subcontractor is not performing its obligations satisfactorily.

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



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

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

**§ 5.3.2.8 Interpretation.** The Contractor shall consult with the Architect and the Owner if any Subcontractor requests interpretations of the meaning and intent of any of the Contract Documents, and shall assist in the resolution of questions, which may arise.

**§ 5.3.2.9 Insurance Certificates.** The Contractor shall receive certificates of insurance from the Subcontractors, and shall review such certificates for compliance with the requirements of the Contract Documents, and shall forward the original certificates to the Owner. No member of the Construction Team shall be permitted to commence any portion of the Work or have a presence at the Project Site without complying with all insurance requirements of the Contract Documents. The Contractor shall monitor the same to ensure the certificates of insurance remain current, and shall advise the Subcontractors of the impending expiration of their respective certificates, but the failure of Contractor to give such advice shall not, as between the Contractor and any of the Subcontractors, excuse the obligation of the Subcontractors to maintain current, unexpired certificates.

**§ 5.3.2.10 System Readiness.** The Contractor shall, in the company of the Architect and the Owner's maintenance personnel, observe the Subcontractors' evaluation of utilities, operational systems and equipment for readiness, and shall assist in their initial start-up and testing.

**§ 5.3.2.11 Contractor and Subcontractors' Warranty Acknowledgment.** The Contractor shall execute and deliver to the Owner, and shall cause anyone giving warranties that is contractually bound to the Contractor to execute and deliver to the Owner, the following Warranty Acknowledgment before a Certificate of Final Completion is issued:

#### WARRANTY ACKNOWLEDGMENT

(Name of Subcontractor) ("Contractor") warrants that all of its Work complies with the requirements of the Contract Documents. If, within one (1) year after the date of Substantial Completion of the Work or designated portion of the Work, any of Contractor's Work is found to be not in accordance with the requirements of the Contract Documents, Contractor shall correct the Work at its sole expense promptly after receipt of written notice from the Owner. This one (1) year period shall be extended (1) with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of Contractor's Work, and (2) with respect to warranty work for an additional one (1) year period following each correction. This obligation shall survive acceptance of the Work and termination of our contract.

This warranty shall be in addition to the terms of any other warranty or longer period of obligation specified in the Contract Documents, any applicable special warranty required by the Contract Documents, or the terms of any general warranty and is not in lieu of any of them. This warranty shall not be construed to establish a period of limitation with

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respect to other obligations which Contractor might have under the Contract Documents and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced or to the time which any proceeding may be commenced.

#### § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

- § 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that
- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
  - .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

~~§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.~~

~~§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~

#### ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

##### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right but assumes no obligation to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to ~~insurance and waiver of subrogation~~, insurance. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor ~~Agreement~~, Contract.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

##### § 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly

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report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs including costs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

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

§ 6.2.7 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect and Owner will allocate the cost among those ~~responsible~~ responsible in their sole discretion. The Owner's right to clean up shall in no event be deemed a duty, and should the Owner choose not to pursue this remedy, the Contractor necessitating such action shall remain fully responsible for the same.

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by Change Order, Construction Change ~~Directive~~ Directive, written contract amendment or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect ~~alone~~ alone with the Owner's prior approval.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 Changes in the Work may be made without notice to the Contractor's sureties, and absence of such notice shall not relieve such sureties of any of their obligations to the Owner. If notice of any extra Work or change in the Work affecting the general scope of the Work or the provisions of the Contract Documents is required by the provisions of any bond, to be given to any surety issuing such bonds, the giving of any such notice shall be the Contractor's sole responsibility.

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and

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- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Written agreement by the Owner, Architect and Contractor on any Change Order shall constitute a final settlement of and a waiver of and permanent bar to all claims by Architect or Contractor relating to the change in the Work which is the subject to the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum or Guaranteed Maximum Price and the Contract Time. The Contractor shall include the Work covered by such Change Orders in its Applications for Payment as if such Work were originally part of the Contract Documents.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. However, the Contract Time shall only be adjusted if the Contractor demonstrates the Construction Change Directive adversely affects the Construction Schedule.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one or more of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably ~~adjusted~~ adjusted, unless the Contractor provided such unit prices as a part of a competitive bid, in which case the unit price may not increase.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. Contractor agreements to a Construction Change Directive shall require a follow-up writing or signature as contemplated in Section 7.3.6.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine with the Owner's approval the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the ~~Agreement, Contract,~~ or if no such amount is set forth in the ~~Agreement, a reasonable amount-Contract, a reasonable amount~~ however, any such change shall not exceed five percent (5%) in the changes in the Work. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs-Actual costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;



- .2 ~~Costs~~ Actual costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 ~~Costs~~ Actual costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 ~~Additional costs of supervision and field office personnel directly attributable to the change.~~

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for undisputed Work completed under the Construction Change Directive in Applications for Payment. ~~The For those undisputed portions, the~~ Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. ~~The Architect's interim determination of cost cost, if agreed to by the Owner in writing, shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party the Contractor to disagree and assert a Claim in accordance with Article 15.~~

§ 7.3.10 When the Owner and Contractor agree in writing with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, in writing, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 In no event shall the Contractor be entitled to receive, and the Contractor hereby waives the right to receive any payment or any extension of time for additional or changed work, whether partially or fully completed or simply proposed, unless such additional work is authorized by a written Change Order or Construction Change Directive signed by the Owner, nor shall the Contractor be obligated to proceed with any such work. Only the Owner shall have the right to issue a written Change Order or Constructive Change Directive to the Contractor authorizing an addition, deletion or other revision in the scope of the Work and/or an adjustment in the Contract Sum or Guaranteed Maximum Price or the Construction Schedule.

#### § 7.4 MINOR CHANGES IN THE WORK

~~The Architect has Architect, with the Owner's written approval, has the authority to order minor changes in the Work not involving adjustment in the Contract Sum or Guaranteed Maximum Price or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. shall be effected by written order and shall be binding on the Contractor. The Contractor shall carry out such written orders promptly. Architect shall not, without written approval of Owner, order changes in the Work under this Section 7.4.1 that (1) are inconsistent with the intent of the Contract Documents; (2) render the Drawings and Specifications not in material conformity with the Work; or (3) materially affect the quality, utility or general aesthetics of the Work or any component, or result in the use of materials or equipment which are not equivalent to or better than the materials and equipment set forth in the Drawings and Specifications prior to such change.~~

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

§ 8.1.1 ~~Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. See Section 1.1 for Basic Definitions.~~

§ 8.1.2 The date of commencement of the Work is the date established in the ~~Agreement~~ Contract.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

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## § 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement ~~Contract~~ the Contractor confirms that the Contract Time ~~is and~~ the Construction Schedule contain a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 ~~to be furnished by the Contractor and Owner~~, or delivery of the performance and payment bonds required by law, ~~to be furnished by the Contractor~~. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall ~~proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time~~ see to the diligent, expeditious performance of the Work, with adequate resources so that all the Work will be completed within the Contract Time. The Contractor shall require overtime, multiple shifts and any other action necessary to complete of the Work within the Contract Time, all without additional cost to the Owner except as otherwise specifically provided in Section 8.4 in a Change Order or Construction Change Directive. The Contractor shall not, without the Owner's prior written approval, reschedule or re-sequence the Work that will cause the date of Substantial Completion to be modified so that an action, approval, or activity of the Owner moves onto the critical path or otherwise becomes critical to the Contract Time so long as such action, approval, or activity would not in fact have been critical but for the rescheduling or re-sequencing.

§ 8.2.4 Should the Contractor fail, refuse or neglect to supply sufficient workers or to cause the delivery of equipment and materials promptly to prevent delay, or fail in any material respect to commence and prosecute the Work diligently in accordance with the Contract Documents, or if the Work falls behind schedule, the Owner may require the Contractor to take Extraordinary Measures and to have the members of the Construction Team do likewise, all at no additional cost to or compensation from the Owner unless otherwise agreed to in writing by the Owner. Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule.

- .1 The Contractor shall not be entitled to an adjustment in its compensation in connection with Extraordinary Measures required by the Owner under or pursuant to this Article 8 except as specifically provided in Section 8.4.2 or in a Change Order or Construction Change Directive.
- .2 The Owner may exercise the rights furnished it under or pursuant to this Article 8 as frequently as necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.
- .3 Subject to reasonable prior notice and opportunity to cure, and except to the extent caused by Owner delay, the Owner shall also have the right to offset against any amounts then or thereafter due to the Contractor, or to be reimbursed by the Contractor for, any costs incurred as a result of an increase in the Owner's own labor force or for overtime, Saturday, Sunday, and/or holiday work as a result of implementing Extraordinary Measures for which the Contractor is responsible to pay.

## § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Except as provided in this Section 8.3, the Contractor shall be fully responsible for the timely completion of the Work in accordance with the Construction Schedule. The Contractor will use its best efforts to cause all members of the Construction Team to meet all Milestone Dates in the Construction Schedule and shall not be liable for delay caused by the Owner or Architect. The Contractor agrees to use its best efforts to avoid the occurrence of any cause for delay, to avoid any extension of performance dates, and to mitigate the effect of any delay that does occur. The Contract Time will be extended only under the exact

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circumstances described in this Section 8.3 and then if and only if the Contractor complies strictly (not substantially) with the requirements of this Section 8.3.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. Notices in connection with delays shall be made by the Contractor to the Owner in accordance with this Section 8.3.2. The Contractor shall use its best efforts to provide verbal notice to the Owner within twenty-four (24) hours after the commencement of a delay. It must in any event do so as soon as possible and not later than three (3) days after commencement of the delay. Any verbal notice given shall be confirmed in writing within four (4) days. If the Contractor fails to deliver verbal notice within three (3) days after the commencement of a delay, it shall not be entitled to any relief pertaining to the period of time before it gave verbal notice. If the Contractor fails to confirm any verbal notice within four (4) days after the verbal notice was given, it shall not be entitled to any relief for the period of time beginning after the passage of such four (4) days and ending when the confirmation is actually received by the Owner. And, if the Contractor fails to provide verbal notice within ten (10) days after the commencement of a delay or to confirm any verbal notice in writing within ten (10) days after the verbal notice was given, the Contractor shall be barred from seeking any relief whatsoever relating to the delay. The Contractor shall submit such information as may be required by the Owner to evaluate the Change Order Request. The Owner shall decide whether to grant, grant in part or deny the Change Order Request. Any extension of time or adjustment granted shall be memorialized in the form of a Change Order.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Except in the case of changes to the Work covered by Article 7 or failure of the Owner to pay the Contractor for Work performed, the Contractor shall not be entitled to an extension of time unless set forth in a Change Order. The Contractor acknowledges that in preparing the Construction Schedule and in agreeing to the times or dates of completion required by the Contract Documents it will make a reasonable allowance for commercially anticipated delays. Adjustments in the Contract Time will be permitted only to the extent such delay (1) is not caused or contributed to, and could not have been anticipated, by the Contractor using the degree of diligence required by the Contract Documents, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, and (3) is of a duration of not less than one (1) day.

§ 8.3.4 The Owner's exercise of any of its rights under the Contract Documents or the Owner's good faith exercise of any of its remedies, including requirement of correction or re-execution of any defective Work, regardless of the extent, number or frequency of the Owner's good faith exercise of such rights or remedies, shall not under any circumstances be construed as unreasonable interference with the Contractor's performance of the Work or an event of default.

§ 8.3.5 The Contractor shall use its best efforts to mitigate the effects of any delay.

§ 8.3.6 This Section 8.3 does not preclude the recovery of other damages by the Owner for delay under other provisions of the Contract. However, the Contractor acknowledges that the Schedule for the Work may change during the duration of the Project and that fact was taken into account by the Contractor when it agreed to the Contract Sum and entered into this Contract under the terms and conditions set forth herein. As a result, the Contractor shall not be entitled to any additional monies as a result of such schedule changes.

#### **§ 8.4 NO DAMAGE FOR DELAY**

§ 8.4.1 Except only as provided in Section 8.4.2 below, an extension in the Contract Time or adjustment of the Construction Schedule, to the extent permitted under Section 8.3, and the Contractor's rights in connection with a suspension of the Work, as provided in the Contract, shall be the sole and exclusive remedies (in lieu of all other remedies whatsoever) of the Contractor for any delay, interference, hindrance in the performance of the Work, loss of productivity, manpower inefficiencies, impact damages and similar claims and damages, whether or not contemplated by the parties. Except only as provided in Section 8.4.2, in no event shall the Contractor be entitled to any compensation or recovery of any damages in connection with any delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Contractor hereby expressly waives and covenants and agrees not to assert any claims against the Owner for any damages, costs, losses or expenses of any nature whatsoever which any member of the Construction Team may incur as a result of any delays, interferences, suspensions, rescheduling, changes in sequences, congestion, disruptions, or the like arising from, out of or in connection with any act or omission of the Owner, its representatives or agents, it being understood and agreed

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that their sole and exclusive remedy in such event shall be an extension of the Contract Time, but only in accordance with the provisions of this Article 8.

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

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 CONTRACT SUM**

The Contract Sum is stated in the ~~Agreement-Contract~~ and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

### **§ 9.2 SCHEDULE OF VALUES**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The initial schedule of values shall be consistent with the Contract Sum prepared by Contractor and shall include actual Subcontractor bids. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders. A request for payment of sums related to Work regarding Construction Change Directives shall, unless qualified in writing at the time of request, constitute full and complete consent to the Construction Change Directive(s) and to the issuance of a Change Order.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The Contractor shall provide copies of its insurance certificates, bonds, and the same for all Subcontractors prior to submitting the first Application for Payment, unless required to be submitted sooner by the Owner or the Contract. The Contractor shall submit with each monthly Application for Payment (1) an Affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the previous application was submitted and the Owner might in any way be responsible have been paid or otherwise satisfied, and (2) a release or waiver of liens arising out of the Contract from each Contractor and/or Subcontractor, materialmen, supplier and laborer or the Contractor addressing all previous Applications for Payment submitted for the Project.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Payment to Contractor for materials stored off site is discouraged. When circumstances indicate that the Owner's best interest is served by off-site storage,

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the Contractor shall make written request to the Owner for approval to include such material costs in his next progress payment. The Contractor's request shall include the following information:

- .1 A list of the fabricated materials consigned to the Project site (which shall be clearly identified, giving the place of storage, together with copies of invoices and reasons why materials cannot be delivered to the site.
- .2 Certification that items have been tagged for delivery to the Project and that they will not be used for another purpose.
- .3 A letter from the Contractor's Surety indicating agreement to the arrangements and that payment to the Contractor shall not relieve either party of their responsibility to complete the Work.
- .4 Evidence of adequate insurance covering the material in storage, which shall name the Owner as additionally insured.
- .5 Costs incurred by the Owner and Architect to inspect material in off-site storage shall be paid by the Contractor.
- .6 Subsequent pay requests shall itemize the materials and their cost which were approved on previous pay requests and remain in off-site storage.
- .7 When a partial payment is allowed on account of material delivered on the site of the Work or in the vicinity thereof or under possession and control of the Contractor, but not yet incorporated therein, such material shall become the property of the Owner, but if such material is stolen, destroyed or damaged by casualty before being used, the Contractor will be required to replace it at its own expense.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

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

- .1 A duly executed and acknowledged sworn statement with all required information provided, together with properly notarized sworn statements, from the Contractor and all of the Subcontractors; and
- .2 Except as otherwise provided, duly executed unconditional releases in the form required by the Owner establishing payment or satisfaction of all obligations as reflected on the sworn statements referred to in Section 9.3.4.1, provided, however, that the Contractor may furnish with each Application for Payment applicable waivers of lien or releases and properly notarized sworn statements covering the immediately preceding Application for Payment, as opposed to the current Application for Payment, (i.e., 30 day lag), provided Final Payment shall not be forthcoming until final construction lien waivers or releases from all members of the Construction Team have been delivered.
- .3 In addition to the final construction lien waiver, the Owner will require the Contractor and Subcontractors to provide a signed and notarized affidavit that releases and discharges the Owner and Owner's agents from all liability to the Contractor and Subcontractor, which has arisen or which shall arise in connection with any work performed or materials delivered to the Project.

