

AGREEMENT FOR CONSTRUCTION

This Agreement for Construction ("Agreement") is entered into this 15th day of September, 2011, by and between The Wayne County Building Authority (hereinafter referred to as the ("OWNER")), and Blaze Contracting Inc. ("CONTRACTOR").

OWNER and CONTRACTOR agree as follows:

ARTICLE 1 – WORK

CONTRACTOR shall complete all Work as specified or indicated in, or inferred from, the Contract Documents. The Work is generally described as all necessary labor, materials, equipment, fuel, tools, supervision, storage, taxes, bonds, insurance, permits, fees and any other items necessary to fully install and complete, to the Owner's satisfaction, 1,166 linear feet of 30-inch diameter and 43 linear feet of 12-inch diameter ductile iron pipe.

In the event the total length of the 30-inch diameter and the 12-inch diameter ductile iron pipe atermain as-built differs from the quantities stated in Article 1 above, the Contractor herewith declares that an adjustment shall be made to increase or decrease the Contract Sum on the basis of the following unit prices:

- a) Furnishing and installing 30-inch diameter ductile iron type watermain, including excavation and backfilling and excluding entrance manholes and appurtenances.
\$ 322.00 per Linear Foot
- b) Furnishing and installing 12-inch diameter ductile iron type watermain, including excavation and backfilling and excluding entrance manholes and appurtenances.
\$ 232.00 per Linear Foot

Contractor shall have on-site Project Superintendent.

Contractor shall provide Payment and Performance Bonds and insurance for an amount not to exceed \$ 14,000.00. Contractor to document actual costs of Bonds and insurance.

All Work, materials and equipment necessary to accomplish the same shall be to the satisfaction of the OWNER. The Work shall be performed in strict accordance with all applicable laws, codes, ordinances and regulations in effect at time of construction. All Work shall be completed in accordance with the Plans and Specifications provided by the ARCHITECT.

CONTRACTOR shall cooperate and coordinate the Work with OWNER'S consultants ATC Associates, Inc. and Soils and Materials Engineers, Inc., it being agreed and understood OWNER'S consultants shall have supervisory authority related to the Work.

ARTICLE 2 – ARCHITECT AND OWNER'S REPRESENTATIVE

The Project is being designed by AECOM/Ghafari ("ARCHITECT"), and the Architect shall perform all duties and responsibilities, and have the rights and authority specified for the ARCHITECT in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents. The CONTRACTOR shall cooperate and coordinate the Work with any subconsultants designated in writing by the ARCHITECT. Notwithstanding anything to the contrary herein, the Contract Sum shall not change except as specifically provided in the Contract Documents.

The Owner's representative for the Project is Parlovecchio Building, Inc. ("OWNER'S REPRESENTATIVE"), and the OWNER'S REPRESENTATIVE shall perform all duties and responsibilities, and have all rights and authority specified for the OWNER'S REPRESENTATIVE in the Contract Documents.

ARTICLE 3 – CONTRACT TIME

CONTRACTOR shall begin the Work by September 26, 2011 and complete the Work by October 20, 2011 ("Contract Time"). The CONTRACTOR acknowledges and agrees that time is of the essence for performance and completion of the Work. CONTRACTOR fully acknowledges and agrees the Contract Time is sufficient and adequate in all respects to complete the Work as required by the Contract Documents.

ARTICLE 4 – CONTRACT SUM

In exchange for the CONTRACTOR'S performance of the Work in strict accordance with the Contract Documents, the OWNER shall pay the CONTRACTOR the Contract Sum of \$933,000.00. Any and all of the CONTRACTOR'S costs and expenses to perform the Work, included but not limited general conditions costs, mobilization, demobilization, supervision, insurance, bonds, labor, supervision, equipment, fuel, subcontracts, and the like, shall be included in the Contract Sum. The Contract Sum shall be subject to additions and deductions as provided in the Contract Documents. The Contract Sum shall only be payable from the OWNER to the CONTRACTOR in exchange for the CONTRACTOR's full and complete performance of the Work required by Contract Documents. Notwithstanding anything to the contrary herein, the CONTRACTOR shall not be entitled in any monies in addition to the Contract Sum unless the OWNER has approved such amounts in writing prior to any additional Work being performed. The CONTRACTOR waives any and all claims for any amounts in excess of the Contract Sum to which it is not entitled to pursuant to the Contract Documents.

ARTICLE 5 - PAYMENTS

5.1. PROGRESS PAYMENTS.

5.1.1. Based upon Applications for Payment submitted to the ARCHITECT and OWNER'S REPRESENTATIVE by the CONTRACTOR and Certificates for Payment issued by the ARCHITECT, the OWNER shall make progress payments on account of the Contract Sum to the CONTRACTOR as provided below and in Section 112 of the

General Conditions. The CONTRACTOR shall not seek payment for any Work which the CONTRACTOR did not perform and is otherwise not entitled to under the Contract Documents. The period covered for each Application for Payment shall be one (1) calendar month ending on the last day of the month.

5.1.2. All progress Payments shall be measured by the Schedule of Values proposed by the CONTRACTOR and approved by the ARCHITECT and OWNER'S REPRESENTATIVE. It is the CONTRACTOR's obligation to conclusively demonstrate, to the satisfaction of the OWNER, the Work actually completed in connection with each Application for Payment. The CONTRACTOR shall not be entitled to any payment for any Work which the Owner has not determined is complete in accordance with the Contract Documents.

5.1.3. Prior to Substantial Completion, Progress Payments will be made for work completed and materials on Site less the (10%) percent retainage, less the aggregate of payments previously made and less such amounts as the ARCHITECT may determine, or the OWNER may withhold, in accordance with the Contract Documents.

5.1.4. Upon 50% completion of the Work, as determined by the ARCHITECT and OWNER'S REPRESENTATIVE, retainage may be reduced to five (5%) percent of the Contract Sum. Thereafter, the ARCHITECT or OWNER may withhold payment from the CONTRACTOR in accordance with the Contract Documents, it being agreed and understood the OWNER has the unconditional right to increase the retainage percentage at any time, and at the sole discretion of the OWNER.

5.2. **FINAL PAYMENT.**

Upon final completion and acceptance of the Work in accordance with the Contract Documents, the OWNER shall pay the remainder of the Contract Sum.

ARTICLE 6 – LIQUIDATED DAMAGES

6.1. OWNER and CONTRACTOR recognize that time is of the essence and that OWNER will suffer financial loss if the Work is not completed within the times specified in paragraph 3 above, plus any extensions thereof allowed in accordance with Section 111.05 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER \$750.00 for each day that the CONTRACTOR fails to complete the Work as required by the Contract Documents. CONTRACTOR further acknowledges and agrees liquidated damages shall not be the OWNER'S sole and exclusive remedy and/or relief for the CONTRACTOR'S failure to complete the Work in the Contract Time, nor shall any liquidated damages imposed or collected by the OWNER act as a limitation on any of the OWNER'S other rights under the Contract Documents or Michigan law.

6.2. Amounts due the OWNER as liquidated damages shall be immediately paid by the CONTRACTOR to the OWNER, if not immediately paid by the CONTRACTOR upon notification of assessment, the OWNER may deduct any and all liquidated damages assessed from any money payable to the CONTRACTOR pursuant to the Contract Documents. No delay by the OWNER in assessing or collecting liquidated damages shall be construed as a waiver of the OWNER'S rights. Moreover, the OWNER's willingness to allow CONTRACTOR to complete the Work after the Contract Time has expired shall in no way operate as a waiver on the part of the OWNER of any of its rights under the Contract Documents.

6.3. The CONTRACTOR shall not be liable for Liquidated Damages when, in the sole opinion of the OWNER, incidents or delays result directly from causes beyond the control and without the fault or negligence of the CONTRACTOR.

ARTICLE 7 – CONTRACT DOCUMENTS

The documents which comprise the entire agreement between OWNER and CONTRACTOR concerning Work (hereinafter referred to as "Contract Documents") consist of the following:

- (1) This Agreement, and any amendments to this Agreement as executed in writing by the OWNER;
- (2) General Conditions attached hereto and incorporated by reference as if fully restated herein;
- (3) Performance and Payment Bonds in a form and type as specifically required by the Owner;
- (4) Supplementary Conditions and Additional Supplementary Conditions (if any) as provided by the OWNER;
- (5) Specifications as provided by the OWNER; and
- (6) Drawings as provided by the OWNER.

The Contract Documents listed in above are attached to this Agreement (except as expressly noted otherwise above) and constitute the Contract Documents. The Contract Documents shall take precedence in the order they appear above. In the event of a conflict, the CONTRACTOR shall provide the highest possible Work to the Owner, as selected by the OWNER in its sole and absolute discretion to decide conflicts and ambiguities between the Contract Documents.

There are no Contract Documents other than those listed above in this Article 7. The Contract Documents may only be amended, modified or supplemented as provided in accordance with the Contract Documents.

ARTICLE 8 – PROVISIONS MANDATED BY COUNTY PROCUREMENT ORDINANCE

8.1 Incorporated herein by reference are certain standard provisions mandated to be included in every contract by Wayne County Ordinance 120.3402. To the extent there is any claimed conflict between the General Conditions and any Supplementary Conditions (if any), the OWNER shall reconcile same in the OWNER's sole and absolute discretion. Where the applicable General Conditions and any Supplementary Conditions cannot be reconciled in the sole opinion of the OWNER, then the Supplementary Conditions shall control.

8.2 The CONTRACTOR shall not assign any rights under or interest in the Contract Documents without the prior written consent of the OWNER; and, specifically but without limitation, the CONTRACTOR shall not assign moneys that may become due (except to the extent that the effect of this restriction may be limited by law), and the OWNER'S written consent to an assignment shall not release or discharge the CONTRACTOR from any duty or responsibility under the Contract Documents.

8.3 CONTRACTOR binds itself, its partners, successors, agents, assigns and legal representatives to the OWNER, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

8.4 If any provision or part of the Contract Documents is held to be void or unenforceable under any law or regulation, the offending language only shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and CONTRACTOR. The CONTRACTOR agrees the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

8.5 The CONTRACTOR agrees the OWNER has the unconditional right, at any time, to correct any error in any Application for Payment that may have been paid. The CONTRACTOR agrees the OWNER has the right, should proof of defective or nonconforming Work be discovered after any payment (progress or final), to claim and recover from the CONTRACTOR and/or the CONTRACTOR's sureties, sufficient sums to correct or remove and replace the defective or non-conforming Work. All payments from the OWNER to the CONTRACTOR are deemed to be provisional.

8.6 Any waiver by the OWNER of any provision of the Contract Documents shall be specific and in a writing signed by the OWNER, and shall apply only to the specific matter and not to other similar or dissimilar matters.

8.7 Nothing contained in the Contract Documents shall in any manner authorize, empower or constitute the CONTRACTOR, subcontractors or suppliers to (a) act as agents of the OWNER, (b) assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of the OWNER, (c) bind the OWNER in any manner, or (d) make any representation, warranty, covenant, agreement or commitment on behalf of the OWNER. It is the intent and understanding of the parties that the CONTRACTOR shall perform the Work as an independent CONTRACTOR. The Contract Documents shall not create, and shall not be construed as creating, any rights enforceable by any third party. Nothing contained in the Contract Documents shall create any claim and/or cause of action by the CONTRACTOR

against the OWNER'S REPRESENTATIVE and/or the ARCHITECT, it being agreed and understood by the parties that the OWNER'S REPRESENTATIVE and/or ARCHITECT have no independent contractual obligations to the CONTRACTOR. Except only for an intentional tort or gross negligence, the CONTRACTOR shall not file any claim, suit, demand and/or lawsuit against the OWNER'S REPRESENTATIVE and/or ARCHITECT, and the CONTRACTOR fully and forever releases the OWNER'S REPRESENTATIVE and/or ARCHITECT from any and all claims, liabilities, demands and the like.

8.8 This Contract shall be binding on the CONTRACTOR, OWNER and their respective successor and legal representatives and, if the OWNER has consented to an assignment or other conveyance, on all their respective assigns and delegates.

8.9 The Contract Documents shall be governed by and construed in accordance with the laws of the State of Michigan. Notwithstanding any rule of construction to the contrary, each party shall be deemed a drafter of the Contract Documents, it being understood and agreed both parties participated in the creation of the Contract Documents.

ARTICLE 9 – DISPUTE RESOLUTION

9.1 Notwithstanding anything to the contrary herein, all unresolved claims by the CONTRACTOR against the OWNER shall be resolved first through a meeting between the CONTRACTOR'S highest level officer familiar with the Project and the OWNER'S REPRESENTATIVE'S highest level staff member, The ARCHITECT shall attend this meeting if desired by the OWNER'S REPRESENTATIVE. Such meeting shall occur no earlier than thirty (30) days after Final Completion. At the OWNER'S option, this meeting may be conducted by a facilitator mutually acceptable to the parties, or, in the event the parties are unable to agree on a facilitator, the parties shall select a facilitator according to the American Arbitration Association Construction Industry Rules for Mediation. The meeting between CONTRACTOR'S highest officer and the OWNER'S REPRESENTATIVE'S highest level staff member is a condition precedent to CONTRACTOR initiating litigation or demanding arbitration (if elected by the OWNER).

9.2 In the sole and absolute discretion of the OWNER, the OWNER may elect to arbitrate claims, and thereafter all claims, disputes, and other matters in question arising out of or relating to Contract Documents and/or the Project, shall be decided by arbitration. If elected by the OWNER, such arbitration shall be administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) shall be final and binding and shall be entered in any Court having jurisdiction thereof. The arbitration shall be conducted in Wayne County, Michigan. The OWNER may, but is not required to, require the CONTRACTOR to join any of CONTRACTOR'S Subcontractors and/or suppliers to the arbitration, and the CONTRACTOR shall ensure its contracts with each of CONTRACTOR'S Subcontractors and suppliers include the right to join other parties to arbitration. CONTRACTOR shall have no right to join Subcontractors to the arbitration and Subcontractors shall not intervene in the arbitration unless joinder is requested by the OWNER.