## **§ 9.4 CERTIFICATES FOR PAYMENT**

**§ 9.4.1** The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.



§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has ~~(1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.~~

## § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 ~~repeated failure to carry out the Work in accordance with the Contract Documents.~~ Documents;
- .8 failure to provide any documentation, Record Documents, certified weekly payroll reports, as required, etc., in a timely manner;
- .9 Any failure by Contractor or a Subcontractor to fully perform any obligation under the Contract;
- .10 Stop Work notice.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 If the Contractor disputes any determination by the Owner or Architect with regard to any Certificate for Payment, the Contractor shall nevertheless continue to expeditiously perform the Work and such dispute shall provide no basis for any manner of suspension of the Contractor's performance of the Work.

## § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4. The Owner may, in its sole discretion, after providing Contractor with ten (10) days prior written notice, make direct payments to the Contractor's Subcontractors, material men, laborers or claimants relating to labor or material provided to the Contractor for which the Contractor has not provided a waiver of lien, in the event the Subcontractors, material men, laborers or claimants threaten to or actually cease providing labor and/or materials for the Project such that, in the Owner's determination, progress of the Project and the Project's schedule are jeopardized. All payments made pursuant to this section shall be considered the same as if paid directly to the Contractor and shall constitute partial payment of the Contract Sum. In the event the Contractor disagrees with the amount proposed to be paid to one or more Subcontractors, material men, laborers or claimants, the Contractor shall provide a bond in the amount the Contractor believes the Owner will overpay, within ten (10) days of receipt of notice, or be barred from making any claim that the amount of the direct payment was incorrect. Payment under this provision shall not jeopardize any other remedy available to the Owner.

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

§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision otherwise provided in the Contract or Contract Documents, the Owner may retain out of each progress payment a "Retainage" equal to ten percent (10%) of that payment. Retainage will be paid upon Final Completion and acceptance of the Work in accordance with Section 9.10. Upon mutual agreement of the Owner, the Architect and the Contractor, payment in full may be made to subcontractors whose Work is fully completed during early stages of the Project. The Contractor acknowledges and agrees that payments by the Owner shall only be made in respect of Applications for Payments, or portions thereof, reasonably approved by the Owner. If the Contractor disputes any good faith determination by the Owner with regard to any Certificate of Payment, or amount paid by the Owner in respect thereof, the Contractor shall nevertheless expeditiously continue to prosecute the Work while such dispute is being resolved.~~

## § 9.7 FAILURE OF PAYMENT

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

## § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a ~~comprehensive list~~ Punchlist of items to be completed or corrected prior to final payment. Failure to include an item on such ~~list~~ does Punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's ~~list, Punchlist,~~ the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's ~~list, Punchlist,~~ which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the ~~list~~ Punchlist accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of ~~Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion of the Work by Owner~~ following final completion and final payment under Section 9.10.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 Notwithstanding Sections 9.8.1 and 9.8.2, as a condition precedent to establishing the date of Substantial Completion, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or correct (a "punch list"). The Contractor shall respond immediately to correct Work deficiencies and/or punch list items. Should the Contractor fail to make corrections in a timely fashion, but not later than thirty (30) calendar days from the date of Substantial Completion or notification of the required corrections, whichever is earlier, such Work may be corrected by the Owner at the Contractor's sole expense, and the Contract Sum may be adjusted accordingly.

§ 9.8.7 Prior to the final payment, Owner shall make a payment equal to the entire balance of the Contract Sum less one hundred fifty percent (150%) of the estimated cost to complete the "punch list" items. This payment shall be due within thirty (30) days after the earlier of (1) receipt of a Temporary or Conditional Certificate of Occupancy for all the Work required under this Agreement from the State of Michigan, (2) completion of Project pursuant to the Contract Documents.

## § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

#### § 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt completion of the Work the Contractor's shall provide to the Architect a written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if an affidavit that states the Work is fully completed and performed in accordance with the Contract Documents and is satisfactory to the Architect and the Owner, (6) in the event of Contractor bankruptcy, at the Owner's option, an order entered by the court having jurisdiction of the Contractor's insolvency proceeding authorizing such payment, (7) a general release executed by the Contractor on a form provided by the Architect; and (8) if required by the Owner, other data establishing payment or satisfaction of obligations, such as close out documentation, the other documentation required by the Contract Documents, receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable actual attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents; Documents;
- .4 Owner's Claims arising after final payment;
- .5 Owner's claims for indemnification; or
- .6 Claims about which the Owner has previously given notice to the Contractor

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 The amount of the final Payment shall be the Contract Sum or Guaranteed Maximum Price unless the amount paid to date. If the aggregate of previous payments made by the Owner exceeds the amount due the Contractor, the Contractor shall immediately reimburse the difference to the Owner.

§ 9.10.7 Project Closeout. The requirements for Project Closeout begin at the start of a Project. This section outlines the integration of the closeout process into the Construction Phase. Project closeout requirements generally comprise of the following:

Certificate of Substantial Completion [by the Architect]  
Certificate of occupancy, including proof of all final/ [closed] inspection permits  
Operation & Maintenance Manuals  
As-Constructed Record Drawings  
Training of Owner's Personnel  
Attic Stock Materials  
Documents – Warranty, Asbestos free, Smoke & Flame Spread, etc.  
Punchlist Completion (signed by the Architect and the Owner)  
Copies of Shop Drawings, Product Data and Samples

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

~~The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.~~

§ 10.1.1 The Contractor shall continuously maintain adequate protection of all Work from damage and shall protect the Owner's property from injury or loss. The Contractor shall repair any such damage, injury or loss at no cost to the Owner, except to the extent directly caused by agents or employees of the Owner. The Contractor shall adequately protect the Work and adjacent property as required by Applicable Laws, the Contract Documents, or as otherwise required, to cause no damage to the Work and adjacent property during the execution of the Work. This requirement shall also apply to structures above and below ground as conditions of the Work site require. The Contractor shall at all times observe and comply with all Applicable Laws which may in any manner affect the equipment and materials used in the proposed construction, those employed on the work, and the conduct of the Work. The Contractor shall hold harmless and indemnify the Owner and its Board (in its individual and official capacities), employees and administrators, against any claim or liability arising from the violation of any Applicable Laws, whether the violations are by the Contractor or any Subcontractor, Sub-subcontractor or any other person employed or engaged by the Contractor or Subcontractor.

§ 10.1.2 The Contractor is solely responsible to the Owner for health and safety at the Project site and, accordingly, shall be solely responsible for initiating, monitoring, maintaining and supervising all safety precautions and programs in connection with the performance of the Work. The foregoing does not relieve the Subcontractors of their responsibility to the Contractor for the safe performance of their Work in accordance with all Applicable Laws.

§ 10.1.3 The Contractor shall develop and implement a health and safety plan that complies with all Applicable Laws covering all activities on the Project site except those activities performed solely by the Owner. The Contractor shall provide the Owner a copy of such health and safety plan prior to commencement of Work. The Owner shall have no duty to review the plan and shall assume no duty by doing so.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

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- 3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by ~~applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities~~ Applicable Laws, bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 ~~When No use or storage of explosives or other hazardous materials or unusual methods shall be allowed at the Project site without the Owner's express written consent. If use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary~~ permitted by the Owner for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel~~ personnel, and shall store and use in compliance with all Applicable Laws.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. The Contractor shall take all necessary precautions for the safety of employees and visitors on the Project site and shall comply with Applicable Laws and provisions of federal, state, and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the Project Site where the Work is being performed. The Contractor shall erect and properly maintain at all times, as required by the conditions and progress of the Work, all necessary safeguards for the protection of workers and the public. The Contractor shall post danger signs warning against the hazards created by such features of construction such as protruding nails, hoists, holes, elevator hatchways, scaffolding, window openings, stairways, falling material and other such features.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Contractor shall be responsible for securely fastening down all coverings and protecting the Work from injury by any cause.

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



### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, Documents, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up. Contractor shall not permit itself or any third party to use, generate, handle, store or dispose of any Hazardous Materials in, on, under, upon or affecting any of the Owner's property in violation of any Applicable Laws or regulation. Without limiting any other provisions of the Contract Documents, Contractor shall indemnify, defend and hold harmless the Owner, its Board of Education, its Board Members in their official and individual capacities, administrators, employees, agents, contractors, successors and assignees, from and against all liabilities, claims, losses, costs and expenses (specifically including, without limitation, attorneys', engineers', consultants' and experts' fees, costs and expenses) arising from (1) any breach of any representation or warranty made in this paragraph and/or (2) environmental conditions or noncompliance with any Applicable Laws or regulation that result, in the case of Contractor, from operations or the Work by Contractor or its agents, employees or Subcontractors. As used herein, the term "Hazardous Materials" shall mean (1) any hazardous or regulated substance, pollutant, contaminant, material, or waste as defined by any federal, state and local environmental laws, or regulations promulgated thereunder, including, but not limited to, Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.) ("Clean Water Act") the Resource Conservation & Recovery Act (42 U.S.C. §§ 6901 et seq.) ("RCRA"), Safe Drinking Water Act (42 U.S.C. §§ 300f-j-26 et seq.) (Toxic Substances Control Act (14 U.S.C. §§ 2601 et seq.) (Clean Air Act 42 U.S.C. §§ 7401 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 et seq.) ("CERCLA"), the Emergency Planning and Community Right to Know Act, 42 U.S.C. §§ 11001 et seq.) ("EPCRA"), the Atomic Energy Act, 42 U.S.C. Sections 2014, et seq., and the Michigan Natural Resources and Environmental Protection Act (MCL§ 324.101 et seq.) or any other similar federal, state or local law or administrative rule or regulation of similar effect, each as amended and as in effect and as adopted as of the date of execution of this Contract, or date of Work, whichever is more protective of the Owner, (2) any other pollutant, contaminant, hazardous substance, solid waste, hazardous material, radioactive substance, toxic substance, noxious substance, hazardous waste, particulate matter, airborne or otherwise, chemical waste, medical waste, crude oil or any fraction thereof, radioactive waste, petroleum or petroleum-derived substance or waste, asbestos, PCBs, radon gas, all forms of natural gas, or any hazardous or toxic constituent of any of the foregoing, whether such substance is in liquid, solid or gaseous form, or (3) any such substance the release discharge or spill of which requires activity to achieve compliance with Applicable Law. This paragraph shall survive the expiration or earlier termination of the Contract.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property

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(other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. The Owner shall not be responsible for any substances or Hazardous Materials which Contractor, its agents, employees or Subcontractors bring into the Project site, or Owner's property.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### § 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located ~~such insurance as will and must have an A.M. Best's Rating of "A" or better, such insurance as required by the Contractor under the Contract.~~ Unless otherwise required by the Contract, said insurance shall protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor any member of the Construction Team or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; ~~and~~
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section ~~3.18.3.18~~;
- .9 Liability insurance shall include all major divisions of coverage and e on a comprehensive basis including:
  - Premises' Operations (deleting X, C, or U exclusions);
  - Owner's and Contractor's Protective;
  - Products and Completion Operations;
  - Contractual – including specific for the Contractor's obligations under Paragraph 3.18;
  - Any auto; and
  - Broad Form Property Damage, including Completed Operations; and
- .10 All Bonds required by law, including bid bond, performance bond and payment bond.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract or Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. Owner shall be named as an additional insured. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given ~~to the Owner.~~ to the Owner and shall be endorsed to name the Owner as an additional insured. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable ~~promptness.~~ promptness, but not less than 30 days prior to any reduction in coverage.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's ~~consultants.~~ Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

## § 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of ~~the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles.~~ Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. ~~This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project and with deductibles reasonably determined by Owner.~~

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, ~~and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss requirements.~~

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.



§ 11.3.1.3 ~~If~~ Except as otherwise provided in the Contract Documents, if the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This ~~If approved in writing by the Owner, this~~ property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~site.~~

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance. Property insurance coverage for Contractor's owned or hired equipment, tools, automobiles, and materials not incorporated into the final Work shall be the sole responsibility of the Contractor.

### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; ~~this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.~~Owner.

### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

§ 11.3.6 Before an exposure to loss may occur, the Owner shall ~~file with~~ provide the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. ~~Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project.~~ Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

### § 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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§ 11.3.7.1 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the Contractor, Subcontractor and suppliers, as their interests may appear. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Owner as fiduciary shall have the power to adjust and settle a loss with insurers.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish ~~bonds~~ separate Performance and Labor and Material Payment Bonds covering faithful performance of the Contract and payment of obligations arising thereunder each in the penal sum of 100% of the Contract Sum and in accordance with Applicable Laws as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.1.1 Bonds shall be executed by a responsible surety licensed in the state where the Work is located with a Best's rating of no less than A, XII or better and shall remain in effect for a period not less than one (1) year following the later of (1) the date of Substantial Completion or (2) the time required to resolve any items of incomplete Work and the payment of any disputed amounts.

§ 11.4.1.2 Bonds under this Section 11.4 must display the surety's bond number. A rider including substantially the following provisions shall be attached to each bond:

- .1 Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents, the Subcontracts and the Sub-Subcontracts, any addition, alteration, change, extension of time, or other modification of the Contract Documents, the Subcontractors and the Sub-Subcontracts. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, the Subcontracts or the Sub-Subcontracts, or a forbearance on the part of either the Owner, the Contractor or one or more Subcontractors to one or more of the other, shall not release the Surety of its obligations and notice to the surety of such matters is hereby waived.
- .2 Surety agrees that it is obligated under the bonds to any successor, grantee or assignee of the Owner or the Contractor.

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

§ 11.4.1.4 Each Subcontractor's Performance Bond and the Labor and Material Payment Bond shall each be "dual obligee" type bonds naming both the Owner and the Contractor as obligees.

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

§ 11.4.1.6 Upon the request of any person or entity appearing to be potential beneficiary of bonds covering payment of obligations arising under the Contract or any Subcontract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

§ 11.4.1.7 The Contractor shall keep the sureties informed of the progress of the Work, and, without limiting the requirements of Section 11.4.1.2 (1) above, where necessary, obtain the sureties' consent to, or waiver of: (1) notice of changes in the work; (2) request for reduction or release of retainage; (3) request for Final Payment; and (4) any other material required by the surety. The Owner shall be notified by the Contractor, in writing, of all communications with the surety requesting or pertaining to consents or waivers. The Owner may, in the Owner's sole discretion, inform sureties of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges and benefits pursuant to any bond issued in connection with the Works.

§ 11.4.1.8 The Contractor may, in its discretion, determine other members of the Construction Team who will be required to supply bonds. All such bonds shall be (1) purchased solely at the expense of the Contractor (or the persons supplying them), without reimbursement under the Contract Sum or Guaranteed Maximum Price or otherwise, and (2) dual obligee bonds, naming the Owner as one of the Obligees.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 UNCOVERING OF WORK**

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's sole cost and expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request with the Owner's written consent to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

### **§ 12.2 CORRECTION OF WORK**

#### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of

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uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's sole cost and expense.

#### **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall without interfering with Owner's operations, correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. This obligation shall survive the termination of the Contract.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

#### **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum or Guaranteed Maximum Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

#### **§ 12.4 OWNER'S RIGHT TO CORRECT OR REMOVE DEFECTIVE WORK**

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

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not sufficient to cover the amount owed, the Contractor shall pay the difference to the Owner immediately upon demand.

§ 12.4.2 The Owner's right to store and sell such defective Work shall not give rise to a duty to do so. Instead, the Owner may upon ten (10) day's prior written notice simply dispose of such defective Work as it sees fit. All costs of disposal shall be borne by the Contractor, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise.

§ 12.4.3 Tests. If tests or inspections reveal that portions of the Work are Defective, any additional tests or inspections required to assure the Architect and the Owner that the defective Work has been remedied or is in an acceptable condition shall be conducted at the expense of the Contractor, without increase in the Contract Sum, and without use of any contingency. The Contractor shall pay all additional costs of the Architect and the Owner, which are associated with such additional tests or inspections.

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

§ 12.4.5 The Owner's Right to Stop the Work. If the Contractor fails to correct Work, which is not in accordance with the requirements of the Contract Documents as required by Section 12.2.2 or fails to carry out the Work in accordance with the Contract Documents, the Owner may, by written order, direct the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

## **§12.5 DAMAGE**

§ 12.5.1 If prior to the date of Final Completion any member of the Construction Team uses or damages any portion of the Work or other property, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner, without recovery from the Owner, under the Contract Sum or Guaranteed Maximum Price, any contingency or otherwise, unless such damage is caused by the Owner or Architect.

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

§ 12.5.3 Nothing in this Section 12.5 either limits the parties' rights to obtain recovery from any applicable property insurance or entitles the insurer to pursue a subrogation claim.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 GOVERNING LAW**

The Contract shall be governed by the law of the place where the Project is located ~~except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 15.4. located.

### **§ 13.2 SUCCESSORS AND ASSIGNS**

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.



§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a ~~lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents- third party.~~ The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by national overnight courier service providing a tracking system and proof of delivery to, the last business address known to the party giving notice.

### § 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by ~~applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities.~~ Applicable Laws. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's ~~expense.~~ expense without increase in the Contract Sum or Guaranteed Maximum Price, and without use of any contingency.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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

### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, in accordance with Michigan law, regardless of time frames identified herein, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement-Contract within the time period specified by applicable law, Applicable Law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.7.1 Regardless of any provisions to the contrary, the statute of limitations with respect to any defective or nonconforming Work which is not discovered by the Owner shall not commence until the discovery of such defective or nonconforming Work by the Owner.

### § 13.8 SURETY NOTICE AND PRIOR APPROVAL

Except where otherwise expressly required by the terms of the Contract, the Contract Documents or the General Conditions, exercise by the Owner of any contractual or legal right or remedy without prior notice to or approval by the Contractor's surety shall in no way bar or prohibit the Owner's ability to pursue such right or remedy. Further, pursuit of such a right or remedy without prior notice to or approval of surety shall in no way compromise, limit or bar any claim by the Owner against a surety bond of the Contractor.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped; or
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 ~~Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or~~
- .4 ~~The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.stopped.~~

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 ~~If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages. executed.~~

~~§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3. The Contractor acknowledges that it has certified to the Owner that no owner, employee, agent, representative, contractor, Subcontractor, Sub-subcontractors and/or other personnel of the Contractor will be on any School District premises if they are a registered criminal sexual offender under the Sex Offenders Registration Act, Public Act 295 of 1994, or have been convicted of "Listed Offense" as defined under Section 722 of the Sex Offenders Registration Act, MCL 28.722 (the "Certification"). The Contractor acknowledges and agrees that if it is found to have submitted a false Certification or otherwise breaches or fails to comply with the requirements of the Certification, the Owner may immediately terminate the Contract and notwithstanding any other provision of this Contract, the~~

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Contractor shall be liable to the Owner for any and all costs and expenses incurred by the Owner to secure a replacement contractor to complete the Work in accordance with the Contract Documents, including, but not limited to, any costs or expenses required to be paid by the Owner to the replacement contractor in addition to those required to be paid to the Contractor, all attorney and/or professional service fees, and any and all other actual and consequential damages incurred by the Owner.

## **§ 14.2 TERMINATION BY THE OWNER FOR CAUSE**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 repeatedly-refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, disregards Applicable Laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; or
- .5 the Contractor fails to prosecute the Work or any part thereof with promptness and diligence or fails to perform any provisions of this Contract, or goes into bankruptcy, liquidation, makes an assignment for the benefit of creditors, enters into a composition with its creditors, or becomes insolvent.

**§ 14.2.2** When any of the above reasons exist, the Owner, ~~upon certification by the Initial Decision Maker that sufficient cause exists to justify such action,~~ Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

In the event the Contractor's surety bond requires notice of intent to declare a default of the Contractor and if such bond notice is provided by the Owner, such notice shall be adequate to satisfy the three (3) day written notice described above in this section.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until ~~the Work is finished,~~ final completion of the Work is finished and determination of the sums due pursuant to Section 14.2.4 below.

**§ 14.2.4** ~~If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the or Guaranteed Maximum Price exceeds all costs to the Owner of completing the Work, including increased costs resulting from Contractor's default for the Owner's staff time, then the Contractor shall be paid for all Work performed by the Contractor to the date of termination, but in no case shall the amount paid to the Contractor cause the Contract Sum or Guaranteed Maximum Price to be exceeded. If the costs to the Owner of completing the Work exceed such unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.~~ difference, plus interest, to the Owner within thirty (30) days after the Owner's demand. The costs to the Owner of completing the Work shall include (but only to the extent caused or exacerbated by the Contractor's default) the cost of any additional architectural, legal, managerial, and administrative services required, any costs incurred in retaining another Contractor or other Subcontractors, any additional interest or fees which Owner incurs or must pay by reason of a delay in completion of the Work, attorneys' fees and expenses, and any other damages, costs, and expenses Owner may incur by reason of completing the Work.

**§ 14.2.5** If the Owner erroneously or improperly terminates the Contractor for cause, then the Owner's action shall be deemed to be a termination for convenience, subject to the provisions of Section 14.4.



### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum or Guaranteed Maximum Price and Contract Time ~~shall~~ may be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. ~~Adjustment of the Contract Sum shall include profit.~~ No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 ~~cease operations as directed by the Owner in the notice;~~ notice and deliver to the Owner the originals or legible copies of all Drawings, Specifications, reports and other data, records and materials in the Construction Manager's custody and control pertaining to the portion of the Work for which the employment of the Contractor was terminated;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work ~~executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~ executed as of the date of termination by the Owner and subject to negotiation by both parties.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the ~~Contract.~~ Contract, including but not limited to, additional sums, additional time for performance, or damages for delay. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the ~~Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.~~ Architect. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the ~~Initial Decision Maker.~~ Architect.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Failure to provide such notice shall serve as an absolute bar against a

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claim for such an increase in the Contract Sum. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 INITIAL DECISION

§ 15.2.1 Claims, ~~excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for~~ shall be referred to the Architect for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the ~~Agreement-Contract.~~ Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to ~~mediation-litigation or any other mutually agreed upon dispute resolution forum~~ of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the

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reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

**§ 15.2.7** In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### **§ 15.3 MEDIATION**

**§ 15.3.1** Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

**§ 15.3.2** The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

**§ 15.3.3** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### **§ 15.4 ARBITRATION**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a

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written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

~~§ 15.4.2~~ The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

~~§ 15.4.3~~ The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

~~§ 15.4.4 CONSOLIDATION OR JOINDER~~

~~§ 15.4.4.1~~ Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

~~§ 15.4.4.2~~ Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

~~§ 15.4.4.3~~ The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

**SECTION 01 20 00**

**PRICE AND PAYMENT PROCEDURES**

**PART 1 GENERAL**

**1.1 SECTION INCLUDES**

- A. Cash allowances.
- B. Contingency allowances.
- C. Schedule of values.
- D. Applications for payment.
- E. Change procedures.
- F. Defect assessment.
- G. Unit Prices
- H. Alternates.

**1.2 CASH ALLOWANCES – Not used**

**1.3 CONTINGENCY ALLOWANCES**

- A. A Contingency Allowance has been established by the Owner.

**1.4 SCHEDULE OF VALUES**

- A. Submit printed schedule on AIA Form G703 - Continuation Sheet for G702. Contractor's standard form or electronic media printout following format of specified AIA form will be considered.
- B. Submit Schedule of Values in duplicate within 15 days after date of Construction Manager-Subcontractor Agreement.
- C. Include within each line item, direct proportional amount of Contractor's overhead and profit.
- D. Revise schedule to list approved Change Orders, with each Application For Payment.

**1.5 APPLICATIONS FOR PAYMENT**

- A. Submit one copy of each application on AIA Form G702 - Application and Certificate for Payment and AIA G703 - Continuation Sheet for G702 or approved Contractor's electronic media driven form. Submit a pencil copy to the attention of the Construction Manager by the 20th of each month for approval. Once approved forward a final copy by mail to the office of the Construction Manager.
- B. Content and Format: Utilize Schedule of Values for listing items in Application for Payment.

- C. Submit a fully executed Sworn Statement indicating all monies owed as of the date of application.
- D. Submit waivers of lien for each subcontractor and supplier included on the sworn statement. Payment will not be released without verification of waivers for the full balance of the previous payment.
- E. Substantiating Data: When Architect/Engineer requires substantiating information, submit data justifying dollar amounts in question. Include the following with Application for Payment:
  - 1. Partial release of liens from major subcontractors and vendors.
  - 2. Affidavits attesting to off-site stored products.
  - 3. Construction progress schedules.

#### 1.6 CHANGE PROCEDURES

- A. The following procedures, as they apply, will flow from the Architect / Engineer, through the Construction Manager to the contractors and from the contractors to the Construction Manager.
- B. The Architect/Engineer will advise of minor changes in the Work not involving adjustment to Contract Sum/Price or Contract Time by issuing supplemental instructions in writing to the Contractor.
- C. The Architect/Engineer may issue a Proposal Request or Bulletin including a detailed description of proposed change with supplementary or revised Drawings and specifications. Contractor will prepare and submit estimate of cost and any required change in Contract Time within 14 days.
- D. Contractor may propose changes by submitting a request for change to Architect/Engineer, describing proposed change and its full effect on the Work. Include a statement describing reason for the change, and effect on Contract Sum/Price and Contract Time with full documentation and a statement describing effect on Work by separate or other Contractors.
- E. Stipulated Sum/Price Change Order: Based on Proposal Request (Bulletins) and Contractor's fixed price quotation or Contractor's request for Change Order as approved by Architect/Engineer.
- F. Document each quotation for change in cost or time with sufficient data to allow evaluation of quotation.

1.7 DEFECT ASSESSMENT – Not used

1.8 UNIT PRICES – Not used

1.9 ALTERNATES – Not used

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

**END OF SECTION**

**SECTION 01 33 00**

**SUBMITTAL PROCEDURES**

**PART 1 GENERAL**

**1.1 SECTION INCLUDES**

- A. Submittal procedures.
- B. Construction progress schedules.
- C. Proposed products list.
- D. Product data.
- E. Shop drawings.
- F. Samples.
- G. Design data.
- H. Test reports.
- I. Certificates.
- J. Manufacturer's instructions.
- K. Manufacturer's field reports.
- L. Erection drawings.

**1.2 SUBMITTAL PROCEDURES**

- A. Prepare all submittals as per subsequent instructions below. Scan and transmit electronically to the attention of the Construction Manager. ([jerrybrown@sugarconstruction.com](mailto:jerrybrown@sugarconstruction.com)).
  - 1. Sequentially number submittals. Include the specification section in the submittal numbering system. Mark revised submittals with original number and sequential alphabetic suffix.
  - 2. Identify Project, Contractor, subcontractor and supplier; product designated by name indicated in specifications.
- B. Apply Contractor's stamp, signed or initialed certifying that review, approval, verification of products required, field dimensions, adjacent construction Work, and coordination of information is in accordance with requirements of the Work and Contract Documents.
- C. Schedule submittals to expedite Project. Coordinate submission of related items.
- D. For each submittal for review, allow 15 days excluding delivery time to and from Construction Manager. Submittals for long lead time items shall be expedited by the Contractor in order to allow for the Owner's completion schedule. Notify Construction Manager of long lead time items requiring expedited review.