9.3 In the event the OWNER does not elect arbitration, any and all disputes shall be settled via litigation in Wayne County, Michigan, it being agreed the CONTRACTOR conducts business in Wayne County, Michigan and the CONTRACTOR waives any claim that venue is improper in Wayne County, Michigan.

9.4 The pendency or possibility of a dispute between the OWNER and CONTRACTOR shall not interfere with the progress of the Work by CONTRACTOR, nor shall the CONTRACTOR be permitted to suspend the Work, slow the performance of the Work, and/or terminate the Work unless otherwise specifically provided for in the Contract Documents.

9.5 Notwithstanding anything to the contrary herein, the CONTRACTOR irrevocably waives any and all claims against the OWNER for consequential damages arising out of or relating to this Project and/or the CONTRACT DOCUMENTS. This waiver includes any and all indirect and consequential damages claimed by the CONTRACTOR including by example, damages for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, loss of bonding capacity, expectation damages, and for loss of profit including profit arising directly from the Work. The CONTRACTOR'S waiver of consequential damages is also applicable, without limitation, to all consequential damages due to the OWNER'S termination, whether for cause or convenience.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESSED BY:

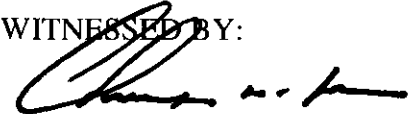


OWNER: WAYNE COUNTY BUILDING AUTHORITY

By: 

Its: Chairman

WITNESSED BY:



CONTRACTOR: 

By: KERLIN BLAISE

Its: President

GENERAL CONDITIONS

SECTION 101: DEFINITION OF TERMS

101.01 GENERAL

The terms used in the Agreement shall have the same meaning as those set forth in the General Conditions, and vice versa.

101.02 ABBREVIATIONS

Wherever the following abbreviations are used in these Specifications or on the Plans, they are to be construed the same as the respective expressions represented:

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AGC	Associated General Contractors of America, Inc.
AIA	American Institute of Architects
ANSI	American National Standards Institute
ASME	American Society of Mechanical Engineers
ASTM	American Society for Testing and Materials
AWS	American Welding Society
CRSI	Concrete Reinforcing Steel Institute
FS	Federal Specifications
MDOT	Michigan Department of Transportation
MIOSHA	Michigan Occupational Safety and Health Administration
NEMA	National Electrical Manufacturers Association
OSHA	Occupational Safety and Health Administration
PCI	Pre-stressed Concrete Institute

101.03 DEFINITIONS

ADDENDA/ADDENDUM. Written or graphic documents issued prior to the execution of the Contract Documents which modify or interpret the Contract Documents, Plans and Specifications, by additions, deletions, clarifications or corrections.

ADJUSTMENT. A monetary revision to a Contract Sum specified item(s) of Work or to the entire Contract Documents.

ADVERTISEMENT. The public announcement inviting Contractors to submit proposals for Work to be performed and materials to be furnished.

APPLICATION FOR PAYMENT. Applications for Payment shall be submitted to the Architect and Owner's Representative in accordance with the Contract Documents, and on AIA forms G702 and G703 (or equivalent). Each Application for Payment shall be in itemized detailed

form. The processing procedures and time for submitting Application for Payment shall be as directed by the Owner's Representative.

ARCHITECT. The person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Contract Documents and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or Architect's authorized representative.

AS-BUILTS (AS-BUILT DRAWINGS). Reproducible construction drawings revised to show significant changes made during the construction process; usually based on marked-up prints, drawings and other data furnished by Owner.

BONDS. Performance and Payment Bonds and other instruments of security.

CALENDAR DAY. Every day shown on the calendar, beginning and ending at midnight. Unless otherwise designated, the word, "day" shall mean Calendar Day.

CALENDAR DATE CONTRACT. Where the Project is required to be physically complete by a date certain, or where the time required to physically complete the Project is designated by a number of Calendar Days.

CERTIFICATION OF DBE CONTRACTORS. The process by which the Owner establishes that a Contractor meets the Federal Requirements as a DBE.

CHANGE. Addition to or deletion from the Work required by the Contract Documents.

CHANGE ORDER. A written order signed and issued by the Owner directing the Contractor to make changes which the "Changes" clause of the Contract Documents authorizes the Owner to order without consent of the Contractor.

CONSTRUCTION INFLUENCE AREA (CIA). The Project and the area surrounding the Project, as shown in the Contract, that defines the limits of responsibility for traffic control.

CONTRACT AUTHORIZATION. The written order of the Owner or the Owner's Representative, on the regulation forms, for changes or extras to Plans or changes the quantity of the Work. Authorizations duly signed by the Contractor constitute authorized modifications to the Contract Documents.

CONTRACT MODIFICATION (BILATERAL CHANGE). Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of the Contract Documents.

CONTRACT TIME. The time assigned in the Contract Documents to perform and complete all the Work, including any written extensions of time signed by the Owner in accordance with the Contract Documents.

CONTRACT SUM. The maximum amount the Owner may be required to pay the Contractor under the Contract Documents, provided the Contractor fully completes all of its obligations to the Owner as required by the Contract Documents.

CONTRACT UNIT PRICE. The unit price of an item provided pursuant to the Contract Documents.

CONTRACTOR. The individual firm or corporation undertaking the execution of the Work under the terms and conditions of the Contract Documents and acting directly or through its agents or employees; a person or company who agrees to furnish materials and labor to do Work for a certain price. The Contractor must perform Work amounting to not less than forty percent (40%) of the original Contract Sum.

CONTROLLING OPERATION. The operation that, if delayed at the time of consideration, would delay the Substantial Completion of the entire project. The operation may be either on or off the job site. The size of the operation is not a factor.

COORDINATION CLAUSE. A clause in the Contract Documents that requires the Contractor to coordinate construction activities with other agencies, utilities or Contractors.

DISADVANTAGE BUSINESS ENTERPRISE (DBE). In connection with a project which is funded in whole or in part from state or federal government sources, a business which has been certified as a disadvantaged business enterprise pursuant to the rules and regulations of such governmental source. For purposes of this Contract, DBE includes small business enterprises (SBE), minority business enterprises (MBE), and women business enterprises (WBE) as defined in the section 120.11102 of the Wayne County Code. The DBE must have a certificate evidencing that status issued by Wayne County Human Relations division or such other form accepted by Wayne County Human Relations.

EFFECTIVE DATE OF THE CONTRACT. The date indicated in the Contract Documents on which it becomes effective.

ENVIRONMENTAL LAWS. All federal, state, and local laws, ordinances, rules, regulations, requirements, permits, licenses, authorizations, approvals, criteria, guidelines, and judicial and administrative orders, decrees, or judgments, now or hereafter in effect, and in each case as amended, and any judicial or administrative interpretation thereof, relating to the regulation and protection of human health, safety, the environmental and the natural resources including, without limitation, laws (and all other items recited above) relating to emissions, discharges, releases, threatened releases or remediation of, or any other response action related to, contamination or Hazardous Materials or otherwise relating to the generation, use, treatment, storage, recycling, disposal, transport, or handling of or exposure to contamination or Hazardous Materials. Environmental Laws include but are not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601, et seq. ("CERCLA"); the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; the Clean Air Act, 42 U.S.C. §7401, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251, et seq.; the Hazardous Materials

Transportation Act, 49 U.S.C. §6901, et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001, et seq. and the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; each as amended from time to time, and each of their state and local counterparts or equivalents including, but not limited to, the Michigan National Resources and Environmental Protection Act, 1994 PA 451, as amended.

EXTENSION OF TIME. Additional Contract Time authorized by the Owner in writing.

FIELD ORDER. A written order issued by the Architect which orders minor changes in the Work, but which does not involve a change in the Contract Sum or the time for Substantial Completion.

HAZARDOUS MATERIALS. Any hazardous waste, toxic substance or related materials identified now or during the term of this Contract Time as hazardous under any federal, state or local law or regulation, including but not limited to or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up, including, without limitation, substances defined as "hazardous substances" or "toxic substances" in CERCLA, RCRA, and the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802.

LABORATORY. The testing laboratory of the Owner, or any other testing laboratory that may be designated or approved by the Owner to inspect and determine the suitability of materials.

LABOR DISPUTE. A controversy between the Contractor and the Contractor's employees, union, bargaining agents, suppliers, or suppliers' bargaining agents, or between unions which results in a Work stoppage.

LAWS OR REGULATIONS. Any and all applicable laws, rules, regulations, ordinances, codes or orders of any and all governmental bodies, agencies, authorities or courts having jurisdiction.

LOCAL TRAFFIC. Traffic that has origin or destination within the Construction Influence Area.

MAJOR AND MINOR ITEMS OF WORK. All items having an original value equal to or greater than five percent (5%) of the original Contract Sum shall be considered a major item or items.

MAXIMUM UNIT WEIGHT OR MAXIMUM DENSITY. The value of the weight per unit volume established for material.

NOTICE OF AWARD. If applicable, the written notice by Owner to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions precedent enumerated therein, within the time specified, the Owner will sign and deliver the Contract Documents upon approval of the Wayne County Building Authority.

NOTICE TO PROCEED. Written notice to the Contractor to begin the Work. When applicable, the notice will include the starting date of the Contract Time.

PAYMENT AND PERFORMANCE BOND(S). The bonds executed by the Contractor and his Surety (upon forms provided by the Owner) guaranteeing the payment of all labor and material claims in connection with the Work as required by Michigan law.

PLAN GRADE. Vertical control grade shown on Plans.

PLAN QUANTITY. The original quantity of an item of Work.

PLANS. Owner approved drawings which show the scope, extent and character of the construction Work to be finished and performed by the Contractor and which have been prepared and approved by the Architect. Shop drawings are not Plans as so defined. Plans may be in electronic format.

PROGRESS CLAUSE. A part of the proposal stating starting, all intermediate and completion dates, and/or number of work days, and other restrictions or conditions.

PROJECT. The total construction of which the Work to be provided under the Contract Documents may be the whole, or part as indicated elsewhere in the Contract Documents. The Project is the construction of the Wayne County Consolidated Jail Facility, projected to be approximately 700,000 Building Gross Square Feet and consisting of a partial basement level with a tunnel connection to the Frank Murphy Justice Center, main support level, and three levels of housing. Approximate total capacity is 2,192 beds, and generally includes twelve 64 cell single cell units, eighteen 64 bed dormitory units consisting principally of eight 8-person mini-dorms, and other special housing. The facility is located on a 7.175 acre site directly east of the Frank Murphy Justice Center bordered by St. Antoine Street on the west, Gratiot St. on the north, the Chrysler Freeway on the east, and Macomb St. on the south.

PROJECT LIMITS. The physical limits given in the Contract Documents showing the dimensions of the area included in the Project site.

The Project Site or the Site means the area within the Owner's property lines or portions of such area which are enclosed within a contract limit line, including any structures or encumbrances within such area.

QUALIFIED PRODUCTS LIST. A listing of specific materials which have been pre-qualified for use on Projects and is contained in the Materials Sampling Guide.

SPECIAL PROVISIONS. The specific clauses setting forth conditions or requirements peculiar to the Project under consideration, covering Work and materials involved in the proposal and estimate which are not thoroughly or satisfactorily stipulated in the General or Supplementary Conditions, Standard Specifications or Supplemental Specifications.

SPECIFICATIONS. The Standard Specifications, Supplemental Specifications, Special Provisions, and all written or printed agreements and instructions pertaining to the method and manner of performing the Work, or to the quantities, or the qualities of the materials to be furnished under the Contract.

Whenever reference is made to standards of AASHTO, ASTM, or other Standards as specified in Subsection 101.02, titled "Abbreviations," it shall be understood that the Specification, or method, current at the date of the Contract Documents. Current ASTM Specifications, or methods, shall be either Standard or Tentative Standard Specifications or methods, but shall not include Tentative Revisions of ASTM Standards which are printed with a view of eliciting criticism. Current AASHTO Specifications shall mean Standard Specifications or Standard Methods of Test but shall not include Interim Specifications or Methods. AASHTO Interim Specifications or Interim Methods of Test shall apply only when specifically named.

State Building Code. The Construction Code adopted by the Bureau of Construction Codes in State Administrative Code Section R 408.30401.

SUBBASE. The layer of specified material placed on the Subgrade as a part of the pavement structure.

SUBCONTRACT. An agreement to execute a part of the Work made between the Contractor and an individual, firm or corporation having a direct Contract with the Contractor or with any other Subcontractor for the performance of a part of the Work on the Project. All Subcontracts shall incorporate the provisions of the Contract Documents. The Contractor shall obtain the Owner's prior written approval before entering into any Subcontract.

SUBCONTRACTOR. An individual, firm or corporation having a direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work on the Project.

SUBGRADE. That portion of the earth grade upon which the Subbase, base course or the surface course, including curb and gutter, are to be placed.

SUBSTANTIAL COMPLETION. The Work (or a specified part thereof) has progressed to the point where in the opinion of the Architect and Owner, as evidenced by the Architect's definitive certificate of Substantial Completion, the Work (or a specified part thereof) is sufficiently complete in accordance with the Contract Documents that it may be utilized for the purpose it was intended; or if no such certificate is issued, when the Work is complete and ready for final payment as evidenced by the Architect's written recommendation of final payment and accepted by the Owner in writing.