- E. Identify variations from Contract Documents and product or system limitations which may be detrimental to successful performance of completed Work.
- F. Allow space on submittals for Construction Manager and Architect/Engineer review stamps.
- G. When revised for resubmission, identify changes made since previous submission.
- H. Distribute copies of reviewed submittals as appropriate. Instruct parties to promptly report inability to comply with requirements.
- I. After submittals are electronically returned stamped reviewed by the architect make (4) hard copies with any required corrections and mail to the attention of the Construction Manager.
  - 1. Provide record copies required by governing authorities which are in addition to copies specified for submittal to Construction Manager.
- J. Submittals not requested will not be recognized or processed.
- K. Where specified below, retain one copy of each submittal to be turned over to the Owner as record documentation in accordance with Section 01 70 00.

1.3 CONSTRUCTION PROGRESS SCHEDULES – Not used

1.4 PROPOSED PRODUCTS LIST – Not used

1.5 PRODUCT DATA

- A. Product Data: Submit to Construction Manager for review by Architect/Engineer for limited purpose of checking for conformance with information given and design concept expressed in Contract Documents.
- B. Mark each copy to identify applicable products, models, options, and other data. Supplement manufacturers' standard data to provide information specific to this Project.
- C. Indicate product utility and electrical characteristics, utility connection requirements, and location of utility outlets for service for functional equipment and appliances.
- D. After review, produce copies and distribute in accordance with SUBMITTAL PROCEDURES article and for record documents described in Section 01 70 00 - Execution and Closeout Requirements.

1.6 SHOP DRAWINGS

- A. Shop Drawings: Submit to Construction Manager for review by Architect/Engineer for limited purpose of checking for conformance with information given and design concept expressed in Contract Documents.
- B. Indicate special utility and electrical characteristics, utility connection requirements, and location of utility outlets for service for functional equipment and appliances.
- C. When required by individual specification sections, provide shop drawings signed and sealed by professional engineer responsible for designing components shown on shop drawings.
  - 1. Include signed and sealed calculations to support design.

2. Submit drawings and calculations in form suitable for submission to and approval by authorities having jurisdiction.
  3. Make revisions and provide additional information when required by authorities having jurisdiction.
- D. After review, produce copies and distribute in accordance with SUBMITTAL PROCEDURES article and for record documents described in Section 01 70 00 - Execution and Closeout Requirements.
- 1.7 SAMPLES – Not used
- 1.8 DESIGN DATA
- A. Submit to Construction Manager for Architect/Engineer's knowledge as contract administrator and for Owner.
  - B. Submit for information for limited purpose of assessing conformance with information given and design concept expressed in Contract Documents.
- 1.9 TEST REPORTS
- A. Submit to Construction Manager for Architect/Engineer's knowledge as contract administrator and for Owner.
  - B. Submit test reports for information for limited purpose of assessing conformance with information given and design concept expressed in Contract Documents.
- 1.10 CERTIFICATES
- A. When specified in individual specification sections, submit certification by manufacturer, installation/application subcontractor, or Contractor to Construction Manager for transmittal to Architect/Engineer, in quantities specified for Product Data.
  - B. Indicate material or product conforms to or exceeds specified requirements. Submit supporting reference data, affidavits, and certifications as appropriate.
  - C. Certificates may be recent or previous test results on material or Product, but must be acceptable to Architect/Engineer.
- 1.11 MANUFACTURER'S INSTRUCTIONS
- A. When specified in individual specification sections, submit printed instructions for delivery, storage, assembly, installation, start-up, adjusting, and finishing, to Construction Manager for delivery to Owner in quantities specified for Product Data.
  - B. Indicate special procedures, perimeter conditions requiring special attention, and special environmental criteria required for application or installation.
- 1.12 MANUFACTURER'S FIELD REPORTS
- A. Submit reports to Construction Manager for Architect/Engineer's benefit as contract administrator and for Owner.

- B. Submit report in duplicate within 2 days of observation to Construction Manager for transmittal to Architect/Engineer for information.
- C. Submit for information for limited purpose of assessing conformance with information given and design concept expressed in Contract Documents.

1.13 ERECTION DRAWINGS – Not used

PART 2 PRODUCTS - Not Used

PART 3 EXECUTION - Not Used

**END OF SECTION**

**SECTION 01 60 00**

**PRODUCT REQUIREMENTS**

**PART 1 GENERAL**

**1.1 SECTION INCLUDES**

- A. Products.
- B. Product delivery requirements.
- C. Product storage and handling requirements.
- D. Product options.
- E. Product substitution procedures.
- F. Equipment electrical characteristics and components.

**1.2 PRODUCTS**

- A. Furnish products of qualified manufacturers suitable for intended use. Furnish products of each type by single manufacturer unless specified otherwise.

**1.3 PRODUCT DELIVERY REQUIREMENTS**

- A. Transport and handle products in accordance with manufacturer's instructions.
- B. Promptly inspect shipments to ensure products comply with requirements, quantities are correct, and products are undamaged.
- C. Provide equipment and personnel to handle products by methods to prevent soiling, disfigurement, or damage.

**1.4 PRODUCT STORAGE AND HANDLING REQUIREMENTS**

- A. Store and protect products on site in accordance with manufacturers' instructions.
- B. Store with seals and labels intact and legible.
- C. Provide equipment and personnel to store products by methods to prevent soiling, disfigurement, or damage.
- D. Arrange storage of products to permit access for inspection. Periodically inspect to verify products are undamaged and are maintained in acceptable condition.

**1.5 PRODUCT OPTIONS**

- A. Products Specified by Reference Standards or by Description Only: Any product meeting those standards or description.

- B. Products Specified by Naming One or More Manufacturers: Products of one of manufacturers named and meeting specifications, no options or substitutions allowed.
- C. Products Specified by Naming One or More Manufacturers with an “Or Equal” provision: Any Product meeting the quality standards or description. Pre-bid requests for approval of Products specified with an “or equal” provision will not be acknowledged. Acceptability of “or equal” Products will be determined by the Architect during the submittal process based upon the quality or suitability of the Product proposed.
- D. Products Specified by Naming One or More Manufacturers with Provision for Substitutions: Submit request for substitution for any manufacturer not named in accordance with the following article.

#### 1.6 PRODUCT SUBSTITUTION PROCEDURES

- A. Instructions to Bidders specify time restrictions for submitting requests for Substitutions during bidding period to requirements specified in this section.
- B. Post-Bid Substitutions will only be considered when a product becomes unavailable through no fault of Contractor.
- C. Document each request with complete data substantiating compliance of proposed Substitution with Contract Documents.
- D. A request constitutes a representation that Bidder:
  - 1. Has investigated proposed product and determined that it meets or exceeds quality level of specified product.
  - 2. Will provide same warranty for Substitution as for specified product.
  - 3. Will coordinate installation and make changes to other Work which may be required for the Work to be complete with no additional cost to Owner.
  - 4. Waives claims for additional costs or time extension which may subsequently become apparent.
  - 5. Will reimburse Owner and/or Architect/Engineer for review or redesign services associated with re-approval by authorities having jurisdiction.
- E. Substitutions will not be considered when they are indicated or implied on Shop Drawing or Product Data submittals, without separate written request, or when acceptance will require revision to Contract Documents.

PART 2 PRODUCTS – Not Used

PART 3 EXECUTION - Not Used

**END OF SECTION**



## SECTION 26 3213

### SPARK IGNITED ENGINE-DRIVEN GENERATOR SETS

#### PART 1 - GENERAL

##### 1.1 SCOPE

- A. Furnish & deliver a new Generator Set, as described herein, to the Owner (Gaylord Community Schools = GGC) at the Board Office & Early Childhood Center (BOECC) building located @ 615 South Elm Ave, Gaylord, MI 49735 – Contact Mr. David Parsell @ 989-731-5230.
  - 1. Owner will be commissioning a licensed Electrical Contractor (E.C.) to install the Generator & ATS.
- B. Provide factory testing; Provide startup assistance & on-site testing to Owner's electrical subcontractor.
- C. Provide a Preventative Maintenance Service Agreement as described herein.

##### 1.2 SUMMARY

- A. Section Includes:
  - 1. Spark-Ignited Engine.
  - 2. Natural Gas Fuel Supply System.
  - 3. Control and monitoring.
  - 4. Generator overcurrent and fault protection.
  - 5. Generator, exciter, and voltage regulator.
  - 6. Outdoor engine generator enclosure.
  - 7. Vibration isolation devices.
- B. Related Requirements:
  - 1. Section 263623 "Automatic Transfer Switches" for transfer switches including sensors and relays to initiate automatic-starting and -stopping signals for engine generators.

##### 1.3 DEFINITIONS

- A. EPS: Emergency power supply.
- B. EPSS: Emergency power supply system.
- C. Operational Bandwidth: The total variation from the lowest to highest value of a parameter over the range of conditions indicated, expressed as a percentage of the nominal value of the parameter.

##### 1.4 ACTION SUBMITTALS

- A. Product Data: For each type of product.
  - 1. Include rated capacities, operating characteristics, electrical characteristics, and furnished specialties and accessories.
  - 2. Include thermal damage curve for generator.
  - 3. Include time-current characteristic curves for generator protective device.
  - 4. Include fuel consumption in gallons per hour (liters per hour) at 0.8 power factor at 0.5, 0.75, and 1.0 times generator capacity.
  - 5. Include generator efficiency at 0.8 power factor at 0.5, 0.75, and 1.0 times generator capacity.

6. Include airflow requirements for cooling and combustion air in cubic feet per minute (cubic meters per minute) at 0.8 power factor, Provide Drawings indicating requirements and limitations for location of air intake and exhausts.
7. Include generator characteristics, including, but not limited to, kilowatt rating, efficiency, reactances, and short-circuit current capability.

B. Shop Drawings:

1. Dimensioned Outline Drawings of Equipment Unit: With engine and generator mounted on rails, identify center of gravity and total weight for provided components; fuel tank, enclosure, silencer, base tank, each piece of equipment not integral to the engine generator.
2. Include details of equipment assemblies. Indicate dimensions, weights, loads, required clearances, method of field assembly, components, and location and size of each field connection.
3. Identify fluid drain ports and clearance requirements for proper fluid drain.
4. Design calculations for selecting vibration isolators and seismic restraints and for designing vibration isolation bases.
5. Vibration Isolation Base Details: Detail fabrication including anchorages and attachments to structure and to supported equipment. Include base weights.
6. Include diagrams for power, signal, and control wiring. Complete schematic, wiring, and interconnection diagrams indicating terminal markings for engine generators and functional relationship between all electrical components.
7. Rigging Information: Indicate location of each lifting attachment, generator-set center of gravity, and total package weight in submittal drawings.

**1.5 INFORMATIONAL SUBMITTALS**

A. Seismic Qualification Data: Certificates, for engine generator, accessories, and components, from manufacturer.

1. Basis for Certification: Indicate whether withstand certification is based on actual test of assembled components or on calculation.
2. Detailed description of equipment anchorage devices on which the certification is based and their installation requirements.

B. Source Quality-Control Reports: Including, but not limited to, the following:

1. Certified summary of prototype-unit test report. Perform tests at rated load and power factor. Provide the following test results:
  - a. Maximum Power Level
  - b. Maximum Motor Starting (sKVA)
  - c. Structural Soundness
  - d. Torsional Analysis
  - e. Transient Response
  - f. Alternator Temperature Rise
  - g. Engine Cooling Requirements (unit mounted radiator)
  - h. Harmonic Analysis (per IEEE-115 and ANSI-100)
  - i. Voltage Regulation
  - j. Endurance Testing
2. Certified Test Reports: For components and accessories that are equivalent, but not identical, to those tested on prototype unit.
3. Report of factory test on units to be shipped for this Project, indicating evidence of compliance with specified requirements.
4. Report of sound generation.

5. Report of exhaust emissions indicating compliance with applicable regulations.
6. Certified Torsional Vibration Compatibility: Comply with NFPA 110.

C. Field quality-control reports. Field start up report and unit in-service documentation, including load bank test results if applicable.

#### **1.6 CLOSEOUT SUBMITTALS**

- A. Operation and Maintenance Data: For packaged engine generators to include in emergency, operation, and maintenance manuals. Include manufacturer's recommended maintenance and periodic testing plan in accordance with NFPA 110, Chapter 8.
- B. Furnish extra materials and that are packaged with protective covering for storage and identified with labels describing contents.

#### **1.7 QUALITY ASSURANCE**

A. The generator set covered by these specifications shall be designed, tested, rated, assembled and installed in accordance with all applicable standards below:

1. CSA C22.2, No. 14-M91 Industrial Control Equipment.
2. CSA C22.2, No. 100 Motors and Generators
3. CSA 282-15
4. EN 61000-6
5. EN 55011
6. FCC Part 15 Subpart B
7. ISO 8528
8. IEC 61000
9. UL 508
10. UL 2200
11. UL 142
12. UL 6200
13. Designed to allow for installed compliance to NFPA 37, NFPA 70, NFPA 99 and NFPA 110

B. Manufacturer Qualifications:

1. Current certificate holder for ISO 9001 compliance.
2. The power system shall be produced by a manufacturer who has produced this type of equipment for a period of at least 25 years and who maintains a service organization of factory-authorized generator technicians available twenty-four hours a day throughout the year.
3. Manufacturing and assembly of products must be done in the United States using domestically sourced materials to the extent practical.

C. Manufacturer's Startup & Maintenance Representative Qualifications: An authorized representative who is trained and certified by the manufacturer on stationary power systems.

#### **1.8 WARRANTY**

A. Manufacturer's Warranty: Manufacturer agrees to repair or replace components of packaged engine generators and associated auxiliary components that fail in materials or workmanship within specified warranty period.

1. Warranty: Two (2) - Year Comprehensive from date of Substantial Completion.
2. A Comprehensive Warranty is defined as the manufacturer covering replacement parts, labor, and limited technician travel costs for covered warranty repairs during the listed warranty period. A Limited warranty is defined as the manufacturer covering replacement parts, labor, and limited technician travel costs for the first 2 years and then replacement parts for the remainder of the listed warranty period.

## **PART 2 - PRODUCTS**

### **2.1 MANUFACTURERS**

- A. Basis-of-Design Product: Subject to compliance with requirements, provide & deliver:  
Generac Power Systems, Inc.; 250 kW. 14.2L with a K0250124Y21 - 250kW alternator. The Three Phase generator shall be rated for 250 kW at 208 volts and 60 Hz, at 0.8 power factor lagging while operating at a maximum ambient temperature of 104 Fahrenheit and maximum altitude of 3500 feet above sea level without reduction in electrical output capacity. Comparable products by one of the following will also be considered:
1. Caterpillar, Inc.
  2. Cummins Power Generation.
- B. Source Limitations: Obtain packaged engine generators and auxiliary components from single source from single manufacturer. "Source Limitations: Obtain packaged engine generators and auxiliary components from single supplier. The equipment supplied and installed shall meet the requirements of NEC and all applicable local codes and regulations. All equipment shall be new, of current production. There shall be one source responsibility for warranty; parts and service through a local representative with factory certified service personnel.
- C. Requests for substitutions shall be made a minimum of ten (10) days prior to bid date. Manufacturers catalog data and a completed generator sizing model using the proposed manufacturer's generator sizing software shall accompany each request and authorized acceptance shall be addenda only. Should any substitutions be made, the contractor shall bear responsibility for the installation, coordination and operation of the system as well as any engineering and redesign costs, which may result from such substitutions.

### **2.2 PERFORMANCE REQUIREMENTS**

- A. Seismic – non-OSHPD: Provide materials, bracing, and mounting to ensure generator will withstand, and continue to operate, through a seismic event. Present seismic calculations and certificate for the specific model generator in accordance with the relevant IBC and ASCE standard. This will include drawings of the generator and mounting details. Seismic Performance: Engine generator housing, sub-base fuel tank, engine-generator assembly, batteries, battery racks, silencers, sound attenuating equipment, accessories, and components to withstand the effects of earthquake motions determined in accordance with ASCE/SEI 7 when required on the project.
- B. NFPA Compliance:
1. Comply with NFPA 37.
  2. Comply with NFPA 70.
  3. Comply with NFPA 99.
  4. Comply with NFPA 110 requirements for Level 1 EPSS.
- C. UL Compliance: Engine generator assembly and factory enclosure (if provided) shall be UL 2200 listed.
- D. Engine Exhaust Emissions: Comply with applicable US EPA, State and Local Government requirements. Spark-ignited Stationary Emergency: Engines shall be certified by the manufacturer to comply with 40 CFR Part 60 Subpart JJJJ, Table 1, Emission Standards for Stationary Emergency SI Engines and Table 2, Requirements for Performance Tests.

### **2.3 ENGINE GENERATOR ASSEMBLY DESCRIPTION**

- A. Factory-assembled and -tested, water-cooled engine, with brushless generator and accessories.
- B. Electrical Components, Devices, and Accessories: Listed and labeled as defined in NFPA 70, by a qualified testing agency, and marked for intended location and use.
- C. Power Rating: Standby.
- D. Service Load: The generator set shall be a Generac model 250 kW. 14.2L with a K0250124Y21 - 250kW alternator. It shall provide 250 kW and 312.5 kVA while operating at the maximum ambient operating temperature and elevation specified in the project documents.
- E. Power Factor: 0.8 lagging.
- F. Frequency: 60 Hz.
- G. Voltage: 208 Volts ac.
- H. Phase: Three Phase, Four Wire.
- I. Induction Method: Naturally aspirated or Turbocharged.
- J. Governor: Adjustable isochronous, with speed sensing.
- K. Mounting Frame: Structural steel framework to maintain alignment of mounted components without depending on concrete foundation. Provide lifting attachments sized and spaced to prevent deflection of base during lifting and moving.
- L. Nameplates: For each major system component to identify manufacturer's name, model and serial number of component.
- M. Engine Generator Performance:
  - 1. Steady-State Voltage Operational Bandwidth: 3 percent of rated output voltage from no load to full load.
  - 2. Transient Voltage Performance: Not more than 10.00 percent variation for 50 percent step-load increase or decrease at unity power factor. Voltage shall recover and remain within the steady-state operating band within three seconds.
  - 3. Steady-State Frequency Operational Bandwidth: 0.5 percent of rated frequency from no load to full load.
  - 4. Steady-State Frequency Stability: When system is operating at any constant load within the rated load, there shall be no random speed variations outside the steady-state operational band and no hunting or surging of speed.
  - 5. Transient Frequency Performance: Less than 3.0 Hertz variation for 50 percent step-load increase or decrease at unity power factor. Frequency shall recover and remain within the steady-state operating band within five seconds.
  - 6. Output Waveform: At no load, harmonic content measured line to line or line to neutral shall not exceed 5 percent total and 3 percent for single harmonics. Telephone influence factor, determined in accordance with NEMA MG 1, shall not exceed 50 percent.
  - 7. Sustained Short-Circuit Current: For a three-phase, bolted short circuit at system output terminals, system shall supply a minimum of 300 percent of rated full-load current for not less than 10 seconds and then clear the fault automatically, without damage to generator system components.
  - 8. Start time to comply with NFPA system requirements.

### **2.4 ENGINE PERFORMANCE**

- A. Fuel: Natural gas shall be "pipeline grade" meeting the following conditions:
  - 1. Methane number 80 or greater.



2. High heating value shall be within the range of 950 - 1,150 BTU/scf.
  3. Hydrogen sulfide shall not exceed 0.3 g/100 scf.
  4. Total sulfur shall not exceed 20 g/100 scf.
  5. Water vapor content shall not exceed 0.32 g/100 scf.
- B. Rated Engine Speed: 1800 rpm.
- C. Lubrication System to be engine mounted.
1. Oil filter shall be engine-mounted replaceable cartridge type with integral bypass valve, in accordance with manufacturer recommendations.
  2. Thermostatic Control Valve: Control flow in system to maintain optimum oil temperature. Unit shall be capable of full flow and is designed to be fail-safe.
  3. Crankcase Drain: Arranged for complete gravity drainage to an easily removable container with no disassembly and without use of pumps, siphons, special tools, or appliances.
- D. Jacket Coolant Heater: Jacket water heater shall be sized per NFPA110 and UL listed to ensure that genset will start within the specified time period and ambient conditions.
- E. Integral Cooling System: Closed loop, liquid cooled, with radiator factory mounted on engine generator set mounting frame and integral engine-driven coolant pump.
1. Coolant: Solution of 50 percent ethylene-glycol-based antifreeze and 50 percent water, with anticorrosion additives as recommended by engine manufacturer.
  2. Expansion Tank: Constructed of welded steel plate and rated to withstand maximum closed-loop coolant system pressure for engine used. Equip with gauge glass and petcock.
  3. Temperature Control: Self-contained, thermostatic-control valve modulates coolant flow automatically to maintain optimum constant coolant temperature as recommended by engine manufacturer.
  4. Maximum Ambient Operating Temperature on Radiator: 104 degrees F (40 degrees C).
  5. Coolant Hose: Flexible assembly with inside surface of nonporous rubber and outer covering of aging-, UV-, and abrasion-resistant fabric.
    - a. Rating: 50-psig (345-kPa) maximum working pressure with coolant at 180 deg F (82 deg C), and noncollapsible under vacuum.
    - b. Meets SAE 100R1A Type S, EN853 1SN, ISO 1436-1 Type 1SN
    - c. a Fittings: Flanges or steel pipe nipples with clamps to suit piping and equipment connections.
- F. Muffler/Silencer:
1. Critical type, sized as recommended by engine manufacturer and selected with exhaust piping system to not exceed engine manufacturer's engine backpressure requirements.
- G. Air-Intake Filter: Heavy duty, engine-mounted air cleaner with replaceable dry-filter element and "blocked filter" indicator.
- H. Starting System: 12 or 24-V electric, with negative ground.
1. Cranking Cycle: As required by NFPA 110 for system level specified.
  2. Battery: Lead acid, with capacity within ambient temperature range specified in "Performance Requirements" Article to provide specified cranking cycle as required by NFPA 110 for system level specified.
  3. Battery-Charging Alternator: Factory mounted on engine with solid-state voltage regulation and 35 minimum continuous rating.
  4. Battery Charger: Current-limiting, automatic-equalizing, and float-charging type designed for lead-acid batteries. Unit shall comply with UL 1236 and NFPA 110 Section 5.6.4.6 for Level 1 systems.:
  5. Battery Warmer Pads.

2.5 FUEL SYSTEM – NATURAL GAS

- A. Comply with NFPA 37.
- B. Operating Pressure: 7 inches of water column.
- C. Flowrate: Maximum gas flow demand at 100% load: 3180 cubic feet per hour.
- D. Provide optional NPT flexible Fuel Line, Ships Loose

2.6 CONTROL AND MONITORING

- A. Automatic Starting System Sequence of Operation: When mode-selector switch on the control and monitoring panel is in the automatic position, remote-control contacts in one or more separate automatic transfer switches initiate starting and stopping of engine generator. When mode-selector switch is switched to the on position, engine generator starts. The off position of same switch initiates engine generator shutdown. When engine generator is running, specified system or equipment failures or derangements automatically shut down engine generator and initiate alarms.
- B. Manual Starting System Sequence of Operation: Switching on-off switch on the generator control panel to the on position starts engine generator. The off position of same switch initiates engine generator shutdown. When engine generator is running, specified system or equipment failures or derangements automatically shut down engine generator and initiate alarms.
- C. Provide minimum run time control set for 15 minutes with override only by operation of a remote emergency-stop switch.
- D. Control panel must comply with UL 6200. The controller shall meet ASTM B117 (salt spray test).
- E. Remote Connectivity: Controller shall be capable of remote connectivity via RS485]. Remote connectivity shall be provided by a physically separate module that can be secured, access limited, and/or physically removed to restrict and/or completely isolate the generator system from any outside control or monitoring.
- F. Connection to Building Management: Provide connections for data transmission of indications to remote data terminals via Modbus.
- G. Environmentally Hardened Design: Open circuit boards, edge cards, and PC ribbon cable connections are unacceptable.
- H. PCB Construction: Circuit boards with surface-mounted components to provide vibration durability. Circuit boards utilizing large capacitors or heat sinks must utilize encapsulation methods to securely support these components.
- I. Configuration:
  - 1. Operating and safety indications, protective devices, basic system controls, and engine gauges shall be grouped in a common control and monitoring panel mounted on the engine generator. Mounting method shall isolate the control panel from engine generator vibration. Panel powered from the engine generator battery.
- J. Control and Monitoring Panel:
  - 1. Digital engine generator controller with integrated touch screen, controls, and microprocessor, capable of local and remote control, monitoring, and programming, with battery backup.
  - 2. Instruments: Located on the control and monitoring panel and viewable during operation.
    - a. Engine lubricating-oil pressure gauge.
    - b. Engine-coolant temperature gauge.

- c. DC voltmeter (alternator battery charging).
  - d. Running-time meter.
  - e. AC voltmeter, for each phase.
  - f. AC ammeter, for each phase.
  - g. AC frequency meter.
  - h. Generator-voltage adjusting feature.
3. Controls and Protective Devices: Controls, shutdown devices, and common alarm indication, including the following:
- a. Cranking control equipment.
  - b. Run-Off-Auto switch.
  - c. Control switch not in automatic position alarm.
  - d. Overcrank alarm.
  - e. Overcrank shutdown device.
  - f. Low-water temperature alarm.
  - g. High engine temperature pre-alarm.
  - h. High engine temperature.
  - i. High engine temperature shutdown device.
  - j. Overspeed alarm.
  - k. Overspeed shutdown device.
  - l. Low fuel main tank.
    - 1) Low-fuel-level alarm shall be initiated when the level falls below that required for operation for duration required for the indicated EPSS class.
  - m. Coolant low-level alarm.
  - n. Coolant low-level shutdown device.
  - o. Coolant high-temperature prealarm.
  - p. Coolant high-temperature alarm.
  - q. Coolant low-temperature alarm.
  - r. Coolant high-temperature shutdown device.
  - s. EPS load indicator.
  - t. Battery high-voltage alarm.
  - u. Low cranking voltage alarm.
  - v. Battery-charger malfunction alarm.
  - w. Battery low-voltage alarm.
  - x. Lamp test.
  - y. Contacts for local and remote common alarm.
  - z. Remote manual stop shutdown device.
  - aa. Total engine run hours, non-resettable.
  - bb. Engine generator metering, including voltage, current, hertz, kilowatt, kilovolt ampere, and power factor.
- K. Engine Generator Metering: Comply with Section 260913 "Electrical Power Monitoring and Control."
- L. External Alarm & Status Relays: Provide a separate terminal block, factory wired to Form C dry contacts, for each alarm and status condition required by Building Management or other external systems as shown on electrical drawings.
- M. Common Remote Panel with Common Audible Alarm: Include necessary contacts and terminals in control and monitoring panel. Remote panel shall be powered from the engine generator battery.

- N. Remote Alarm Annunciator: An LED indicator light labeled with proper alarm conditions shall identify each alarm event, and a common audible signal shall sound for each alarm condition. Silencing switch in face of panel shall silence signal without altering visual indication. Connect so that after an alarm is silenced, clearing of initiating condition will reactivate alarm until silencing switch is reset. Cabinet and faceplate are surface mounting type to suit mounting conditions indicated.
1. Overcrank alarm.
  2. Low water-temperature alarm.
  3. High engine temperature pre-alarm.
  4. High engine temperature alarm.
  5. Low lube oil pressure alarm.
  6. Overspeed alarm.
  7. Low fuel main tank alarm.
  8. Low coolant level alarm.
  9. Low cranking voltage alarm.
  10. Contacts for local and remote common alarm.
  11. Audible-alarm silencing switch.
  12. Air shutdown damper when used.
  13. Run-Off-Auto switch.
  14. Control switch not in automatic position alarm.
  15. Fuel tank derangement alarm.
  16. Fuel tank high-level shutdown of fuel supply alarm.
  17. Lamp test.
  18. Low-cranking voltage alarm.
  19. Generator overcurrent-protective-device not-closed alarm.
- O. Remote Emergency-Stop Switch: Provide remote emergency stop switch (Red Mushroom-Type, Exterior Surface Mount). Electrical contractor to coordinate exact location with engineer and local AHJ. Ships loose for field mounting.
- P. Engine Run Relay: The generator set shall be provided with a run relay which shall provide a double-pole, double-throw relay with 10-amp/ 250 VAC contacts to indicate that the generator is running. The run relay dry contacts can be used for energizing or de-energizing customer devices while the generator is running (e.g. louvers, indicator lamps, etc.)
- Q. Data Logging:
1. Event Logging – the controller keeps a record of up to 8,000 events with date and time locally for warning and shutdown faults. This event log can be downloaded onto a USB storage device or onto a PC through the service program.
  2. Event Snapshot – the control system shall capture 15 seconds of critical data around the time a fault or warning. This data shall be viewable on the controller and downloadable.
  3. Data Logging – the controller shall allow customized parameters to be logged based on a start trigger from the controller interface.
    - a. The parameters are selectable from all monitored parameters.
    - b. The sample period shall be configurable from 1 second to 1 day.
    - c. The collected data shall be stored on a USB storage device plugged into the control panel.

## 2.7 GENERATOR OVERCURRENT AND FAULT PROTECTION

- A. Overcurrent protective devices shall be coordinated to optimize selective tripping when a short circuit occurs.