SUPERINTENDENT. The executive representative designated by the Contractor to be present on the Project during the progress of the Work; who shall be the authorized representative of the Contractor and who shall receive and fulfill instructions from the Owner, and supervise and direct the operations of the Contractor or Subcontractors.

SUPPLEMENTAL CONDITIONS. If provided, the part of the Contract Documents which amends or supplements these General Conditions, including, but not limited to the Provisions Mandated by Charter County of Wayne Procurement Ordinance 120-3402.

SUPPLEMENTAL SPECIFICATIONS. Special written or printed clauses supplemental to or superceding the Standard Specifications setting forth requirements peculiar to the specific Work included in the Contract.

SURETY. The individual or corporate body which is authorized to do business in this State and which is bound with and for the Contractor for both: (a) the full and complete performance of each of the Contractor's obligations under the Contract Documents; and (b) for the payment of all lawful debts incurred in by the Contractor in fulfilling the Contractor's obligations under the Contract Documents.

SURFACE COURSE. The top layer of pavement structure.

UTILITY. Property of railway, telegraph, telephone, water, sewer, electric, gas, petroleum, cable television and similar companies.

WAYNE COUNTY CODE. The complete codification of the general and permanent ordinances of the County of Wayne, Michigan, copies of which can be found at the Purchasing Office, 600 Randolph, Suite 146, Detroit, MI 48226.

WORK DAY CONTRACT. Where the time required to physically complete the Project is designated by the number of work days.

WORKING DAY. Any day when, as determined by the Owner, it is possible for the Contractor to effectively carry out Work on the Project.

WORKING DRAWING(S). Supplemental design sheets or similar data that the Contractor may be required to submit to the Architect. Examples of these include, but are not limited to, stress sheets, shop drawings, erection plans, falsework plans, framework plans, and bending diagrams for reinforcing steel.

WORK ORDER. A written order by the Owner requiring performance by the Contractor.

Terms used and defined in the Contract Documents shall have the meanings designated in the Contract Documents. Terms which are defined in the Contract Documents shall have their meanings as defined, whether or not such terms are capitalized unless the context clearly indicates otherwise. Terms not otherwise defined in the Contract Documents shall have meanings consistent with industry standards and industry practice.

SECTION 102: PRELIMINARY MATTERS

102.01 DELIVERY OF BONDS AND INSURANCE

Before mobilizing on the Project or beginning any Work on the Project, the Contractor shall provide the Payment and Performance Bonds, both in 100% of the Contract Sum, to the Owner. The Payment and Performance Bonds shall comply with the requirements of the Contract Documents. Before mobilizing on the Project or beginning any Work, Contractor shall provide certificates of insurance (and other evidence of insurance which Owner or any additional insured may reasonably request) which Contractor is required to purchase and maintain in accordance with the Contract Documents.

102.02 STARTING THE WORK

Contractor shall start to perform the Work no later than September 26, 2011.

102.03 CONTRACTOR'S REVIEW OF CONTRACT DOCUMENTS

Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. Contractor shall promptly report in writing to Architect any conflict, error, ambiguity or discrepancy which Contractor may discover and shall obtain a written interpretation or clarification from Architect before proceeding with any Work affected thereby; however, Contractor shall be liable to Owner or Architect for failure to report any conflict, error, ambiguity or discrepancy in the Contract Documents.

102.04 EXECUTION OF THE CONTRACT DOCUMENTS

Execution of the Contract Documents by the Contractor is a representation and acknowledgment that the Contractor has visited the site, became familiar with all existing conditions of any type under which the Work is to be performed, and correlated personal observations with the requirements of the Contract Documents which Contractor has also reviewed and understands. By executing the Contract Documents, the Contractor agrees the Work can be properly completed by the Contract Time and for a price equal to or less than the Contract Sum.

102.05 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of

them, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractor, sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. 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' copyrights or other reserved rights.

102.06 PRECONSTRUCTION SUBMISSIONS FOR SCHEDULES

Within three days after the Effective Date of the Agreement, Contractor shall submit to Owner and Architect for review:

102.06.1 A preliminary progress schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any milestones specified in the Contract Documents;

102.06.2 A preliminary schedule of Shop Drawing and Sample submittals which will list each required submittal and the times for submitting, reviewing and processing such submittal;

102.06.3 A preliminary Schedule of Values for all of the Work aggregating the Contract Sum and subdividing the Work into components parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

102.07 ACCEPTABLE SCHEDULES

Unless otherwise provided in the Contract Documents, at least ten days before submission of the first Application for Payment a conference attended by Contractor, Owner's Representative, Architect and others as appropriate will be held to review for acceptability to Owner's Representative and Architect as provided below the schedules submitted in accordance with Section 102.06. Contractor shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until the schedules are submitted to and acceptable to Owner's Representative and Architect as provided below. The progress schedule will be acceptable to Owner's Representative and Architect as providing an orderly progression of the Work to completion within any specified milestones and the Contract Time, but such acceptance will neither impose on Owner's

Representative and Architect responsibility for the sequencing, scheduling or progress of the Work nor interfere with or relieve Contractor from Contractor's full responsibility therefor. Contractor's schedule of Shop Drawing and Sample submissions will be acceptable to Owner's Representative and Architect as providing a workable arrangement for reviewing and processing the required submittals. Contractor's schedule of values will be acceptable to Architect as to form and substance.

SECTION 103: OWNER

103.01 Information and Services Required of the Owner

103.01.1 The Owner shall furnish and pay for surveys and a legal description of the site.

103.02 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, or fails to carry out the 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 is 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.

103.03 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or fails or neglects to carry out the Work in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Owner, after 10 days' written notice to the Contractor and without prejudice to any other remedy the Owner may have, may make good such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the Architect's services made necessary thereby, from the payment then or thereafter due the Contractor. If Owner determines Contractor has fallen behind in the progress of the Work or is in danger of falling behind at its then current rate of progress, or is responsible for any delays to the Project, Owner may direct Contractor on written notice to take the steps Owner deems necessary to improve the rate of progress of the Work, including requiring Contractor to increase its labor force, number of shifts and/or overtime operations, days of work, or to provide additional equipment or materials. Additionally, within forty-eight (48) hours of such written notice from Owner, Contractor shall submit for Owner's approval a recovery plan and schedule to demonstrate the manner by which Contractor will implement required steps to attain the required rate of progress. Contractor will implement the recovery plan immediately upon Owner's approval. If Owner determines that Contractor's recovery plan will not attain the required rate of progress, Contractor shall take the steps Owner directs in that regard and perform the Work accordingly, all without additional cost to Owner. In the event: Contractor fails to submit or follow a recovery plan as required; perform the Work in accordance with Owner's directives; and/or Contractor's recovery plan is not approved, then Owner may, but is not obligated to, following twenty-four (24) hour notice to Contractor, supplement Contractor's forces and/or perform the Work as Owner deems necessary to attain the required rate of progress. Owner shall deduct from any payment due Contractor or collect directly from

Contractor on demand, all costs, expenses and damages incurred or suffered by Owner in connection with Contractor's delay in the progress of the Work or to the schedule. Nothing herein shall relieve Contractor of its sole responsibility to direct the means and methods, and schedule as it relates to the Project.

SECTION 104: CONTRACTOR

104.01 SUPERVISION AND CONSTRUCTION PROCEDURES

104.01.01 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. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall nonetheless be fully and solely responsible for the jobsite safety thereof unless the Contractor gives timely written notice to the Owner and Architect that such means, methods, techniques, sequences or procedures may not be safe.

104.01.02 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

104.02 LABOR AND MATERIALS

104.02.01 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.

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

104.02.03 The Contractor shall deliver, handle, store and install materials in accordance with manufacturers' instructions.

104.02.04 The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

104.03 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract Documents will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the

Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor shall remove and replace any and all defective Work, whether discovered before or after the Work is completed. The Contractor shall bear any and all costs arising from or related to the replacement of defective Work, including but not limited to any costs incurred by the Owner. The Contractor's obligation to remove and replace defective Work and reimburse the Owner for any and all costs related to Contractor's defective Work shall not be a limitation of any other right or remedy available to the Owner under the Contract Documents or under Michigan law.

104.04 TAXES

The Contractor shall pay sales, consumer, use and other similar taxes which are legally enacted at the time the Contractor begins Work.

104.05 PERMITS, FEES AND NOTICES

104.05.1 The Contractor shall secure and pay for the building permit and all other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work.

104.05.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. The Contractor shall promptly notify the Architect and Owner if the Drawings and Specifications are observed by the Contractor to be at variance therewith. If the Contractor performs Work contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear any and all costs attributable to correction.

104.06 SUBMITTALS

104.06.1 The Contractor shall review for compliance with the Contract Documents, approve in writing and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness. The Work shall be in accordance with approved submittals.

104.06.2 Shop Drawings, Product Data, Samples and other similar submittals are not Contract Documents.

104.07 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall be responsible for dust control, and shall not unreasonably expose the CIA to dust and contaminants arising from or relating to the Work.

104.08 CUTTING AND PATCHING

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

104.09 CLEANING UP

The Contractor shall keep the premises 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 from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material.

104.10 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees; shall indemnify and defend the Owner from any and all suits or claims for infringement of copyrights and patent rights and shall hold the Owner, Owner's Representative and Architect harmless from 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, unless the Contractor has reason to believe that there is an infringement of patent or copyright and fails to promptly furnish such information to the Architect.

104.11 INSPECTION OF THE WORK AND PLANT

The Owner, Owner's Representative and Architect shall be allowed access to all portions of the Work at all times and shall be furnished such information and assistance by the Contractor as may be required to make a complete and detailed inspection. Such inspection may include mill, plant or shop inspection of materials and workmanship.

The Contractor shall make available to the Owner, Owner's Representative, Architect or its authorized representatives, at any time during normal business hours, the right to inspect that part of the plant, place of business, or work site of the Contractor which the Owner deems pertinent to the performance of any tier of the Contract Documents by the Contractor. Contractor must include a similar covenant allowing for the right of the Owner to inspect the facilities of any subcontractor with whom the Contractor has an agreement related to this Contract.

104.12 LABOR HARMONY

Contractor shall not employ personnel, means, materials or equipment that may cause strikes, work stoppages or any disturbances by workers employed by Contractor or its Subcontractors on or in connection with the Work or the Project or the location thereof. Contractor agrees that all disputes as to jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the Work is being done and that it shall be bound and abide by all such adjustments and settlements of jurisdictional disputes, provided that the provision of this Subsection shall not be in violation of or in conflict with any provisions of law applicable to the settlement of such disputes.

Should the Contractor fail to carry out or comply with any of the foregoing provisions, the Owner shall have the right, in addition to any other rights and remedies provided by the Contract Documents or by law, after three (3) days written notice mailed or delivered to the last known address of Contractor, to terminate the Contract Documents or any part thereof or the employment of the Contractor for all or any portion of the Work, and, for the purpose of completing the Work, to enter upon the Premises and take possession, in the same manner, to the same extent and upon the same terms and conditions as set forth in the termination provision of this Contract.

104.13 ASSIGNMENT

Contractor shall not assign or in any manner transfer the Contract Documents, or any part or parts hereof, or interest herein, or subcontract for any Work, equipment or operations without the prior, written consent of the Owner. Any unauthorized assignment or transfer will be considered a material breach of the Contract Documents and result in the cancellation of the Contract Documents at the Owner's discretion, with the Contractor waiving any and all claims for payment, including but not limited to lost profits, following termination. If the Contract Documents are not cancelled, the assignment shall be deemed null and void. Consent by the Owner to one or more assignments of the Contract Documents shall not operate to exhaust the Owner's rights under this Article. The sale of fifty percent (50%) or more of the capital stock of the Contractor (if the Contractor is a corporation having less than ten (10) shareholders) will constitute an assignment of the Contract Documents within the meaning of this Article.

104.14 BUY AMERICAN

The "Buy-American" provisions set forth in section 120.4106 of the Wayne County Code are incorporated herein by reference. If Contractor is found to be in violation of this provision and has not been relieved of this requirement by action of the Chief Executive Officer pursuant to section 120.4107(5) of the Procurement the Chief Executive Officer shall make public that finding, and shall debar Contractor from any further business with County for a period of three (3) years.

SECTION 105: SURETY AND INDEMNIFICATION

105.01 BONDS REQUIRED PRIOR TO BEGINNING WORK

The Contractor shall furnish a satisfactory Performance Bond executed by the Contractor and his Surety (upon forms provided by the Owner) guaranteeing performance of the Work in accordance with the intent of the Plans and Specifications and the terms of the Contract Documents as provided by law, in the full amount of the Contract Sum.

The Contractor shall furnish a satisfactory Payment Bond executed by the Contractor and his Surety (upon forms provided by the Owner) guaranteeing the payment of all labor and material claims in connection with the Work as provided by law, in the full amount of the Contract Sum.

105.01.1 The minimum requirement for Owner's Representative's approval of the Surety shall be that the Surety is listed by the United States Treasury Department as acceptable for bonding federal projects, that the bond amount is within the limit set by the Treasury Department as the net limit on any single risk, that the Surety has a financial rating not lower than XII and service rating no lower than A as listed in A.M. Best's Key Rating Guide, current edition, and that there is no affiliation between the Contractor and the bonding agent or bonding agency.

105.01.2 The bonds required by Section 105.01 shall guarantee that the Contractor will perform each and every part of the Agreement, cover all guarantees called for, and insure prompt payment to all persons furnishing labor or material required in the prosecution of the Work under the Agreement. In the event of additions to the Contract Documents, the Owner's Representative reserves the right to require evidence of an increase in the penal sum of bonds.

105.01.3 If the Surety on any bond furnished by the Contractor is declared bankrupt, becomes insolvent, is delisted by the United States Treasury Department, loses its right to do business in the State of Michigan, has a financial rating lower than XII and service rating lower than A as listed in A.M. Best's Key Rating Guide, current edition, or ceases to meet the requirements outlined in the above Subparagraph, the Contractor shall, within five (5) days thereafter, substitute another bond and Surety, both of which shall be acceptable to the Owner's Representative. The Owner has no obligation to monitor the Surety's status.

105.01.4 Whenever the Contractor shall be and is declared to be in default under the Contract Documents, the Surety shall immediately remedy the default or shall promptly:

105.01.4.1 Complete the Work required by the Contract Documents, or

105.01.4.2 Obtain a bid or bids for completing the Work in accordance with the terms and conditions of the Contract Documents and upon determination by the Owner's Representative and the Surety jointly of the lowest responsible bidder, arrange a contract between such bidder and the Owner, and make available as the Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost to complete the Work as required by the Contract

Documents, and including other costs and damages for which the Surety may be liable pursuant to Section 105.01.5.

105.01.5 Other costs and damages shall include, but not be limited to the following as incurred and determined by the Owner's Representative, the following:

105.01.5.1 Costs associated with re-bidding the Work;

105.01.5.2 Unproductive use of Owner personnel;

105.01.5.3 Additional costs associated with re-negotiating a contract;

105.01.5.4 Direct damages and liquidated damages caused by delay in the completion of the Work as required by the Contract Documents and other associated costs and losses occasioned to Owner; and

105.01.4.5 Costs associated with preconstruction activities that must be repeated by a replacement contractor.

105.01.6 Final acceptance of the Work shall not relieve the Contractor and/or Contractor's Surety from their obligations under the Contract Documents, including guarantees of materials, equipment, installation, or service.

105.02 INDEMNIFICATION

105.02.01 To the fullest extent permitted by law, the Contractor hereby assumes entire responsibility and liability for any and all damage or injury of any kind or nature whatsoever (including death resulting therefrom) to all persons, whether employees of any tier of the Contractor or otherwise, and to all real or personal property, and for all environmental claims, liabilities, demands, obligations, and actions at law and equity, caused by, resulting from, arising out of or occurring in connection with Contractor's representations, Contractor's performance or obligations under the Contract Documents, or in preparation for the Work to be provided under the Contract Documents, or any extension, modification, or amendment to the Work provided by Change Order, Contract Modification or otherwise, or violation of any Environmental Law or improper use of Hazardous Materials. The Contractor shall indemnify, defend and hold harmless the Owner, Owner's Representative, Architect and the County of Wayne from damages from breaches of the Contract Documents and against all such liability, damages, obligations, penalties, claims, costs, charges and expenses (including, without limitation, fees and expenses of attorneys, expert witnesses and other consultants).

105.02.02 For purposes of this Article, the term "County" includes the County of Wayne and all other associated, affiliated, or subsidiary agencies, branches, divisions, or departments, now existing or to be created, and their respective agents, employees, officers, directors and elected officials.

105.02.03 Contractor's indemnity obligation applies irrespective of whether the claim, damage, liability or expense is based on breach of contract, breach of warranty, negligence, strict liability, or other tort. This indemnity survives delivery and acceptance of all Work performed under the Contract Documents. The Contractor's indemnity obligations are not limited or excused by any bond or insurance obtained by the Contractor.

105.02.04 Contractor agrees that it is the Contractor's responsibility, and not the responsibility of the Owner to safeguard the property and materials used by Contractor's employees in performing this Contract. Contractor agrees to hold the Owner harmless for all costs and expenses resulting from any loss of such property and materials.

105.02.05 By beginning any Work in any area of the Project, the Contractor represents that it has examined that area and determined the area is safe for such Work. Contractor shall be exclusively responsible for, shall bear, and shall relieve the Owner and County from liability for all loss, expense, expense, damage or claims resulting from bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person or person, or on account of damage to or destruction of property, including that of Owner and County, arising out of, or in connection with the performance of the Work on Owner's premises except that Contractor shall not be responsible for or relieve Owner from liability for claims arising from the willful misconduct or sole negligence of Owner.

105.02.06 Contractor's employees, subcontractors and agents (a) will not possess, use, sell or transfer illegal drugs, medically unauthorized drugs or controlled substances, or unauthorized alcohol, and will not be under the influence of alcohol or drugs on County's premises and (b) must comply with the County's Administrative Personnel Order 1-2001 (a copy of which may be obtained from the Owner) prohibiting, among other things, the carrying of firearms, concealed or not, on Owner's premises.

105.02.07 All royalties or other charges for any Contractor provided patent, copyright, trademark, trade secret, or other proprietary right to be used in the performance of the Work shall be considered as included in the price of the Work. Contractor warrants that any products sold or processes used in the performance of the Contract Documents do not infringe upon or violate any patent, copyright, trademark, trade secret or any other proprietary rights of any third party. If a third party makes a claim against the Owner, the Contractor shall defend the claim in the name of the Owner, at the Contractor's sole expense. The Owner will cooperate with the Contractor and/or its suppliers in the defense against the suit. In no event shall Contractor make any admission of guilt or liability on behalf of the Owner without the Owner's prior, written consent. The Contractor must indemnify the Owner and County against any loss, cost, expense or liability arising out of the claim, whether or not the claim is successful.

105.02.08 If the Owner's use of any portion of the products or documentation provided by Contractor as part of its Work under the Contract Documents is enjoined by a court of competent jurisdiction, Contractor shall at its option and expense and within five (5) days of the enjoinder:

- (a) Procure for the Owner the right to use such infringing portion;
- (b) Replace such infringing portion with a non-infringing portion providing equivalent functionality; or
- (c) Modify the infringing portion so as to eliminate the infringement while providing equivalent functionality.

Contractor may delegate its responsibilities under this Article to the manufacturer of the allegedly infringing product, provided Contractor has, received the advance, written consent of the Owner. Such consent will not be unreasonably withheld or delayed.

105.02.09 Contractor and anyone directly or indirectly employed or otherwise retained by it shall (a) comply with all Environmental Laws in connection with the performance of the Work and (b) not use any Hazardous Materials in connection with the Work in such manner as would violate any Environmental Law or would cause any damage or risk of any damage to the environment, or in such manner as to leave any residue which could be hazardous to persons or property or cause liability to the Owner and County. The indemnity obligations of the Contractor shall apply to any and all losses, injuries, claims, actions (at law or in equity), proceedings, liabilities, demands, obligations, fines, penalties, cost and expense, including legal fees and disbursements, resulting from, arising out of or occurring in connection with the Contractor's violation of this Section.

105.02.10 In the event that any claim for damages is made, asserted or threatened against the Owner or County and/or the officers, agents, employees or elected officials and/or a lien is recorded against the Owner's property as a result of the Contractor's failure to pay for any labor, services, materials, equipment, taxes or other items or obligations furnished or furnished or incurred for or in connection with the Work to be provided under this Contract, upon written notice, the Owner may withhold from any payments due or to become due to the Contractor under the Contract Documents an amount sufficient, in its judgment, to (1) satisfy, discharge, and/or defend against any such claim or any action which may be brought or judgment which may be recovered thereon, (2) make good any such nonpayment, damage, failure or default, and/or (3) compensate the Owner for and indemnify and hold it harmless against any and all losses, liability, damages, costs and expenses, including legal fees and costs, which may be sustained or incurred in connection therewith. If the amounts withheld under the Contract Documents are insufficient to compensate the Owner for its losses, damages, costs and expenses, the Owner may require the Contractor to make immediate payment of any such deficiency or offset such deficiency against the compensation to be paid the Contractor in any concurrent, successive or future contracts between the parties.

105.02.11 In furtherance to but not in limitation of the indemnity provisions in this Contract, the Contractor hereby expressly and specifically agrees that its obligation to indemnify, defend and save the Owner and County harmless as provided in the Contract Documents shall not in any way be affected or diminished by any statutory or constitutional immunity it enjoys from suits by its own employees or from limitations of liability or recovery under worker's compensation laws.

105.02.12 The Contractor further agrees that this indemnity does not constitute or act as a waiver of any governmental immunity the Owner and County, its agencies, officers, employees, agents or elected officials enjoy under applicable statutory or common law.

105.03 WAIVER OF SUBROGATION

The Contractor shall waive any rights of subrogation for personal injury or property damage against the Owner, its employees and agents arising from this Contract. In the event of any payment by any insurer of the Contractor under any policy of insurance, the insurer of the Contractor shall not be subrogated to any of the Contractor's rights of recovery therefore against the Owner, its employees and agents; and the Contractor shall neither execute nor deliver instruments and papers nor do anything whatever to secure any such rights for the insurer of the Contractor. The Contractor shall do nothing after loss to secure such rights for the benefit of the insurer against the Owner, its employees and agents. The Contractor waives any and all rights of recovery against the Owner and County of Wayne, its employees and agents for insured losses occurring to any property insured by the Contractor arising from this Contract.

The Owner and County of Wayne shall not, under any circumstances, be liable to the Contractor or any person for any personal injury or property damage occasioned by any defect or malfunction of equipment or property, or from the escape of steam or water, or for any damage or injury occasioned by water or ice being on the premises or Work site or coming from any source. The Contractor shall be solely responsible for providing all services and products arising from the Contract Documents in a safe and proper fashion as specified in the section "Protection of Persons and Property."

The Contractor will be solely and completely responsible for conditions of the job site, including but not limited to the safety of all persons and property during the performance of the Work. This requirement will apply continuously and not be limited to normal Working hours.

The Contractor shall furnish take all other precautions as shall be necessary to prevent damage to persons or property. All structures and improvements in the vicinity of the Work shall be protected by the Contractor, and if such property is damaged, injured or destroyed by the Contractor, his employees, Subcontractors, or agents, it shall be restored to a condition as good as when he entered upon the Work.

The safety provisions of applicable laws, including but not limited to building and construction codes, shall be observed. Machinery, equipment, and all hazards shall be guarded (or hazards eliminated) in accordance with the safety provisions of the latest edition and any supplements thereto of the Manual of Accident Prevention in Construction, heretofore published by the Associated General Contractors of America, to the extent that such provisions are not in contravention to applicable law.

The duty of the Owner to conduct construction inspections of the Contractor's performance is not intended to include review of the adequacy of the Contractor's safety measures in, on or near the construction site or sites.

105.04 INSURANCE

(a) Insurance Required of the Contractor: Prior to commencement of the Work, the Contractor shall purchase and maintain and ensure that any Subcontractor hired by the Contractor purchases and maintains, during the term of the Project, such insurance as will protect him/her and the Owner from claims, demands and lawsuits arising out of the Work described in the Contract Documents and performed by the Contractor, Subcontractors(s), or Sub-Subcontractors. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Contractor or any of its Subcontractor's responsibility for payment of damages resulting from his/her operations under the Contract Documents. The Contractor shall advise all insurance companies to familiarize themselves with the conditions and provisions of the Contract Documents dealing with waiver of subrogation, insurance and indemnification, and failure of the Contractor to so notify the aforesaid insurance companies shall in no way relieve these aforesaid insurance companies; from their obligation under the Contract Documents.

If the Owner determines that the insurance requirements contained in the Contract Documents are no longer sufficient to protect the Owner, the Owner may require the Contractor to obtain additional insurance.

The insurance shall provide that the inclusion of more than one corporation, person, organization, firm or entity as a named insured or an additional insured in the policy shall not in any way affect the rights of any such corporation, person, organization, firm or entity either as respects any claim, demand, suit or judgment made or brought by or in favor of any other named insured or additional insured, or by, or in favor of any employee of such other insured or additional insured. This policy shall insure each such corporation, person, firm or entity in the same manner as though a separate policy had been issued to each; but nothing herein contained shall operate to increase the insurance company's or insurance companies' liability as set forth elsewhere in this policy beyond the amount or amounts for which the insurance company or insurance companies would have been liable if only one person or interest had been named as insured.

The Contractor shall purchase and maintain and ensure that any Subcontractor hired by the Contractor purchases and maintains the following insurance:

1. Workers' compensation insurance including employer's liability to cover employee injuries or disease compensable under the Workers' compensation statutes of the State of Michigan and the states in which Work is conducted under this Contract; disability benefit laws, if any; or Federal compensation acts such as U.S. Longshoremen or Harbor Workers, Maritime Employment, or Railroad Compensation Act(s), if applicable. Self insurance Plans approved by the regulator authorities in the state in which Work on this Project is performed and the State of Michigan are acceptable. The Contractor shall provide coverage for Workers' compensation sufficient to meet the statutory requirements for compensation. Employer's liability insurance, in conjunctions with worker's compensation insurance, for claims for

damages because of bodily injury, occupations sickness or disease or death of an employee when worker's compensation be an exclusive remedy, subject to a limit of liability of not less than \$1,000,000 each accident.

2. Comprehensive general liability policy or commercial general liability policy (occurrence or claims made, CG 0001 or CG 0002; if a claims made policy is used, it must have an unaltered extended discovery period provision) to cover bodily injury to person other than employees subject to bodily injury limits of not less than \$1,000,000 per occurrence and \$5,000,000 in the and aggregate, and for damage to tangible property, including loss of use thereof with damage limits of not less than \$1,000,000 per occurrence, \$5,000,000 in the aggregate or a combined single limit of \$ 5,000,000, plus appropriate endorsements to protect Owner against claims, demands and lawsuits from employees of the Contractor and Subcontractors, including:

- a. All premises and operations.
- b. Explosion, collapse and underground damage.
- c. Contractor's Protective coverage for independent contractors or Subcontractors employed by him/her.
- d. Broad Form Blanket, Contractual liability for the obligations assumed in the Indemnification of Hold Harmless agreement (the Waiver of Subrogation section and the Insurance section found herein).
- e. The usual Personal Injury Liability endorsement with no exclusions pertaining to employment.
- f. Products and Completed Operations coverage. This coverage shall extend through the contract guarantee period.
- g. Broad Form Property Damage.
- h. Cross liability endorsement.