1. Overcurrent protective devices for the entire EPSS shall be coordinated to optimize selective tripping when a short circuit occurs. Coordination of protective devices shall consider both utility and EPSS as the voltage source.
2. Overcurrent protective devices for the EPSS shall be accessible only to authorized personnel.

**B. Generator Overcurrent Protective Device:**

1. Unit mounted circuit breakers. Rating, ampacity, accessories, as shown on drawings or as listed below:
  - a. 800 amp @ 208V/3-phase
2. Molded-case circuit breaker, electronic-trip type; Adjustable 80-95 percent rated; complying with UL 489:
  - a. Tripping Characteristics: Adjustable long-time and short-time delay and instantaneous.
  - b. Trip Settings: Selected to coordinate with generator thermal damage curve.
  - c. Shunt Trip: Connected to trip breaker when engine generator is shut down by other protective devices.
  - d. Mounting: Adjacent to, or integrated with, control and monitoring panel.

**C. Generator Controller Integrated Alternator Protective Functions:**

1. Short-time I<sup>2</sup>t function : Generator controller-based function shall continuously monitor current level in each phase of alternator output, integrate alternator heating effect over time, and predict when thermal damage of alternator will occur. As overcurrent heating effect on the alternator approaches the thermal damage point of the unit, protector switches the excitation system off, opens the generator disconnect device, and shuts down the engine generator. When signaled by generator protector or other engine generator protective devices, a shunt-trip device in the generator disconnect switch shall open the switch to disconnect the generator from load circuits.
2. Long-time function: Initiates a generator overload alarm when generator has operated at an overload equivalent to 110 percent of full-rated load for 60 seconds. Indication for this alarm is integrated with other engine generator malfunction alarms. Contacts shall be available for load shed functions.
3. Short-circuit fault clearing: Under single- or three-phase fault conditions, regulates generator to 300 percent of rated full-load current for up to 10 seconds.
4. Senses clearing of a fault by other overcurrent devices and controls recovery of rated voltage to avoid overshoot.
5. Ground Fault Indication: Comply with NFPA 70, "Emergency System" signals for ground fault. Indicate ground fault with other engine generator alarm indications.
6. Ground Fault Protection: Comply with NFPA 70, section 215 "Feeder Ground-Fault Protection of Equipment". When configured for ground fault protection; trip generator protective device(s) on ground fault."
7. Arc Flash Energy Reduction: Comply with NFPA 70 Article 240.87 for Arc Energy Reduction for circuit breakers 1200A and greater. Energy-reducing maintenance switch with local status indicator. Instantaneous override that is less than the available arcing current.

**2.8 GENERATOR, EXCITER, AND VOLTAGE REGULATOR**

- A. Comply with NEMA MG 1.



- B. Drive: Generator shaft shall be directly connected to engine shaft. Exciter shall be rotated integrally with generator rotor.
- C. Electrical Insulation: Class H.
- D. Stator-Winding Leads: Brought out to terminal box to permit future reconnection for other voltages if required.
- E. Range: Provide range of output voltage by adjusting the excitation level.
- F. Construction shall prevent mechanical, electrical, and thermal damage due to vibration, overspeed up to 125 percent of rating, and heat during operation at 110 percent of rated capacity. Stator shall be skewed construction to minimize harmonic voltage distortion.
- G. Enclosure: Drip proof.
- H. Instrument Transformers: Mounted within generator enclosure.
- I. Voltage Regulator:
  - 1. Voltage Regulator: Solid-state type, separate from exciter. The digital voltage regulator shall be microprocessor based with fully programmable operating and protection characteristics. The regulator shall maintain steady-state generator output voltage within +/- 0.25% for any constant load between no load and full load. The regulator shall be capable of sensing true RMS. The regulator shall provide an adjustable Volts/Hz slope regulation characteristic in order to optimize voltage and frequency response for site conditions.
  - 2. Alternator Excitation: Permanent Magnet Generator (PMG) shall provide excitation power for optimum motor starting and short circuit performance.
  - 3. The generator must accept rated load in one-step.
  - 4. Calculated Transient Voltage Performance: Motor starting performance and voltage dip determinations shall be based on the complete generator assembly. Voltage dip shall not exceed 3.3 percent based on the largest project block load, as determined by manufacturer's sizing program.
  - 5. System Transient Voltage Performance: Alternator shall be capable of supplying 557 sKVA with a voltage dip not more than 35% at 0.3 starting power factor. Sustained voltage dip data or manufacturer-published SKVA numbers based on unity PF alternator-only dynamometer testing will not be accepted.
  - 6. Calculated Transient Frequency Performance: Transient frequency dip performance shall be based on the complete generator set. Maintain frequency within 1.0 percent based on largest project block load, as determined by manufacturer's sizing program.
- J. Strip Heater: Thermostatically controlled unit arranged to maintain stator windings above dew point. The strip heater shall be wired directly to the incoming power distribution panel or load center.
- K. Windings: Two-thirds pitch stator winding and fully linked amortisseur winding.

**2.9 OUTDOOR ENGINE GENERATOR ENCLOSURE**

- A. Basis of design is a Sound Level 1.
- B. Generator packaged within manufacturer's weather protective, sound attenuated enclosure. Enclosure and generator set shall be UL 2200 Listed as a system.
- C. Enclosure Construction: Minimum 14 gauge construction. Roof construction shall be raised-seam, gasket-free interlocking panels. Rivets shall not be used on external painted surfaces. Design shall be rodent resistant.

- D. Doors shall be equipped with lift-off pin and sleeve type hinges to allow access to the engine, alternator, and control panel. Hinges shall be adjustable for door alignment. Hinges and all exposed fasteners shall be stainless steel. Each door shall be equipped with minimum 2-point latching mechanism and identical keys. Perimeter of all door openings shall include polyethylene gasket.
- E. Upward discharging exhaust hood for engine cooling airflow and exhaust.
- F. Engine exhaust silencer mounted within enclosure discharge hood.
- G. Enclosure Finish: Electrostatic applied powered paint, baked and finished to manufacturer's specifications. Finish system shall be subjected to the following tests:
  - 1. ASTM D1186 - 87; 2.5+ mil Paint Thickness
  - 2. ASTM D3363 - 92a; Material Hardness
  - 3. ASTM D522 - B; Resistance to Cracking
  - 4. ASTM D3359 - B; Adhesion
  - 5. ASTM B117 D 1654; Resistant to Salt Water Corrosion
  - 6. ASTM D1735 D 1654; Resistant to Humidity
  - 7. ASTM 2794 93 (2004); Impact Resistance
  - 8. SAE J1690 - UV Protection"
- H. Enclosure Color: Manufacturer's standard color, or custom color matched based on architect's design with color sample provided to generator manufacturer.
- I. Wind Rating: Enclosure shall be constructed to attain basic wind speed rating of 110 MPH; WIF 1.15, Exposure Category "C", Building Classification "Enclosed", Topographic Factor Kzt = 1. Wind Design Pressures: windward, 20.6 lb/ft<sup>2</sup>; leeward, -12.9 lb/ft<sup>2</sup>; roof, -18.0 lb/ft<sup>2</sup>."
- J. Snow Load Rating: Minimum 70 pounds per square foot.
- K. Engine-Cooling Airflow through Enclosure: Maintain temperature rise of system components within required limits when unit operates at 110 percent of rated load for two hours with ambient temperature at top of range specified in system service conditions.
- L. Sound Insulation: Enclosure and air discharge hood completely lined with reflective silver mylar faced sound attenuating closed cell foam that meets UL 94 HF1 standards for flammability (FMVSS 302 test method). Roof sound insulation panels shall include additional mechanical retention.
- M. Sound Performance: The engine generator, while operating at full rated load, shall not exceed 77.80 dBA average measured at 23 ft (7 meters) from the engine generator in a free field environment.
- N. Louvers: Fixed-engine, cooling-air inlet and discharge. Stormproof and drainable louvers prevent entry of rain and snow.
- O. Convenience Outlet: Factory-wired convenience 120v duplex-outlet within enclosure, GFCI.
- P. Enclosure Heater: Provide thermostatically controlled space heater factory installed within enclosure designed to maintain minimum internal temperature at 40 deg F (4 deg C).

**2.10 VIBRATION ISOLATION DEVICES**

- A. Elastomeric Isolator Pads: Oil- and water-resistant elastomer or natural rubber, arranged in single or multiple layers, molded with a nonslip pattern and galvanized-steel baseplates of sufficient stiffness for uniform loading over pad area, and factory cut to sizes that match requirements of supported equipment for units with a ratings 750kw or below.
  - 1. Material: Standard neoprene separated by steel shims.

- B. Spring Isolators: Freestanding, steel, open-spring isolators with seismic restraint for units with a rating larger than 750kw.
  - 1. Housing: Steel with resilient vertical-limit stops to prevent spring extension due to wind loads or if weight is removed; factory-drilled baseplate bonded to 1/4-inch- (6-mm-) thick, elastomeric isolator pad attached to baseplate underside; and adjustable equipment-mounting and -leveling bolt that acts as blocking during installation.
  - 2. Outside Spring Diameter: Not less than 80 percent of compressed height of the spring at rated load.
  - 3. Minimum Additional Travel: 50 percent of required deflection at rated load.
  - 4. Lateral Stiffness: More than 80 percent of rated vertical stiffness.
  - 5. Overload Capacity: Support 200 percent of rated load, fully compressed, without deformation or failure.
  - 6. Minimum Deflection: 0.5.
- C. Vibration isolation devices shall not be used to accommodate misalignments or to make bends.

## **2.11 SOURCE QUALITY CONTROL**

- A. Prototype Testing: Factory test engine generator using same engine model, constructed of identical or equivalent components and equipped with identical or equivalent accessories.
  - 1. Tests: Comply with IEEE 115 and with NFPA 110, Level 1 Energy Converters.
- B. Project-Specific Equipment Tests: Before shipment, factory test engine generator and other system components and accessories manufactured specifically for this Project. Perform tests at rated load and power factor. Include the following tests:
  - 1. Test components and accessories furnished with installed unit that are not identical to those on tested prototype to demonstrate compatibility and reliability.
  - 2. Test generator, exciter, and voltage regulator as a unit.
  - 3. Full load run.
  - 4. Maximum power.
  - 5. Voltage regulation.
  - 6. Transient and steady-state governing.
  - 7. Single-step load pickup.
  - 8. Safety shutdowns.
  - 9. Report factory test results within 10 days of completion of test.

## **2.12 FINISHES**

- A. Indoor and Outdoor Enclosures and Components: Manufacturer's standard finish over corrosion-resistant pretreatment and compatible primer.

## **PART 3 - EXECUTION** - *Installation of the Generator Set will be performed by a licensed Electrical Contractor (E.C.), to be commissioned by the Owner*

### **3.1 EXAMINATION**

- A. Examine areas, equipment bases, and conditions, with Installer present, for compliance with requirements for installation and other conditions affecting packaged engine generator performance & installation.
- B. Examine roughing-in for piping systems and electrical connections. Verify actual locations of connections before packaged engine generator installation.
- C. Proceed with installation only after unsatisfactory conditions have been corrected.

### 3.2 PREPARATION

- A. Interruption of Existing Electrical Service: Do not interrupt electrical service to facilities occupied by Owner or others unless permitted under the following conditions and then only after arranging to provide temporary electrical service in accordance with requirements indicated:
  - 1. Notify Project Manager in advance of proposed interruption of electrical service.
  - 2. Do not proceed with interruption of electrical service without written permission.
- B. Electrical Contractor (E.C.) shall coordinate exact location of Generator Set, ATS, Remote Annunciator Panel, and Emergency Stop Switch with the Owner's Rep, Engineer, and local AHJ prior to rough-in.

### 3.3 **INSTALLATION** - *Installation of the Generator Set will be performed by a licensed Electrical Contractor (E.C.), to be commissioned by the Owner*

- A. Comply with NECA 1 and NECA 404.
- B. Comply with packaged engine generator manufacturers' written installation and alignment instructions and with NFPA 110.
- C. Equipment Mounting:
  - 1. Install packaged engine generators on cast-in-place concrete equipment bases or steel dunnage as indicated on drawings.
  - 2. Coordinate size and location of mounting bases for packaged engine generators with concrete trades for properly sized/configured concrete pad.
  - 3. Install unit with vibration isolation devices described in section 2.10.

### 3.4 **FIELD QUALITY CONTROL**

- A. Tests and Inspections: The supplier of the electric generating plant and associated items covered herein shall provide factory certified technicians to inspect the completed installation and to perform an initial startup inspection to include:
  - 1. Ensuring the engine starts (both hot and cold) within the specified time.
  - 2. Verification of engine parameters within specification.
  - 3. Verify no load frequency and voltage, adjusting if required.
  - 4. Test all automatic shutdowns of the engine-generator.
  - 5. Perform a load test of the electric plant, ensuring full load frequency and voltage are within specification by using building load.
- B. NFPA 110 Acceptance Tests: Perform tests required by NFPA 110 that are additional to those specified here, including, but not limited to, single-step full-load pickup test.
- C. Battery and Charger Tests:
  - 1. Measure charging voltage and voltages between available battery terminals for full-charging and float-charging conditions.
  - 2. Verify that measurements are within manufacturer's specifications."
- D. System Integrity Tests: Verify proper installation, connection, and integrity of each element of engine generator system before and during system operation. Check for air, exhaust, and fluid leaks.
- E. Coordinate tests with tests for transfer switches and run them concurrently.
- F. Operational Test: After electrical circuitry has been energized, start units to confirm proper motor rotation and unit operation for generator and associated equipment.
- G. Test and adjust controls and safeties. Replace damaged and malfunctioning controls and equipment.

- H. Remove and replace malfunctioning units and retest and reinspect as specified above.
- I. Retest: Correct deficiencies identified by tests and observations, and retest until specified requirements are met.
- J. Report results of tests and inspections in writing. Record adjustable relay settings and measured insulation resistances, time delays, and other values and observations.

**3.5 DEMONSTRATION**

- A. Generator supplier shall provide services of a factory-authorized service representative to train Owner's maintenance personnel to adjust, operate, and maintain packaged engine generators.