The Owner, County of Wayne, employees of the County of Wayne, Architect and Owner's Representative shall be named as additional insureds under this policy.

3. A comprehensive Automobile Liability policy (form number CA 0001 Symbol 1, with an MCS 90 endorsement and CA 9948 endorsement) to cover bodily injury, subject to a limit of liability of not less than \$5,000,000, and property damage, subject to a limit of liability of not less than \$5,000,000, arising out of the shipment, maintenance or use of any motor vehicle, including owned, non-owned and hired vehicles. In light of standard policy provisions concerning (a) loading and unloading and (b) definitions pertaining to motor vehicles licensed for road used verses unlicensed or self-propelled construction equipment, it is strongly

recommended that the Comprehensive General Liability and the Comprehensive Auto Liability be written by the same carrier, though no necessarily in one policy.

The Owner, County of Wayne, employees of the County of Wayne, Architect and Owner's Representative shall be named as additional insureds under this policy.

4. At Owner's option upon written direction to the Contractor, the Contractor shall purchase a Builder's Risk-Installation floater in a form acceptable to the Owner covering property of the project for the full cost of replacement as of the time of any loss which shall include, as named insured, (a) the Contractor, (b) all Subcontractors, (c) all Sub-subcontractors, (d) Owner and (e) the Owner, as their respective interest may prove to be at the time of loss, covering insurable property which is the subject of this Contract, whether in place, stored at the job site, stored elsewhere, or in transit at the risk of the insured(s). The Owner shall be furnished with two (2) "originally signed copies" of this policy. The Owner, County of Wayne, employees of the County of Wayne, Architect and Owner's Representative shall be named as additional insureds under this policy.

5. The Contractor shall have in place in the event of loss an Umbrella or Excess Liability policy in an amount not less than \$ 5,000,000. The Contractor is granted the option of arranging for coverage under a single policy for the full limit required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy equal to total limit(s) requested. Umbrella or Excess policy wording shall be at least as broad as the primary or underlying policy(ies) and shall apply both to the Contractor's general liability and to his automobile liability insurance and shall be written on an occurrence basis. The Owner, County of Wayne, employees of the County of Wayne, Architect and Owner's Representative shall be named as additional insureds under this policy.

6. Where such an exposure exists, the contractor will provide coverage in the name of each railroad company having jurisdiction over Rights-of-Way across which Work under the Contract Documents is to be performed.

7. The Contractor shall have in place a Contractor's Pollution Liability (CPL) policy, with minimum coverages of \$1,000,000.00 per loss and \$1,000,000.00 aggregate, with coverage for:

- a. bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death;
- b. property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean up costs, and the loss of use of tangible property that has not been physically injured or destroyed; and
- c. defense including loss adjustment costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensatory damages.

For losses caused by pollution conditions that arise from the operations of the CONTRACTOR described under the scope of services of the contract.

The Owner, County of Wayne, employees of the County of Wayne, Architect and Owner's Representative shall be named as additional insureds under this policy.

Coverage shall apply to sudden and non-sudden pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in bodily injury, property damage and/or cleanup.

The Owner, County of Wayne, employees of the County of Wayne, Architect and Owner's Representative shall be named as additional insureds under this policy.

8. If the CONTRACTOR also performs any professional, consulting and/or design services, including, but not limited to the testing of waste streams and/or selection of appropriate waste treatment, storage or disposal facility (TSDF), then the Contractor shall obtain \$3,000,000.00 (per claim and aggregate) Errors and Omissions liability insurance appropriate to the areas of work being provided by CONTRACTOR. Coverage should be for a professional error, act or omission arising out of the scope of services shown in this contract. The policy form may not exclude:

- a. Bodily injury
- b. Property damage
- c. Claims arising out of pollution
- d. Claims arising out of asbestos
- e. Laboratory analysis
- f. The operations of a treatment facility if it is required within the scope of services.

All insurance coverage shall be effected on an "All Risk" form including, but not limited to, the perils of fire, wind, vandalism, collapse, theft, flood and earthquake, with removal of passive design error exclusion. The Contractor may arrange for such deductibles as he deems to be within his ability to self-assume, but he will be held solely responsible for the amount of such deductible and for any co-insurance penalties. Any insured loss shall be adjusted with the Owner and the Contractor and paid to the Owner and the Contractor as trustee for the other insureds.

Insurance coverage shall comply with the requirements of Flood Disaster Protection Act of 1973 contained in 40 CFR., Part 30.

Compliance with the insurance requirements of this Section is a continuing condition of Contractor's rights under this Contract. If Contractor fails to procure and maintain such insurance, the Owner shall have the right, but not the obligation, to procure and maintain the insurance for and in the name of Contractor and the Contractor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurance or, at the Owner's option, the Owner may offset the cost incurred by Owner against amounts otherwise

payable to Contractor under this Contract. If the Contractor fails to comply with the insurance requirements, the Owner has the right to terminate the Contract.

(b) INSURANCE - OTHER REQUIREMENTS

1. **NOTICE OF CANCELLATION OR INTENT NOT TO RENEW:** Policies will be endorsed to provide that at least thirty (30) days written notice shall be given to the Owner.

2. **EVIDENCE OF COVERAGE:** Prior to commencement of the Work, the Contractor shall furnish evidence of insurance. The Owner reserves the right to request complete copies of policies if deemed necessary to ascertain details of coverage not provided by certificates. Such policy copies shall be "Originally Signed Copies" and so designated. The Certificates of Insurance shall evidence the required insurance coverages as enumerated above, including coverage required for the Contractor, the Owner and any additional named insured and for the Contractor and the Owner.

3. **QUALIFICATION OF INSURERS:** In order to determine financial strength and reputation of insurance carriers, all companies providing the coverage required under the Contract Documents shall be licensed and approved by the Insurance Bureau of the State of Michigan and shall have a financial rating no lower than XI and a policy holder's service rating no lower than [A] as listed in A.M. Best's Key Rating Guide, current edition or interim report. Companies with ratings lower than [A] or XI will be acceptable only upon written consent of the Owner.

4. **DAMAGE CLAIMS** - Acknowledgment and Reports: The Contractor shall furnish to the Owner an acknowledgment of receipt from the Insurance Carrier for each damage claim against the project. The receipt shall include the Insurance Carrier's assigned claim number.

Upon request, the Contractor or his Insurance Carrier shall also furnish to the Owner a status report of all damage claims. This report shall include inspections made, the disposition of claims, and what action has been taken towards settlement of each claim.

Failure of the Contractor to comply with this Section of the Specifications may result in the amount of such damage claims being withheld from the Contractor's progress payment. Such withholding shall be reimbursed in the progress payment following compliance.

(c) PAYMENT

The cost of the insurance hereinbefore specified must be clearly identified in all Applications for Payment.

SECTION 106: ARCHITECT'S ADMINISTRATION OF THE CONTRACT

The Architect, in conjunction with Owner's Representative, will provide administration of the Contract Documents (1)during construction, (2)until final payment is due and (3) with the Owner's concurrence, from time to time after the Work is completed.

The Architect, will visit the site at intervals appropriate to the stage of the Contractor's operations (1)to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2)to endeavor to guard the Owner against defects and deficiencies in the Work, and (3)to determine in general if the Work 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 neither have control over or charge of, nor be responsible for, the 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 rights and responsibilities under the Contract Documents, except as provided elsewhere in Contract Documents.

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.

Based on the Architect's evaluations of the Work and 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.

The Architect will have authority to reject Work that does not conform to the Contract Documents.

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 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 will consult with the Owner on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions so rendered in good faith.

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

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.

SECTION 107: SCOPE OF WORK

107.01 INTENT OF THE PLANS, SPECIFICATIONS AND CONTRACT

The intent of the Plans, Specifications and Contract Documents is to provide for the completion of the Work in substantial compliance with the details as shown thereon and as described herein. The Contractor shall furnish all labor, materials, equipment, tools, transportation and necessary supplies, and shall perform all operations required to complete the Work in accordance with the Specifications, and the lines, grades and cross-sections provided for on the Plans.

The Contractor shall have the affirmative responsibility to carefully study and compare the Contract Documents with each other and with information furnished by the Owner. The Contractor shall have the responsibility to immediately report to the Owner any and all errors, inconsistencies or omissions discovered. If the Contractor performs any construction Work knowing it involves a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owner, the Contractor shall assume full responsibility for such performance and shall bear any and all of the attributable costs arising from or related to correction.

107.02 CONSTRUCTION SCHEDULE

The critical path method construction schedule shall be submitted, prior to the pre-construction conference, for review and approval by the Owner. Updated construction schedules shall be supplied to the Owner with each application for payment.

An updated construction schedule will always be supplied when any extension of the Contract Time has been granted by the Owner. Failure to provide any requested update of the construction schedule is grounds for termination.

The Contractor shall prepare and keep current, for the Owner's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Owner reasonable time to review the submittals.

Approval by the Owner of any construction schedule indicating completion of the Work in less time than allotted by the Contract Documents shall not be construed as an acknowledgment, either express or implied, that the Work can be completed within the time shown on this schedule, and shall not under any circumstances give rise to a cause of action for damages by the Contractor.

107.03 VARIATIONS IN ESTIMATED QUANTITIES

The quantities as shown in the Contract Documents may be approximate and are given only as a basis of calculation for awarding Contracts. The Owner does not guarantee that the actual

quantities required for the Project will correspond with any estimate(s) provided. Should actual requirements be less than the quantities stated in the Contract Documents, that fact will not constitute the basis for any price increase or adjustment, nor will the Owner be obligated or assume the responsibility to utilize or pay for any unused quantity balances at the end of the Contract Time.

107.04 CHANGES (INCREASED OR DECREASED QUANTITIES)

The Owner may, at any time, direct changes in quantities and alterations in the Work as are necessary to satisfactorily complete the Project. Such changes in quantities shall not invalidate the Contract Documents or release the Surety, and the Contractor shall perform the Work as altered.

When a major item of work is increased in excess of one hundred and twenty-five percent (125%) or decreased below seventy-five percent (75%) of the original quantity set forth in the Contract Documents, an Adjustment, excluding anticipated profit, may be negotiated to the Contract. The basis for the Adjustment shall be agreed to prior to the performance of the Work. If the basis cannot be agreed upon, then an Adjustment will be made either for or against the Contractor in such amount as the Owner may determine to be fair and equitable, subject to the provision of Subsection 107.08, titled "Pricing Adjustments". The allowances for increases in quantity shall apply only to that portion in excess of one hundred and twenty-five percent (125%) of the original Contract Item quantity, or in the case of decrease below seventy-five percent (75%), to the actual amount of Work performed.

107.05 MODIFICATIONS (EXTRA WORK)

The Contractor shall not perform any extra Work without the prior written approval of the Owner.

107.06 ALTERATION IN CHARACTER OF THE WORK

Should the Contractor encounter discover, during the progress of the Work, physical conditions at the site differing materially from those known or reasonably discoverable by the Contractor prior to beginning Work or unknown physical conditions of a nature differing materially from those generally recognized as Work of the character provided for in the Contract, the Owner shall be promptly notified in writing by the Contractor before conditions are disturbed. The Owner will promptly investigate the conditions, and if he finds that they materially differ and cause an increase or decrease in the cost of the Contract, an equitable adjustment may be authorized as provided in the Contract Documents.

Notwithstanding anything to the contrary herein, no adjustment in the Contract Sum and/or Contract Time shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions that reasonably should have been discovered by the Contractor's (i) prior inspections, tests, reviews, and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the Contractor had the opportunity to make or should have performed in connection with the Project.

107.07 CHANGES IN SCOPE / SERVICE

Owner may request changes to the scope of Work to be furnished or performed by the Contractor under the Contract, as well as changes in the time of performance of the Contract. All such changes shall be authorized by either Change Order or Contract Modification, as those terms are defined in this Contract.

Contractor shall provide Owner with a written proposal to Owner's change request within five (5) business days of receipt of any such request. Contractor's proposal shall describe in reasonable detail the basis for any proposed price or time adjustment. All cost estimates shall include all completed Work, and cover all costs, expenses, overhead and profit of subcontractors, if any.

Contractor acknowledges that any change in the Contract Sum represents full compensation for all costs associated with the change request, including delay costs, impacts, acceleration, disruption, consequential damages and any other cost of any nature.

If the Owner does not accept the Contractor's proposal, the Owner may:

- (a) withdraw its change request; and
- (b) modify its change request, in which case the procedures set forth above will apply to the modified change request; or

Any adjustment in the Contract Sum shall be computed in accordance with the provisions of Subsection 107.08 of this Contract. Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract Documents as changed, provided the Owner promptly and duly makes provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the required Work under protest, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of the time for completion.

No action, conduct, omission, prior failure or course of dealing by the Owner shall act to waive, modify, change or alter the requirement that Contract Modifications must be in writing and signed by the Owner and the Contractor. Contractor further acknowledges that Change Orders and Contract Modifications are the exclusive method for effecting any change to the Contract.

No change to the Contract Documents is effective unless it is in writing and signed by the Owner. If the change is a Contract Modification, it must be signed and acknowledged by duly authorized representatives of both parties. If the change is a Change Order, it must be signed by an authorized representative of the Owner.

107.08 PRICING ADJUSTMENTS

Any adjustment in the Contract Sum as a result of Owner's exercise of its rights pursuant to Subsections 107.04, titled "Changes (Increased or Decreased Quantities)", 107.05, titled "Modifications", and 107.06 titled, "Alteration in Character of the Work" of the Contract Documents shall be made in one or more of the following ways:

- (a) by unit prices specified in the Contract;
- (b) by unit prices subsequently agreed upon;
- (c) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (d) by the costs attributable to the event or situation, plus appropriate profit or fee, if applicable, as specified in the Contract Documents or subsequently agreed upon;
- (e) in such other manner as the parties may mutually agree; or
- (f) in the absence of agreement between the parties, by a unilateral determination of the Owner of the costs attributable to the event or situation, with adjustment of profit or fee, as computed by the Owner in accordance with generally accepted accounting principles and subject to the provisions of Article 9 of Chapter 120 of the Wayne County Code governing "Appeals and Remedies."

Contractor shall provide cost or pricing data for any price adjustments subject to the provisions of Section 120.3302 (Cost or Pricing Data) of the Wayne County Code.

107.09 DEFECTIVE COST OR PRICING DATA

If Contractor submits cost or pricing data and the Owner subsequently determines that such cost or pricing data is inaccurate, incomplete, or noncurrent as of the date stated in the Contractor's Application for Payment, Contractor acknowledges the Owner's unconditional right to adjust the Contract Sum, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was changed because of the inaccurate, incomplete and/or defective cost or pricing data.

107.10 CLAIMS FOR ADDITIONAL COMPENSATION

In the event the Contractor wishes to make a claim for additional compensation; the Contractor must make his claim in writing to the Owner before the Contractor begins the Work on which he bases the claim or out of which the claim arises or, in the case of a delay or slowdown no later than three (3) days after the event giving rise (in whole or in part) to the delay or slowdown. Failure to give such notification shall constitute a waiver of the claim for such additional compensation. If the Contractor is directed in writing by the Owner to proceed, the Contractor must afford the Owner every facility for keeping records of the actual cost of the Work. The

Contractor and Owner shall compare records and bring them into agreement at the end of each day. Failure to afford the Owner proper facilities for keeping strict account of actual cost shall constitute a waiver of the claim for additional compensation. The filing of such notice by the Contractor and the keeping of costs by the Owner shall not in any way be construed to prove the validity of the claim.

Notwithstanding anything to the contrary herein, unless pursuant to this Subsection no additional compensation shall be paid to the Contractor unless the Contractor receives prior written approval of the Owner.

107.11 REMOVAL AND DISPOSAL OF STRUCTURES AND OBSTRUCTIONS

Salvage material derived therefrom shall become the property of the Contractor and shall be disposed of by him except as otherwise provided in the Specifications or the Plans.

SECTION 108: SUBCONTRACTS

108.01 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.

108.02 The Contractor shall furnish in writing to the Owner the names of the Subcontractors for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor to whom the Owner or Architect has made an objection. The Contract Sum and Contract Time shall not be increased or changed if the Owner objects to any Subcontractor.

108.03 Contracts between the Contractor and Subcontractors shall be in form and type reasonably acceptable to the Owner, and shall, at a minimum (1)require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the 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 the Contract Documents, assumes toward the Owner and Architect, and (2)allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor as is afforded to the Contractor by these Contract Documents.

108.04 Contractor shall be fully responsible to Owner and Architect for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents shall create for the benefit of any such Subcontractor, Supplier or other person or organization any contractual relationship between Owner, Owner's Representative and Architect, on one hand, and any such Subcontractor, Supplier or other person or organization on the other hand, nor shall it create any obligation on the part of Owner, Owner's Representative or Architect to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

108.05 Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with Contractor. Contractor shall require all Subcontractors, Suppliers and such other persons and organizations performing or furnishing any of the Work to communicate with the Architect through Contractor.

108.06 All work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Architect. Whenever any such agreement is with a Subcontractor or Supplier who is listed as an additional insured on the property insurance provided for here in the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Architect, Architect's Consultants and all other additional insureds for all losses and damages caused by, arising out of or resulting from any of the perils covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor, or Supplier, Contractor will obtain the same. All Subcontracts shall include language indicating the Subcontract may, at the written request of the Owner, be assigned to the Owner and each Subcontractor agrees to such assignment. The Contractor shall cooperate to secure Subcontractor's assignments following the request of the Owner.

108.07 PROMPT PAYMENT

If the Contractor should subcontract a part of its obligations under this Contract to a business which has been certified by the County's Division of Human Relations as a small or Disadvantaged Business Enterprise, the Contractor shall make prompt payments to each such Subcontractor as the subcontract is performed which are at least equal to the prompt payments which are due to the Contractor under the provisions of the Contract Documents and to section 120.3404 of the Wayne County Code. Unless alternate terms which have a similar purpose and effect are otherwise agreed upon in writing, the Contractor shall make payment within 45 days after delivery or satisfaction of the subcontract, or receipt of a complete invoice therefore, whichever is later. If an invoice is filled out incorrectly or contains a defect or impropriety, the Contractor shall notify the Subcontractor of that fact within 10 days after receipt of the invoice. The 45 day period shall be extended by each day over 5 days which the Subcontractor takes to make a correction. If a payment is past due, the Contractor shall pay to the subcontractor an additional amount to be calculated on a daily basis which is equal to an annual rate of interest of 9% (amount overdue X number of days overdue X .000246575). Interest shall not be if payment is delayed because of good faith disagreement between the Contractor and the Subcontractor regarding contract performance and the dispute is resolved in favor of the Contractor. This provision is expressly intended to create a third-party right which is legally enforceable by Subcontractor. This provision does not, however, create a duty on the part of the Owner to seek enforcement of a default of this provision or to make payment to the Subcontractor on behalf of the Contractor.

SECTION 109: OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

109.01 The Owner reserves the right 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 a contract identical or substantially similar to these, including those portions related to insurance and waiver of subrogation.

109.02 The Contractor shall afford the Owner and separate contractors every opportunity for introduction and storage of their materials and equipment and performance of their activities, and Contractor shall connect and coordinate the separate contractor's activities with the Contractor's activities. The Contractor understands and agrees the Work required by the Contract Documents requires the Contractor to coordinate, schedule, manage and oversee the work of Owner's separate contractors.

109.03 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall not be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, and damage to the Work or defective construction of a separate contractor.

SECTION 110: RELATIONS AND RESPONSIBILITY TO PUBLIC

110.01 LAWS TO BE OBSERVED

In all operations connected with the Work, all Federal and State laws, local ordinances, and laws or by-laws controlling or limiting in any way the actions of those engaged on the Work shall be strictly complied with by the Contractor and all employees Working under his direction.

110.02 Non-Discrimination of Employment

110.02.01 The Contractor must comply with:

- (a) Titles VI and VII of the Civil Rights Act (42 U.S.C. § 2000d et. seq.) and the United States Department of Justice Regulations (28 C.F.R. Part 42) issued pursuant to those Titles.
- (b) The Age Discrimination Act of 1985 (42 U.S.C. § 6101-07).
- (c) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794).
- (d) The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et. seq.) and its associated regulations.

- (e) The Michigan Civil Rights Act (P.A. 1976 No. 453) and the Persons with Disabilities Civil Rights Act (P.A. 1976 No. 220)
- (f) The anti-discrimination provisions as required by section 120.11104 of the Wayne County Code.
- (g) Any other appropriate affirmative action provisions as may be required from time to time by the Director of Human Relations of the County. Contractor shall promptly give notice of any such provisions to Owner during the term of the Contract.

110.02.02 The Contractor must not:

- (a) Refuse to recruit, hire, employ, promote or to bar or discharge from employment an individual, or discriminate against an individual in compensation, terms, conditions or privileges of employment because of race, color, creed, national origin, age marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.
- (b) Limit, segregate, or classify and employee or applicant for employment in a way which deprives or tends to deprive any individual of employment opportunities or otherwise adversely affects the employment status of an employee because of race, color, creed, national origin, age, marital status, handicap, sex, or sexual orientation, religion, familial status, height or weight.
- (c) Print or publish or cause to be printed or published a notice, application, or advertisement relating to employment by the Contractor indicating a preference, limitation, specification, or discrimination based upon race, color, creed, national origin, age marital status, handicap, sex or sexual orientation, religion, familial status, height or weight.
- (d) Except as permitted by rules and regulations promulgated pursuant to section 120.11104 of Wayne County Code, or applicable state or federal law, make or use a written or oral inquiry or form of application that elicits or attempts to solicit information concerning the race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight, of perspective employees, Contractor also shall not make or keep a record of that information or disclose such information.
- (e) Make or use a written or oral inquiry or form of application that expresses a preference, limitation or specification based on religion, race, color, creed, national origin, age, height, weight, marital status, handicap, sex or sexual orientation.

110.02.03 The Contractor must notify any Subcontractor of the obligations relative to non-discrimination under the Contract Documents when soliciting the subcontractor. The Contractor will include the provision of this Subsection in any subcontract, as well as provide the Owner with a copy of any subcontract agreement.

110.02.04 The Contractor and its Subcontractors must not discriminate against minority business enterprises or women business enterprises (as defined in section 120.11102 of the Wayne County Code) in selecting and retaining Subcontractors to perform work on this Contract.

110.02.05 The Contractor and its Subcontractors must not discriminate against any employee or applicant for employment, training, education, or apprenticeship connected directly or indirectly with the performance of this Contract, with respect to hire, promotion, job assignment, tenure, terms, conditions or privileges of employment because of race, color, creed, national origin, age, marital status, handicap, sex or sexual orientation, religion, familial status, height or weight. This Section does not apply if it is determined by the Division of Human Relations that the requirements are bona fide occupational qualifications reasonably necessary to perform the duties required for employment. The burden of proof that the occupational qualifications are bona fide is upon the Contractor.

110.02.06 Breach of any of the covenants in this Subsection may be regarded as a material breach of this Contract.

110.02.07 Contractor acknowledges the right of the Owner to sue to enforce the provisions in this Subsection of the Contract.

110.02.08 If the Contractor does not comply with the non-discrimination and affirmative action provisions of this Contract, the Owner may impose sanctions, as it determines to be appropriate, including but not limited to:

- (a) the withholding of payments to the Contractor under the Contract Documents until the Contractor attains compliance;
- (b) cancellation, termination or suspension of this Contract, in whole or in part; and/or
- (c) the imposition of liquidated damages (not a penalty) in the amount of as required in Section 111.06 of the Contract Documents per day, for each day that the Contractor shall fail to comply with said requirements, as determined by the Purchasing Director, in consultation with the Director of Human Relations and Corporation Counsel.

110.02.09 If the Contract Documents are funded, in whole or in part, by federal funds:

- (a) Contractor's breach of affirmative action commitments set forth in this Subsection constitutes a material breach of contract sufficient to warrant the immediate termination and the imposition of liquidated damages as set forth above, based upon the decision of the director of Human Relations;
- (b) Contractor must provide immediate notice to the Owner when a Subcontractor who was part of the Contractor's affirmative action commitment is terminated or substantially displaced by a Subcontractor who does not qualify as a

disadvantaged business enterprise, as that term is defined in section 120.11102 of the Wayne County Code; and

- (c) Contractor must establish and implement a good faith plan and goal to eliminate the continuing effects of past discrimination, which is determined by the Division of Human Relations to be appropriate for that purpose, provided the Owner has been authorized by the funding source to require such an affirmative action commitment from the Contractor.

110.02.10 In the event that the Contract Documents are or becomes subject to federal or state law which conflicts with the requirements of section 120.11104 of the Wayne County Code, the provisions of the federal or state law shall apply and the Contract Documents shall be interpreted and enforced accordingly.

110.03 PREVAILING WAGES

The rates of wages and fringe benefits to be paid to each class of construction laborers and mechanics by the Contractor and any Subcontractor shall not be less than the wage and fringe benefit rates issued by the Michigan Department of Consumer and Industry Services, Bureau of Safety and Regulation, Wage/Hour Division in its schedule of occupational classification and wage and fringe benefit rates for the locality in which the Work is to be performed.

The Contractor shall keep posted on the construction site, in a conspicuous place, a copy of all prevailing wage and fringe benefit rates and the address and telephone number of the Michigan Department of Consumer and Industry Services' office responsible for enforcement of these provisions.

Apprentices and trainees may be employed at less than the predetermined rates. Apprentices must be employed pursuant to an apprenticeship program registered with the Department of Labor or with a State of Michigan apprenticeship agency recognized by the Department of Labor. Trainees must be employed pursuant to a training program certified by the Department of Labor.

Contractors and Subcontractors are also required, pursuant to the Contract Work Hours and Safety Standards Act, to pay employees one and one half (1 1/2) times their basic rate of pay for all hours worked on covered Contract Work over forty (40) hours in one work week.

The Davis-Bacon Act 40 U.S.C. §§ 276a-276a-7 ("Davis-Bacon") shall govern this Project. The Contractor, and all subcontractors and sub-subcontractors, shall comply with Davis-Bacon, pay prevailing wages as required by Davis-Bacon, and submit any and all reports required in order to substantiate compliance with the Davis-Bacon Act.

110.04 NOTICES

Notices under the Contract Documents shall be delivered by certified mail, return receipt requested, to:

For the Owner:

WAYNE COUNTY BUILDING AUTHORITY

Attention: Owner's Representative: Anthony P. Parlovecchio
500 Griswold, 21st Floor
Detroit, Michigan 48226

With a Copy to:

Jeffrey M. Sangster
KOTZ, SANGSTER, WYSOCKI AND BERG, P.C.
400 Renaissance Center, Suite 3400
Detroit, Michigan 48243

For the Contractor:

Blaze Contracting, Inc.
5640 St. Jean Street
Detroit, MI 48213

Either party may change their designated representative during the pendency of the Contract Documents by written notice to the last named representative of the respective party.