**3.6 MAINTENANCE SERVICE**

- A. Repair Service Capabilities:
  - 1. The generator set supplier shall maintain service parts inventory for the entire power system at a central location which is accessible to the service location 24 hours per day, 365 days per year. The manufacturer of the generator set shall maintain a central parts inventory to support the supplier, covering all the major components of the power system, including: engines, alternators, control systems, paralleling electronics, and power transfer equipment.
  - 2. The generator set shall be serviced by a local service organization that is trained and factory certified in generator set service. The supplier shall maintain an inventory of power system replacement parts in the local service location. Service vehicles shall be stocked with critical replacement parts. The service organization shall be on call 24 hours per day, 365 days per year. The service organization shall be physically located within 50 miles of the site.
  - 3. The manufacturer shall maintain model and serial number records of each generator set provided for at least 20 years.
- B. Preventative Maintenance Service Agreement: The supplier shall include as a line item adder in the proposal, a one-year maintenance service agreement. The maintenance shall be performed by factory authorized service technicians capable of servicing both the engine generator set(s) and the transfer switch(es). This agreement shall include semi-annual preventative maintenance visits to verify operation and/or complete the following:
  - 1. All periodic engine maintenance as recommended by the service manual.
  - 2. All electrical controls maintenance and calibrations as recommended by the manufacturer.
  - 3. All auxiliary equipment as a part of the emergency systems.
  - 4. The supplier shall guarantee emergency service.
  - 5. All expendable maintenance items are to be included in this agreement.
  - 6. A copy of this agreement and a schedule shall be provided in the submittal documents, detailing scope of work and preventative maintenance service visit interval.

**END OF SECTION**



## SECTION 26 3623

### AUTOMATIC TRANSFER SWITCH

#### PART 1 GENERAL

##### 1.01 SCOPE

- A. Furnish & deliver a new Automatic Transfer Switch (ATS), as described herein, to the Owner (Gaylord Community Schools = GGC) at the Board Office Early Childhood Center (BOECC) building located @ 615 South Elm Ave, Gaylord, MI 49735 – Contact Mr. David Parsell @ 989-731-5230.
  - 1. The Owner will be commissioning a licensed Electrical Contractor (E.C.) to install the Generator & ATS.
- B. Furnish Automatic Transfer Switch with number of poles, amperage, voltage, and withstand current ratings as shown on the plans and/or as described herein.
- C. Basis of design is a Generac TX Series Service Entrance Rated Automatic Transfer Switch, Open - Delayed/Programmed Transfer (3 position), 800 A, 3 Pole 4 Wire 208V, Transfer Switch in a NEMA 3R Enclosure. Automatic transfer shall consist of a mechanically held power transfer switch unit and a microprocessor controller, interconnected to provide complete automatic operation. All transfer switches and control panels shall be the product of the same manufacturer. **1.02 ACCEPTABLE MANUFACTURERS**
  - A. Basis of Design Automatic transfer switches shall be Generac TX Series.
  - B. Any alternative to the Basis of Design shall be submitted to the consulting engineer in writing at least 10 days prior to bid. Each alternate bid must list any deviations from this specification.

##### 1.03 CODES AND STANDARDS

- A. The automatic transfer switches and accessories shall conform to the requirements of:
  - 1. UL 1008 - Standard for Automatic Transfer Switches
  - 2. NFPA 70 - National Electrical Code (2017 version and later for start circuit monitoring)
  - 3. NEC Articles 700, 701, 702, 708
  - 4. NFPA 99 – Health Care Facilities
  - 5. NFPA 110 – Emergency and Standby Power Systems
  - 6. IEEE Standard 446 – IEEE Recommended Practice for Emergency and Standby Power Systems for Commercial and Industrial Applications
  - 7. NEMA Standards ICS10, MG1, MG250, ICS6, AB1
  - 8. ANSI C62.41
  - 9. International Standards Organization: ISO 8528, 9001.
  - 10. Where seismic rating and/or certification is required: IBC 2018, OSHPD

##### 1.04 RELATED REQUIREMENTS:

- A. Section 263213 "Packaged Spark Ignited Engine Generator Set" for the Generator Set also being Pre-Purchased by the Owner for installation by E.C.

##### 1.05 SUBMITTALS:

- A. Product Data: Provide catalog sheets showing voltage, switch size, ratings and size of switching and overcurrent protective devices, operating logic, short circuit ratings, dimensions, and enclosure details.
- B. Manufacturer's Instructions: Indicate application conditions and limitations of use stipulated by product testing agency. Include instructions for storage, handling, protection, examination, preparation, and installation of product.
- C. Operation Data: Instructions for operating equipment under emergency conditions when engine generator is running.
- D. Maintenance Data: Routine preventative maintenance schedule. List special tools, maintenance materials, and replacement parts.

**1.06 FACTORY SERVICES:**

- A. The transfer switch manufacturer shall perform a complete operational test on the transfer switch prior to shipping from the factory. A certified test report shall be available on request. Test process shall include calibration of voltage sensors
- B. Manufacturer's representative/supplier shall provide startup assistance to the Owner's E.C. installer and also Owner Training to the Owner after substantial completion installation by E.C.
- C. Manufacturer's representative/supplier shall provide Maintenance Service agreement for Service and Maintenance of the Automatic Transfer Switch to the Owner for one (1) – year from date of substantial completion installation by E.C.

**PART 2 PRODUCTS**

**2.01 MECHANICALLY HELD TRANSFER SWITCH**

- A. The basis of design is the Generac TX Series Transfer switch that utilizes a knife blade mechanically latching design with maintenance free contacts. The transfer switch unit shall be electrically operated and mechanically held. The open transition switch shall be mechanically interlocked to ensure only one of two possible positions, normal or emergency. The delayed transition switch shall be mechanically interlocked to ensure one of three possible positions, normal and emergency.
- B. The switch shall be positively locked and unaffected by momentary outages so that contact pressure is maintained at a constant value and temperature rise at the contacts is minimized for maximum reliability and operating life.
- C. All main contacts shall be silver composition. Switches shall have segmented blow-on construction for high withstand current capability and be protected by separate arcing contacts.
- D. A manual operating handle shall be provided for maintenance purposes.
- E. Designs utilizing components of or parts thereof which are not intended for continuous duty, repetitive switching, or transfer between two active power sources are not acceptable.
- F. Where neutral conductors must be switched, the ATS shall be provided with fully rated neutral transfer contacts.
- G. Where neutral conductors are to be solidly connected, a neutral terminal plate with fully rated AL-CU pressure connectors shall be provided.
- H. The switch shall be capable of the following methods of transfer: Open with In-Phase transition only, Time Delay in Neutral transition, or In-Phase transition with a default to Time Delay in Neutral.
- I. The transfer switch shall have a Seismic Certification to the requirements of the international Building Code of electrical equipment.

## 2.02 ATS CONTROL WITH INTEGRATED USER INTERFACE PANEL

- A. The basis of design is the Generac TXC-100 Controller with Integrated User Interface Panel which is voltage agnostic for service purposes removing the need for technicians to carry and support control panels for every available voltage. Any manufacturers that provide a controller or control panel that does not meet this requirement should notify the consulting engineer before bidding.
- B. The controller shall be connected to the transfer switch by an interconnecting wiring harness. The harness shall include a keyed disconnect plug to enable the controller to be disconnected from the transfer switch for routine maintenance.
- C. The controller shall direct the operation of the transfer switch. The controller's sensing and logic shall be controlled by a built-in microprocessor for maximum reliability, minimum maintenance, and include standard on-board serial communications capability.
- D. A user accessible USB port shall be provided to facilitate firmware updates, uploading of switch operational parameters, downloading of event history and switch operational statistics. This USB port shall be front accessible without opening the ATS door.
- E. The controller shall provide single and three phase capability for maximum application flexibility and minimal spare part requirements. Voltage sensing shall be true RMS type and shall be accurate to  $\pm 1\%$  of nominal voltage. Frequency sensing shall be accurate to  $\pm 0.1\text{Hz}$ . Time delay settings shall be accurate to  $\pm 0.5\%$  of the full-scale value of the time delay. The panel shall be capable of operating over a temperature range of  $-20$  to  $+70$  degrees C.
- F. The controller power supply shall be field-configurable to operate on 120V through 480V systems without the need for transformers.
- G. Control logic shall be backed up with a rechargeable, user-replaceable lithium-ion battery that shall also maintain control power for up to 60 minutes in the event no source power is available.
- H. The controller shall be enclosed with a protective cover and be mounted separately from the transfer switch unit for safety and ease of maintenance.
- I. The controller shall meet or exceed the requirements for Electromagnetic Compatibility (EMC) as follows:
  - 1. IEC 61000 – 4 – 3 Radiated RF Field Immunity
  - 2. IEC 61000 – 4 – 4 Electrical Fast Transient/Burst Immunity
  - 3. IEC 61000 – 4 – 5 Surge Immunity
  - 4. IEC 61000 – 4 – 6 Conducted RF Immunity
  - 5. IEC 61000 – 4 -11 Voltage Dips and Interruptions
  - 6. EN 61000 – 6 - 2 Industrial Immunity Requirements EN 61000-6-4 - Radiated Emissions
  - 7. EN 61000 – 6 - 4 Conducted Emissions
  - 8. CISPR 11 – Conducted RF Emissions and Radiated RF Emissions

## 2.03 ENCLOSURE

- A. The basis of design is a Generac TX Series Service Entrance Rated Transfer Switch in a NEMA 3R enclosure, with dimensions no larger than 89.8 Inches in Height, 38 Inches in Width, and 24.5 Inches In Depth. Larger enclosures than the basis of design will need to be approved by the Consulting Engineer to ensure there is enough wall space and appropriate clearance. Provide a temperature and humidity controlled anti-condensation heater for all NEMA 3R and 4X enclosed units. Heater cover to indicate a hot surface.
- 2. The switch mechanism and controller shall be easily removable from the enclosure in the field. This requirement will facilitate easy single-person installation on wall mounted switches, conduit fitting, and

cable pulling while minimizing risk of damage and/or contamination of ATS components during the installation process.

3. Controller human interface and USB port shall be visible and operational through the enclosure door, without the need for personal protective equipment, avoiding arc-flash hazard for routine checks of the controller status.

## PART 3 OPERATIONS

### 3.01 CONTROLLER DISPLAY AND KEYPAD

- A. A backlit four-line graphical LCD display and human interface shall be an integral part of the controller for viewing all available data and setting desired operational parameters. Operational parameters shall also be available for viewing and limited control through the RS-485 communications port.
- B. All instructions and controller settings shall be easily accessible, readable, and accomplished without the use of codes, calculations, or instruction manuals.
- C. The user interface shall be provided with test/reset modes. The test mode will simulate a normal source failure. The reset mode shall bypass the time delays on either transfer to emergency or retransfer to normal.
- D. The following parameters shall only be adjustable only by authorized service personnel:
  1. Nominal line voltage and frequency
  2. Single or three phase sensing on normal
  3. Transfer operating mode configuration, (open transition, or delayed transition)

### 3.02 VOLTAGE AND FREQUENCY SENSING

- A. Voltage and frequency on both the normal and emergency sources (as noted below) shall be continuously monitored, with the following pickup, dropout, and trip settings capabilities; values shown as percentage of nominal unless otherwise specified.

Voltage and Frequency Settings	Range	Default Value
Source 1 (Normal) is Genset	Yes or No	No
Source 1 Undervoltage Dropout	50-97%	85%
Source 1 Undervoltage Pickup	52-99%	90%
Source 1 Overvoltage Dropout	105-120%	110%
Source 1 Overvoltage Pickup	103-118%	105%
Source 1 Underfrequency Dropout	90-97%	90%
Source 1 Underfrequency Pickup	91-99%	95%

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Source 1 Overfrequency Dropout	103-110%	105%
Source 1 Overfrequency Pickup	101-109%	102%
Source 1 Voltage Imbalance Drop	5-20%	5%
Source 1 Voltage Imbalance Pickup	3-18%	3%
Source 1 Warmup Time	0-1800s	3s
Source 1 Cooldown Time	0-1800s	1800s
Source 1 Minimum Run Time	300-1800s	1200s
Source 2 is Generator	Yes or No	Yes
Source 2 Undervoltage Dropout	50-97%	85%
Source 2 Undervoltage Pickup	52-99%	90%
Source 2 Overvoltage Dropout	105-120%	110%
Source 2 Overvoltage Pickup	103-118%	105%
Source 2 Underfrequency Dropout	90-97%	90%
Source 2 Underfrequency Pickup	91-99%	99%
Source 2 Overfrequency Dropout	103-110%	105%
Source 2 Overfrequency Pickup	101-109%	102%
Source 2 Voltage Imbalance Drop	5-20%	5%
Source 2 Voltage Imbalance Pickup	3-18%	3%
Source 2 Minimum Run Time	300-1800s	1200s
Source 2 Warmup Time	0-1800s	3s
Source 2 Cooldown Time	0-1800s	1800s
Phase Rotation Check	ABC, CBA, OFF	ABC
Supply Overvoltage	350 VAC	Fixed
Manual Return to Normal	Yes or No	
<b>Time Delay Settings</b>		
Transfer to Emergency	120s max	30s
Re-transfer to Normal	1,800s max	1,800s

Time Delay Neutral	120s max	30s
Engine Cool Down	300-1,800s	1,800s
Delayed Transition Time	120s max	120s
Elevator Signal	120s max	30s
In Phase Transfer	Yes or No	
In Phase Synchronization	Time 60-3600s	300s
Preferred Source	S1, S2	S1
Voltage Imbalance Enable	Yes or No	
Voltage Imbalance Timeout	10-30s max	20s

- B. Repetitive accuracy of all settings shall be within 1% at +25C.
- C. Voltage and frequency settings shall be field adjustable in 1% increments either locally with the display and keypad or remotely via RS-485 communications port access.
- D. Source status screens shall be provided for both normal & emergency to provide digital readout of voltage and frequency.
- E. The backlit graphical display shall have multiple language capability. Languages can be selected from the user interface.

**3.03 TIME DELAYS**

- A. A **Line Interrupt** delay shall be provided to override momentary normal source outages, delay all transfer and engine starting signals; adjustable 0 to 120 seconds. It shall be possible to bypass the time delay from the controller user interface.
- B. An **Engine Warm Up** delay shall be provided for extended engine RPM stabilization where fast transfer to the emergency source is not required; adjustable 0 to 1,800 seconds. It shall be possible to bypass the time delay from the controller user interface.
- C. A **Transfer to Emergency** delay shall be provided for controlled sequencing of loads to the emergency source; adjustable from 0 to 120 seconds. It shall be possible to bypass the time delay from the controller user interface.
- D. A **Retransfer to Normal** delay shall be provided to ensure stability of the normal source, adjustable from 0 to 1,800 seconds. Time delay shall be automatically bypassed if the emergency source fails and normal source is acceptable.
- E. An **Engine Minimum Runtime** delay shall be provided to reduce nuisance starts when the normal source power is unstable but does not trigger a transfer to the emergency source, adjustable from 5 to 30 minutes. Operates in conjunction with Engine Cool Down delay.
- F. An **Engine Cool Down** delay shall be provided; adjustable 300 – 1,800 seconds.
- G. A **Delayed Transition** delay shall be provided to ensure sufficient time for motor voltage decay for transition between live sources; adjustable from 0 – 120 seconds.