110.05 ETHICS IN CONTRACTING

110.05.01 The Contractor must comply with Article 12 of Chapter 120 of the Wayne County Code governing "Ethics in Public Contracting."

110.05.02 Contractor's material misrepresentation or delinquency in the disclosures required by section 120.12105 of the Wayne County Code constitutes a material breach of this Contract, sufficient to warrant immediate termination and the imposition of liquidated damages (not a penalty) of fifteen percent (15%) of the consideration made or due under the Contract Documents as of the date of termination.

110.05.03 If the Owner determines that the Contractor has made a material misrepresentation or is willfully delinquent or knowingly evasive in the disclosures required by section 120.12105, the Contractor and any other business which has substantially the same principal beneficiaries (as defined in section 120.12901 of the Wayne County Code), may be debarred by the Purchasing Director, pursuant to Article 6 of Chapter 120 of the Wayne County Code, from competing for any further Wayne County contracts for up to three (3) years.

110.05.04 If the Contract Sum is in excess of \$20,000, or the terms thereof require the approval of the Wayne County Commission, and the Contractor knowingly collaborates in or induces a violation of any of the ethical standards that are set forth in sections 120.12103, 120.12104,

120.12105, 120.12301, 120.12401, 120.12402, 120.12403, or 120.12405 of the Wayne County Code, the Owner has the right to impose any one or more of the following sanctions:

- a. Immediately terminate the Contract Documents and require the Contractor to pay the Owner liquidated damages, and not a penalty, of 15% of the Contract Sum;
- b. Debar or suspend the Contractor from consideration from competing for further Owner contracts; or
- c. Recover the value transferred or received in breach of the ethical standards by an Owner employee or other person

110.06 RIGHT TO AUDIT CONTRACTOR'S RECORDS

110.06.01 Contractor must maintain all pertinent financial and accounting records and evidence pertaining to the Contract Documents in accordance with generally accepted principles of accounting and other procedures specified by the Owner.

110.06.02 The Owner has the right to examine and audit all books, records, documents and other supporting data, as the Owner deems necessary, of the Contractor, or any subcontractors, or agents, performing Work under this Contract, whether direct or indirect, that will permit adequate evaluation of the Work performed by the Contractor and any Subcontractors. Contractor must include a similar covenant allowing for Owner audit in any agreement it has with a subcontractor or agent related to this Contract. The Owner may delay payment to the Contractor pending the results of any such audit without penalty or interest.

110.06.03 The Contractor must make available to the Owner, or its authorized representatives, including the Legislative Auditor General, at any time Monday through Friday, inclusive, between the hours of 8:00 a.m. and 6:00 p.m., at the Owner's election, at that location among its offices which the Work is principally performed or which is closest and most convenient for the Owner's auditors, all records, books, statements, reports, or other pertinent information that the Owner deems necessary concerning Contractor's and any subcontractor's performance of Work under this Contract, as may be required for audit purposes. Contractor shall make its staff available to answer all questions and provide all information reasonably necessary to complete both a financial and compliance audit of the Contract. If, in the course of the inspections, the representatives of the Owner should note any deficiencies in the performance of the Work of the Contractor, or any other deficiencies, the alleged deficiencies will be reported promptly to the Contractor, in writing. The Contractor agrees to promptly remedy and correct any reported deficiencies within ten (10) days of notification by the Owner.

110.06.04 If, as a result of any audit conducted by or for a Owner, State of Michigan or federal agency relating to the Contractor's performance under this Contract, a discrepancy should arise as to the amount of compensation due the Contractor, the Contractor shall pay to the Owner on demand the amount of compensation in question as well as any and all costs incurred by the Owner in conducting the audit. If Contractor fails or refuses to make payment, in addition to any other legal remedies available to the Owner, the Owner may retain said amount from any funds

allocated to the Contractor but not yet disbursed under the Contract Documents or may offset such a deficiency against the compensation to be paid the Contractor in any concurrent, successive or future contracts between the parties.

110.06.05 A breach of this Subsection constitutes a material breach of the Contract Documents sufficient to warrant termination, the imposition of liquidated damages (not a penalty) of fifteen percent (15%) of the Contract Sum, and debarment from further work for Wayne County for no less than three (3) years.

110.06.06 Contractor further acknowledges the right of the Wayne County Commission as a third party to sue to enforce this Subsection.

110.06.07 Contractor and its Subcontractor(s) shall maintain all documents pertinent to the Contract Documents or Subcontract(s) for a period of six (6) years from the date each receives final payment under their respective contracts. If the Work is funded, in whole or in part, by federal and/or state funds, Contractor and its subcontractor(s) shall maintain all such documents for a period of six (6) years after the Owner completes its final audit. Contractor shall make this a condition of any subcontract with its subcontractors. Contractor shall maintain all documents at that location among its offices in which the Work is principally performed or which is closest and most convenient for the Owner's auditors.

110.07 TAX REPORTING

The Owner shall not be obligated to make payments to the Contractor prior to the Owner's receipt of information necessary to enable it to comply with its reporting or other legal obligations under the Internal Revenue Code and similar provisions of state or local law. Information required by the Owner may include, but is not limited to, Form W-9, Request for Taxpayer Identification Number, and other information or certifications determined by the Owner, in its sole discretion, to be reasonably necessary to evidence Contractor's legal status, address, taxpayer identification number, or other information relating to backup withholding pursuant to IRC Section 3406. The Owner will furnish information returns (including Forms 1099 or other returns, as appropriate) to the Contractor and appropriate government entities by their required due dates and in accordance with applicable law. Any payment due the Contractor shall be reduced by the amount of any required backup withholding, and the Contractor shall have no claim against the Owner for additional amounts or payments under the Contract Documents for the amount of any backup withholding required by applicable law to be paid over to any government authority.

110.08 APPROVAL OF ACCOUNTING SYSTEM

Except in those instances in which the Contract Sum is fixed, for all contracts over \$20,000, the Contractor shall not begin Work unless and until the Owner's Representative has determined, in writing, that the Contractor's accounting system: (a) permits timely development of all cost data in a form reasonably acceptable to the Owner; and (b) is adequate to allocate costs in accordance with generally accepted cost accounting principles.

110.09 PERMITS AND LICENSES

The Contractor shall secure at his own expense all permits and licenses, and shall give all notices necessary to the due and lawful prosecution of the Work. All inspection fees and other expenses occasioned by the Contractor's Work adjacent to a railroad facility, public or private utility, conduit or structure, as determined by the Owner shall be paid by the Contractor and shall not be recoverable from the Owner.

110.10 PATENTED DEVICES, MATERIALS AND PROCESSES

If the Contractor is required or desires to use any design, device, material or process covered by letters patent or copyrighted, he shall provide for such use by suitable legal agreement with the patentee. The Contractor and the Surety shall indemnify, hold harmless, and defend the Owner for any and all claims for infringement by reason of the use of any such patent, design, device, material or process, or trademark or copyright in connection with the Work agreed to be performed under this Contract, and shall indemnify the Owner for any costs, expense and damages which it may be obliged to pay by reason of any such infringement at any time during the prosecution or after the completion of the Work.

110.11 SANITARY PROVISIONS

The Contractor shall provide and maintain in a neat and sanitary condition such accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the Federal, State and local health authorities; and he shall take such precautions as are necessary to avoid creating unsanitary conditions. All sanitary installations for use during construction shall be removed from the Project by the Contractor before acceptance of the Work. The construction, maintenance, and removal of all temporary sanitary facilities shall be included in other items of Work and will not be paid for separately.

110.12 PUBLIC CONVENIENCE AND SAFETY

The Contractor shall comply with all Federal, State, Municipal and local laws, bylaws, ordinances, and regulations applicable to the Work under this Contract, including OSHA and MIOSHA. He shall furnish and use all material, safeguards, safety devices, and protective equipment as required by such laws, ordinances, or regulations. He shall also be responsible for taking any other needed actions to protect the life and health of the Contractor's and Owner's employees on the Work and safety of the public, and to protect the Work and adjoining utilities and property during the construction of the Project.

- (a) Control- of Air Pollution: The Contractor shall comply with all Federal, State, and local laws and regulations governing the control of air pollution.

During the construction of any project, adequate dust control measures shall be maintained so as not to cause detriment to the safety, health, welfare, or comfort to any person or cause damage to property or business.

All bituminous and portland cement concrete proportioning plants shall meet the requirements of the rules of the Michigan Air Pollution Control Commission. The Contractor shall notify the Air Pollution Control Division, Michigan Department of Natural Resources, Lansing, in writing, as to the proposed location of any bituminous or concrete plant at least two weeks prior to the production of a mixture.

- (b) Excavation and Shoring: Excavation and Shoring, as hereinafter specified in the Standard Specifications, are intended only as a guide to the Contractor. When, in the judgment of the Owner, any additional excavation, sheeting, shoring and/or bracing is required to adequately protect the Work, the Contractor shall promptly provide the same. This additional Work will not be a pay item unless a method of payment is specified in the Specifications. However, in all situations the Contractor will be responsible for the Work, the safety of the personnel engaged in the Work, and the safety of the public at large.
- (c) Utilities: For protection of underground utilities and according to Public Act 53, 1974, the Contractor shall dial Miss Dig 1-800-482-7171 a minimum of three full working days, excluding Saturdays, Sundays, and holidays, before beginning each excavation in areas where public utilities have not been previously located. This does not relieve the Contractor of the responsibility of notifying utility owners who may not be a part of the Miss Dig alert system.

The Contractor shall comply with Act 53 of the Michigan Public Acts of 1974, commonly known as "MISS DIG " at points where the Contractor's operations are adjacent to utilities, construction shall not be commenced until all arrangements necessary for the protection thereof have been made.

The Contractor shall cooperate with the owners of any underground or overhead utilities in their removal and rearrangement operations in order that (1) these operations may progress in a reasonable manner, so (2) duplication of rearrangement operations may be reduced to a minimum, and (3) services rendered by those utilities will not be unnecessarily interrupted. The Contractor shall arrange for the discontinuance of all Utility services that are to be abandoned as part of the Project. The Contractor agrees the Contractor is solely responsible for any and all claims arising from his failure to do so.

In the event of interruption to utility services as a result of accidental breakage or as a result of being exposed or unsupported, the Contractor shall promptly notify the proper Utility and shall cooperate with said utility in the restoration of service. If utility service is interrupted, repair work shall be continuous until service is restored.

Sufficient warning lights and safety devices shall be provided and properly maintained by the Contractor. Proper maintenance shall include washing, painting, positioning and any other work necessary for them to perform their intended function. Where sufficient warning lights and safety devices have not been provided by the Contractor, the Owner shall have the authority, in its discretion, to provide for any additional protective equipment necessary; and the cost thereof shall be deducted from any money due to the Contractor.

110.13 PROTECTION AND RESTORATION OF PROPERTY

The Contractor shall restore, at Contractor's sole own expense and without any reimbursement or payment from the Owner, any public or private property damaged or injured in consequence of any act or omission on his part, or on the part of his Subcontractors, sub-subcontractors, employees or agents, to a condition equal or better than that existing before such injury or damage was done. If the Contractor neglects to restore or correct such damage or injury, the Owner may, upon forty-eight (48) hours notice, proceed to restore or make good such damage or injury and order the cost thereof deducted from any monies that are due or may become due the Contractor. In the event no monies are due to the Contractor, the Contractor shall immediately pay the Owner all amounts claimed by the Owner and no later than forty-eight (48) hours after the Owner's demand.

When it is possible that construction operations may endanger any railroad facility, public or private utility, conduit or structure the Contractor shall notify the railroad or utility owner of this possibility, and the Contractor shall take such steps as may be required to safeguard and support such railroad facilities, utilities, conduits, or structures. All inspection fees, permit charges and other expenses occasioned by the Contractor's Work adjacent to the railroad facility, as determined by the Owner, shall be paid by the Contractor and shall not be recoverable from the Owner.

Repairs made by the Contractor shall be done as directed by the Utility owner and at the expense of the Contractor. Where it is the policy of any Utility owner to make its own repairs to damaged conduit or other structures, the Contractor shall cooperate to the fullest extent with the Utility, and he shall see that his operations interfere as little as possible with these operations, and the Contractor shall assume the cost of any charge against the Owner therefore.

In cases where existing public and private Utility service connections are encountered, the Contractor shall perform his operations in such a manner that service will be uninterrupted, and the cost thereof shall be at the Contractor's expense, unless otherwise provided. The methods used by the Contractor for maintaining and supporting utilities and their service connections shall be such as to avoid settlement of such utilities (before and after placing of backfill). Support details shall meet the approval of the Utility involved.

110.14 NO WAIVER OF LEGAL RIGHTS

The Owner shall not be precluded or estopped by any measurement or estimate made either before or after the completion and acceptance of the Work and payment therefore, from showing the true amount and character of the Work performed and materials furnished by the Contractor, nor from showing that any such measurement or estimate is untrue or incorrectly made, nor that the Work or materials do not conform in fact to the Contract. The Owner shall not be precluded or estopped, notwithstanding any such measurement of estimate and payment in accordance therewith, from recovering from the Contractor and the Surety such damages as it may have sustained by reason of his failure to comply with the terms of the Contract. Neither the acceptance by the Owner or by his representative, nor any payment for or acceptance of the

whole or any part of the Work, nor any extension of time, nor any possessions taken by the Owner shall operate as a waiver, of any portion of the Contract Documents or of any power herein reserved or any right to damages herein provided. A waiver of any breach of the Contract Documents shall not be held to be a waiver of any other or subsequent breach.