- H. An **Elevator Signal Before Transfer** output signal shall be provided to drive an external relay for selective load disconnect control. The controller shall have the ability to activate an adjustable 0 to 120 second delay in any of the following modes:
  - 1. Prior to transfer only.
  - 2. Prior to and after transfer.
  - 3. Normal to emergency only.
  - 4. Emergency to normal only.
  - 5. Normal to emergency and emergency to normal.
  - 6. All transfer conditions or only when both sources are available.
- I. For special applications (i.e., three sources), the option to select the **Preferred Source**.
- J. All adjustable time delays shall be field adjustable without the use of special tools or software.

**TIME DELAY SUMMARY TABLE:**

Time Delay Description	Range	Default Value
Line Interrupt Delay	0 – 120 sec.	3 sec.
Engine Warm Up Delay	0 – 1,800 sec.	3 sec.
Transfer to Emergency	0 – 120 sec.	3 sec.
Retransfer to Normal	0 – 1,800 sec.	1,800 sec.
Engine Minimum Run Time	5 – 30 min.	5 min.
Engine Cool Down	300 – 1,800 sec.	1,800 sec.
Delayed Transition (Center Off Position)	0 – 120 sec.	120 sec.
Elevator Signal Before Transfer	0 – 120 sec.	0 sec.
Preferred Source	Normal (S1), Emerg. (S2)	Normal (S1)

**3.04 EXTERNAL CONTROL INTERFACES AND INDICATORS**

- A. Communications connectors, user interface and display shall be accessible and usable without presenting an arc-flash hazard.
- B. Customer inputs shall be optically isolated for wider compatibility with external systems. This will protect the controller from external surges and transient voltages.
- C. Surge Protection for the ATS controls shall be provided.
- D. Replaceable fuses to protect the power supply to the ATS control panel.
- E. A set of contacts rated 5 amps, 30 VDC shall be provided for a low-voltage **engine start** signal. The start signal shall prevent dry cranking of the engine by requiring the generator set to reach proper output and run for the duration of the Engine Minimum Runtime setting, regardless of whether the normal source restores before the load is transferred.
- F. Engine starting contacts shall facilitate start-circuit monitoring to comply with the 2017 and later versions of NFPA 70 Article 700.10 (D)(3).
- G. Four (4) sets of Form-C auxiliary contacts rated 10 amps, 250 VAC shall be provided to indicate the switch actuator position, including center-off for Time Delay Neutral switches or a Permissive (Emergency Inhibit) condition.

- H. A single **General Alarm** (summary alarm) indication shall light up the alert indicator and de-energize the configured common alarm output relay for external monitoring.
- I. LED indicating lights shall be provided; one to indicate when the ATS is connected to the normal source and one to indicate when the ATS is connected to the emergency source.
- J. LED indicating lights shall be provided and energized by controller outputs. The lights shall provide true source availability of the normal and emergency source, as determined by the voltage sensing trip and reset settings for each source.
- K. LED indicating light shall be provided to indicate switch not in automatic mode (manual).
- L. LED indicating light shall be provided to indicate any alarm condition.
- M. The controller shall have two programmable inputs and one programmable output as standard; with an optional expansion board to add up to four programmable input/outputs. Programmable I/O conditions shall include:

Programmable Output	Programmable Input
Source 1 – Two Wire Start	Permissive (Emergency Inhibit)
Source 2 – Two Wire Start	Remote Engine Fast Test
Engine Exercising	Remote Engine Normal Test
Engine Warmup	ATS Timer
Signal Before Transfer	Initiate Demand Response
General Alarm	
Source 1 Good	
Source 2 Good	

- N. System Status - The controller LCD display shall include a System Status screen which shall be accessible from any point in the menu system by depressing the “ESC” key until you arrive at the System Status screen. This screen shall display a clear description of the active operating sequences and switch position. Operational status information displayed shall include:
  - 1. Source 1 status (good or bad)
  - 2. Source 2 status (good or bad)
  - 3. Any active timer
  - 4. Permissive (Emergency Inhibit when active)

**3.05 Transfer and Exercise Controls**

- A. The following standard features shall be built into the controller, capable of being activated through keypad programming as required by the user:
  - 1. Provide the ability to select “commit/no commit to transfer” to determine whether the load should be transferred to the emergency generator if the normal source restores before the generator is ready to accept the load.
  - 2. An engine generator exercising timer shall be provided to configure daily, day of week, weekly, bi-weekly, or monthly testing of an engine generator set at a specified time of day with or without load for a programmable period (Engine Minimum Runtime).
  - 3. Terminals shall be provided for a remote contact to signal the ATS to transfer to emergency for remote test. Test signal can be enabled through the keypad or digital input. Transfer to emergency for demand response can be enabled by digital input.
  - 4. **For In-Phase Transfer Switch Designs:** An in-phase monitor shall be provided in the controller such that the transfer occurs with less than ten degrees phase angle difference between sources. The monitor shall

control transfer so that motor load inrush currents do not exceed normal starting currents and shall not require external control of power sources. In-phase switch transfer time shall not exceed 25ms.

5. **For Delayed Transition Transfer Switch Designs:** Terminals shall be provided for a remote contact to signal the ATS to load-shed (Permissive is removed) and move to a center-off position. When the load-shed signal is removed (Permissive is restored), the ATS shall reclose to the emergency. If normal source is good during load-shed the ATS shall transfer to and remain on normal source.

### 3.06 DATA LOGGING AND DIAGNOSTICS

- A. Controllers that require multiple screens to determine system status or display “coded” system status messages, which must be explained by references in the operator’s manual are not permissible.
  1. Controller & Contactor Health Monitoring with visual and auxiliary contact status shall be provided.
  2. Communications Interface – The controller shall be capable of interfacing, through a standard RS-485 serial communication port with a network of transfer switches.
  3. Data Logging – The controller shall have the ability to log data and to maintain the last 200 events, even in the event of total power loss. The following events shall be time and date stamped and maintained in a non-volatile memory:
    - a. Date, time and reason for transfer normal to emergency.
    - b. Date, time and reason for transfer emergency to normal.
    - c. Date, time and reason for engine start.
    - d. Date and time engine stopped.
    - e. Date and time emergency source available.
    - f. Date and time emergency source not available.

## PART 4 ADDITIONAL FEATURES AND ACCESSORIES

### 4.01 ADDITIONAL OPTIONAL FEATURES

- A. Line Interrupt Time Delay. An extended time delay on engine starting shall be provided. Adjustable from 0 to 120 seconds. Default set at 3 seconds.
- B. Integrated Metering with current transformers. Three phase ammeter with selector switch (with current transformers and shorting blocks) shall be provided
- C. Manual Retransfer to Generator. - Not Selected
- D. Permissive (Emergency Inhibit). - Not Selected
- E. Chicago Toolkit. - Not Selected
- F. Expanded Input/Output Module. Expandable Input/Output Board Module Includes: 4 Relay Outputs and 4 Optically Isolated Inputs.
- G. Pad lockable controller cover (Standard on NEMA 3R). Pad lockable user interface cover shall be provided with the ability to protect the user interface from the environment
- H. Temperature and Humidity Controlled Heater for NEMA 1. An enclosure heater strip shall be supplied inside the transfer switch enclosure and shall be controlled by an adjustable humidistat.
- I. Transient Voltage Surge Suppressor – A TVSS shall be provided with a surge current rating of 80ka per phase, high-performance EMI/RFI filtering, LED status indication via solid state diagnostics plus remote indication

contacts, built-in audible alarm, thermal and short circuit fusing and a short circuit current rating: 200k AIC, UL 1449 3rd Edition Listed, UL1449 Type 2 SPD, In=20kA.

- J. Remote Annunciator – Shipped Loose for installation/wiring by Electrical Contractor (E.C.). E.C. shall coordinate location of Remote Annunciator with Owner's Rep, Engineer, AHJ prior to rough-in.

## **PART 5 ADDITIONAL REQUIREMENTS**

### **5.01 WITHSTAND AND CLOSING RATINGS**

- A. The ATS shall be rated to close on and withstand the available RMS symmetrical short circuit current at the ATS terminals with the type of overcurrent protection shown on the plans. The basis of design for this project is a Generac TX Series Service Entrance Rated Automatic Transfer Switch with a 125kaic WCR Breaker Rating transfer switches from other manufacturers with ratings less than provided in this section will need to be approved by the Consulting Engineer to ensure compatibility with the project.
- B. Provide a temperature and humidity controlled anti-condensation heater for all NEMA 3R and 4X enclosed units. Heater cover to indicate a hot surface.
- C. The switch mechanism and controller shall be easily removable from the enclosure in the field. This requirement will facilitate easy single-person installation on wall mounted switches, conduit fitting, and cable pulling while minimizing risk of damage and/or contamination of ATS components during the installation process.
- D. Controller human interface and USB port shall be visible and operational through the enclosure door, without the need for personal protective equipment, avoiding arc-flash hazard for routine checks of the controller status.

### **5.02 TESTS AND CERTIFICATION**

- A. The complete ATS shall be factory tested to ensure proper operation of the individual components and correct overall sequence of operation and to ensure that the operating transfer time, voltage, frequency, and time delay settings are in compliance with the specification requirements.
- B. The ATS manufacturer shall be certified to ISO 9001: 2015 International Quality Standard and the manufacturer shall have third party certification verifying quality assurance in design/development, production, installation, and servicing in accordance with ISO 9001: 2015.

### **5.03 SERVICE REPRESENTATION**

- A. The ATS manufacturer shall support a service organization of company-employed personnel located throughout the contiguous United States. The service center's personnel must be factory trained and must be on call 24 hours a day, 365 days a year.
- B. The manufacturer shall maintain records of switch shipments, by serial number, for a minimum of 10 years.

### **5.04 WARRANTY**

- A. The basis of design is a Generac TX Series Service Entrance Rated Automatic Transfer Switch Comprehensive 2 Year Warranty.
- B. A Basic Warranty is defined as the manufacturer covering replacement parts for the listed amount of the warranty period.
- C. The Comprehensive Warranty is defined as the manufacturer covering replacement parts, labor, and limited technician travel costs for covered warranty repairs during the listed warranty period.
- D. The switch mechanism and controller shall be easily removable from the enclosure in the field. This requirement will facilitate easy single-person installation on wall mounted switches, conduit fitting, and cable pulling while minimizing risk of damage and/or contamination of ATS components during the installation process.

- E. Controller human interface and USB port shall be visible and operational through the enclosure door, without the need for personal protective equipment, avoiding arc-flash hazard for routine checks of the controller status.

**PART 6 - EXECUTION** - *Installation of the ATS will be performed by a licensed Electrical Contractor (E.C.), to be commissioned by the Owner*

**6.01 EXAMINATION**

- A. Examine areas, equipment bases, and conditions, with Installer present, for compliance with requirements for installation and other conditions affecting ATS performance & installation.
- B. Examine roughing-in for piping systems and electrical connections. Verify actual locations of connections before ATS installation.
- C. Proceed with installation only after unsatisfactory conditions have been corrected.

**6.02 PREPARATION**

- A. Interruption of Existing Electrical Service: Do not interrupt electrical service to facilities occupied by Owner or others unless permitted under the following conditions and then only after arranging to provide temporary electrical service in accordance with requirements indicated:
  - 1. Notify Project Manager in advance of proposed interruption of electrical service.
  - 2. Do not proceed with interruption of electrical service without written permission.
- B. Electrical Contractor (E.C.) shall coordinate exact location of Generator Set, ATS, Remote Annunciator Panel, and Emergency Stop Switch with the Owner's Rep, Engineer, and local AHJ prior to rough-in.

**6.03 INSTALLATION** - *Installation of the ATS will be performed by a licensed Electrical Contractor (E.C.), to be commissioned by the Owner.*

- A. Comply with NECA 1.
- B. Comply with ATS manufacturers' written installation and alignment instructions and with NFPA 110.
- C. Equipment Mounting:
  - 1. Install ATS on cast-in-place concrete equipment bases as indicated on drawings.
  - 2. Coordinate size and location of mounting bases, and conduit entries, for ATS & Remote Annunciator, with concrete trades for properly sized/configured concrete pad.

**6.04 FIELD QUALITY CONTROL**

- A. Tests and Inspections: The supplier of the ATS and associated items covered herein shall provide factory certified technicians to inspect the completed installation and to perform an initial startup inspection to include:
  - 1. Ensuring the ATS transfers within the specified time.
  - 2. Verification of ATS parameters within specification.
- B. Coordinate tests with tests for generator and run them concurrently.
- C. Test and adjust controls and safeties. Replace damaged and malfunctioning controls and equipment.
- D. Remove and replace malfunctioning units and retest and reinspect as specified above.
- E. Retest: Correct deficiencies identified by tests and observations, and retest until specified requirements are met.
- F. Report results of tests and inspections in writing. Record adjustable relay settings and measured insulation resistances, time delays, and other values and observations.

## **6.05 DEMONSTRATION**

- A. ATS supplier shall provide services of a factory-authorized service representative to train Owner's maintenance personnel to adjust, operate, and maintain ATS.

## **6.06 MAINTENANCE SERVICE**

- A. Repair Service Capabilities:
  - 1. The ATS supplier shall maintain service parts inventory for the entire power system at a central location which is accessible to the service location 24 hours per day, 365 days per year.
  - 2. The ATS shall be serviced by a local service organization that is trained and factory certified in generator set service. The supplier shall maintain an inventory of power system replacement parts in the local service location. Service vehicles shall be stocked with critical replacement parts. The service organization shall be on call 24 hours per day, 365 days per year. The service organization shall be physically located within 50 miles of the site.
  - 3. The manufacturer shall maintain model and serial number records of each ATS provided for at least 20 years.
- B. Preventative Maintenance Service Agreement: The supplier shall include as a line item adder in the proposal, a one-year maintenance service agreement. The maintenance shall be performed by factory authorized service technicians capable of servicing both the engine generator set(s) and the transfer switch(es). This agreement shall include semi-annual preventative maintenance visits to verify operation and/or complete the following:
  - 1. All periodic engine maintenance as recommended by the service manual.
  - 2. All electrical controls maintenance and calibrations as recommended by the manufacturer.
  - 3. All auxiliary equipment as a part of the emergency systems.
  - 4. The supplier shall guarantee emergency service.
  - 5. All expendable maintenance items are to be included in this agreement.
  - 6. A copy of this agreement and a schedule shall be provided in the submittal documents, detailing scope of work and preventative maintenance service visit interval.

**END OF SECTION**