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.

110.15 PERSONAL LIABILITY OF PUBLIC OFFICIALS

In carrying out any of the provisions of the Contract Documents or in exercising any power or authority granted to them by or within the scope of the Contract, there shall be no liability upon the Owner or its authorized representatives, either personally or as officials of the Owner, it being understood that in all such matters they act solely as agents and representatives of the Owner.

110.16 USE OF EXPLOSIVES

The Contractor shall not use explosives in excavation or for the removal of structures or portions of structures without the written permission of the Owner.

In addition to the requirements in Subsection 107.11, titled " Removal and Disposal of Structures and Obstructions" herein, the following procedures are required:

- (a) The Contractor shall request in writing permission from the Owner to use explosives in the Work. This request must outline precisely where the blasting is to be used and who is to perform the Work. If permission is granted, the Contractor shall designate a person qualified in the use of explosives that shall outline the entire planned use of explosives and shall describe the type of explosive and detonation method to be used.
- (b) The Owner may require that a seismometer instrument be used to record and measure the shock wave experienced when blasting. A trial blast may be required to demonstrate the anticipated shock wave.
- (c) The Contractor shall exercise the utmost care not to endanger life and property, including the new Work, and will be held responsible for all damage due to the use of explosives.

The Contractor shall secure all Federal, State and local permits and licenses necessary to perform this Work. In all operations connected with the use of explosives for blasting, the Contractor shall strictly comply with all laws and ordinances controlling or limiting in any way the actions of those engaged in this Work.

110.17 CONTROL OF WATER POLLUTION AND SILTATION

The Contractor shall conduct his Work in a manner that will not cause damaging siltation or pollution of the water in streams, rivers, watercourses, lakes and reservoirs.

All applicable regulations of agencies and statutes relating to the prevention and abatement of pollution shall be complied with in the performance of the Contract.

Construction operations shall be conducted in such manner as to reduce erosion to the practicable minimum. The Owner shall have full authority to order the suspension of grading and other operations pending adequate and proper performance of trimming, finishing and maintenance Work, or to restrict the area of erodible land exposed to the elements.

The disturbance of lands and waters within the Right-of-Way that are outside the limits of construction is prohibited, except as found necessary and approved by the Owner.

The Contractor shall conduct his Work in such manner as to prevent the entry of fuels, oils, bituminous materials, chemicals, sewage or other harmful materials into streams, rivers, watercourses, lakes or reservoirs.

Care shall be taken during any construction and/or demolition to minimize the muddying of a stream, river, watercourse, lake or reservoir. All waterways shall be cleared as soon as practicable of falsework, piling, debris or other obstructions placed during construction operations and not a part of the finished Work.

SECTION III: PROSECUTION AND PROGRESS

111.01 PROSECUTION OF THE WORK

The Contractor shall begin Work on the Project immediately.

Under this Contract, time is of the essence; hence the Contractor has a duty to complete the Work within the time limits set forth in the Contract. If, in the judgment of the Owner, the Contractor is not proceeding as rapidly as is provided in the project completion schedule, the Owner may direct the use of extra men and equipment, extra shifts or seven-day-a week operations to insure completion of the Work or any section of the Work within dates specified in the Contract. Any of the above requirements directed by the Owner shall be performed by the Contractor at no additional cost to the Owner.

The Contractor's failure to comply with this Subsection shall be cause for termination of the Contract Documents in accordance with the Contract Documents.

111.02 LIMITS OF OPERATION

The Contractor shall begin Work and operate as he deems necessary and/or as provided in the project completion schedule incorporated in the Contract, except where the integrity of the Work and/or unforeseen circumstances requires rescheduling of the Work by the Owner.

During construction operations, no Work shall be performed by private agreement with property owners adjacent to the Project. Work may be allowed when requested by local municipalities, but only with the written consent of the Owner.

In case of a dispute arising between two or more Contractors or others as to the respective rights of each under these Specifications, the Architect shall determine the matters at issue and shall define the respective rights of the various interests involved in order to secure the completion of all parts of the Work in general harmony and with satisfactory results, and his decision shall be final and binding on all parties concerned and shall not in any way be cause for claim for extra compensation by any of the parties.

111.03 CHARACTER OF WORKMEN AND EQUIPMENT

The Contractor shall employ workmen skilled in their various duties. Any superintendent, foreman or workman who ignores the instructions of the Architect or Owner's Representative or willfully neglects to perform their Work in accordance with the Plans and Specifications or is intemperate or disorderly shall be removed from the Project by the Contractor upon the written complaint of the Owner and shall not be employed again in any portion of the Work without the approval of the Owner.

Should the Contractor fail to remove such person or persons as required above or fail to furnish suitable and sufficient personnel for the proper prosecution of the Work, the Owner may suspend the Work by written notice until such orders are complied with. In no instance shall any action by the Owner be construed as supervisory control of the Work or of means and methods employed by the Contractor and shall not relieve the Contractor from any of his responsibilities or obligations under the Contract.

The Contractor shall furnish and use such adequate and proper machinery and equipment as will insure the Work being done in a satisfactory manner. Equipment used on any portion of the Project shall be such that no injury to the completed work, adjacent property, or other property will result from its use.

When the methods and equipment to be used by the Contractor in accomplishing the construction are not prescribed in the Contract, the Contractor is free to use any methods or equipment that he demonstrates, to the satisfaction of the Architect, will accomplish the Work in conformity with the requirements of the Contract, except that equipment for a specific task shall be the type generally designed for this purpose.

When the Contract Documents specify that the construction be performed by the use of certain methods and equipment, such methods and equipment shall be used unless others are authorized by the Architect.

111.04 SUSPENSION OF WORK BY OWNER

111.04.01 The Owner may, at any time, at will and without cause, suspend, delay or interrupt any part of the Work or any Subcontract or all Work for any reason whatsoever for such period of time as the Owner may determine by giving three (3) calendar days prior written notice to Contractor specifying the part of Work or Subcontract to be suspended, delayed or interrupted and the effective date of such suspension, delay, or interruption. The basis of the suspension may include, without limitation, unsuitable weather, or such other conditions as are considered unfavorable for the suitable prosecution of the Work, or for such time as is necessary, due to the failure on the part of the Contractor to carry out orders given or to perform any or all provisions of the Contract Documents or for violation of the Contract Specifications. In addition, the Owner may suspend the Work when proper inspection by the Owner is precluded by labor strife, including strikes, walkouts or slowdowns by the Owner's own employees.

111.04.02 Contractor shall continue to prosecute that part of the Work not suspended, delayed or interrupted and shall properly protect and secure that part of the Work so suspended, delayed or interrupted, so far as is necessary in Contractor's reasonable opinion. The Contractor also shall exercise due care in storing all materials in such a manner so as not to become an obstruction, nor become damaged in any way, and shall provide suitable drainage by opening ditches, shoulder drains, etc., and shall erect temporary structures where necessary. In all cases of Owner ordered suspension of construction operations, the Work shall not be resumed until permitted by written order of the Owner.

111.04.03 The Contractor at his own volition shall not suspend the Work or remove any equipment or materials required for further prosecution of the Work without written authority from the Owner.

111.04.04 Notwithstanding anything to the contrary contained in this Contract, if the suspension is for a period of 180 days or less, there shall be no adjustment to the Contract Sum. If the suspension period exceeds a 180 day period, then the Contract Sum and time may be equitably adjusted. The Contractor may be paid reasonable standby fees and reasonable standby fees of Subcontractors, provided said fees are authorized in advance by Owner. However, no payment or extension of Contract Time shall be made under this Section to the extent that any Work or Subcontract is, was, or could have been suspended, delayed, or interrupted under any other provision of the Contract Documents.

111.05.01 The Contract Time may only be changed by a Change Order or a Written Amendment. Any claim for an adjustment of the Contract Time shall be based on written notice delivered by the party making the claim to the other party and to Owner promptly (but in no event later than seven days) after the occurrence of the event giving rise to the claim and stating the specific nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within fourteen (14) days after such occurrence and shall be accompanied by the

claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by Owner. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this Section 111.05.01, and the Contractor specifically waives any and all claims for which it has not provided noticed as specifically required by the Contract Documents.

111.05.02 All time limits stated in the Contract Documents are of the essence of the Agreement. By executing the Contract the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

111.05.03 Where Contractor is prevented from completing any part of the Work within the Contract Time due to delay beyond the control of Contractor, the Contract Time may be extended in an amount equal to the time lost due to such delay if a claim is made therefor as provided in Section 111.05.01. The Contractor and Owner agree the Owner is vested with the sole and absolute discretion to decide whether to grant Contractor an extension of the Contract Time.

111.05.04 DELAY: The following definitions shall apply:

111.05.04.01 CRITICAL DELAY: A delay is a "Critical Delay" if and only to the extent it adversely affects the Critical Path of the Work. When two (2) or more delays occur concurrently, and each such concurrent delay by itself without consideration of the other delay(s) would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Project Schedule should be adjusted, such concurrent Critical Delays shall be treated as a single delay which commences at the start of the delay that begins first and terminates at the cessation of the delay that ends last.

111.05.04.02 CRITICAL PATH: The term "Critical Path" means the longest continuous chain of activities through the network schedule that establishes the minimum time to complete the Work as required by the Contract Documents within the Contract Time.

111.05.04.03 DEFECTIVE WORK: Work not conforming to the requirements of the Contract Documents, including substitutions not properly approved and authorized, shall be considered "Defective."

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

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

111.05.04.05 Owner Delay: An "Owner Delay" is an actual delay to the Contractor's performance of the Work to the extent the delay affects the critical path and is caused by one or more of the following: (i) work directives (excluding minor changes in the Work and interpretations), (ii) the Owner's failure (or that of any other person for whom the Owner is responsible to the Contractor) to provide in a reasonable manner any data or information requested by the Contractor in writing that is reasonably necessary for the Contractor to carry out its duties and is the Owner's obligation to provide (so long as the Owner and any other responsible person are given adequate time to respond); (iii) the failure or inability of the Owner to provide access to the Project Site or critical portions thereof due to a failure to obtain a necessary easement or other cause for an unreasonable and unanticipated period of time; or (iv) unreasonable and unanticipated interference by the Owner or persons for whom it is responsible with the Contractor's performance of the Work which continues after written notice to the Owner of such interference. Contractor shall not claim an Owner Delay as a result of a condition the Contractor discovered or should have discovered prior to Contractor beginning the Work (or any part of the Work).

111.05.04.06 If the Contractor shall be delayed by Force Majeure, as defined in the Contract Documents, and if such delay affects the Critical Path, then the Contract Time only shall be adjusted, subject to and in strict conformance with the requirements of the Contract Documents, and only to the extent necessary to compensate for such delay (but the total extension of all Critical Path activities may not exceed the period of time required by the Contractor, using its best efforts, to mitigate the effect of the delay). The adjustment of Contract Time shall be the Contractor's sole remedy for any Force Majeure delay. The Contractor shall use its best efforts to mitigate the effects of any delay, whether or not it is caused by a Force Majeure event.

111.05.04.07 Immediately upon (and not more than twenty-four (24) hours following the commencement of) the occurrence of a Force Majeure delay, the Contractor shall notify the Owner's Representative in writing, setting forth the cause of the delay, a description of the portions of the Work affected, and additional relevant details. Failure to submit the notice of Force Majeure delay required herein shall constitute a waiver of claim for an extension of time by the Contractor. In the case of a continuing cause of Force Majeure delay, only one notice is necessary.

111.05.04.08 No adjustments shall be made to the Contract Time for any suspension, delay, or interruption (i) to the extent that performance would have been so suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor, (ii) to the extent the delay could have been mitigated by the Contractor, or (iii) for which an equitable adjustment is provided or excluded under any other provision of the Contract Documents. The

Owner's exercise of any of its rights under the Contract Documents or the Owner's requirement of correction or re-execution of any Defective Work shall not, under any circumstances, be construed as interference with the Contractor's performance of the Work.

111.05.04.09 The remedies provided in this section 111.05.04, respectively, shall be the sole and exclusive remedies (in lieu of all other remedies whatsoever) of the Contractor for any delay, interference, hindrances in the performance of the Work, loss of productivity, impact damages, and similar claims and damages, whether or not contemplated by the parties. Except only as specifically provided in the Contract Documents for cases of an Owner Delay (as the term is defined in the Contract Documents), the Contractor hereby expressly waives, covenants, and agrees not to assert any claims against the Owner for any damages, costs, losses, or expenses of any nature whatsoever which it or any Subcontractor or supplier 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 Force Majeure or act or omission of the Owner, its representatives or agents, it being understood and agreed that their sole and exclusive remedies shall be those set forth in this section, unless and to the extent specifically provided for herein.

111.05.04.10 Claims of Contractor for costs and damages resulting from the Owner's suspension, delay, or interruption of the Work shall be determined in accordance with the following:

- (a) If the performance of all or any part of the Work on the Project is otherwise delayed or interrupted by an Owner Delay; and
- (b) If such act causes delays in the Critical Path activity, then the Contract Time shall be adjusted, but only to the extent necessary to compensate for such delay; then
- (c) An adjustment shall be made to the Contract Sum for the following items:

The cost of equipment necessary for the performance of Work required to remain on the Project Site that cannot be used for any Work whatsoever and cannot be relocated to perform other Work on other sites;

field general conditions actually incurred by the Contractor for the cost to maintain the Project Site; and

Actual salaried supervision costs for supervision required on Site for an extended period of time where the supervisor could not be released from the Project and where no Work could be performed.

No payment and no increase in the Contract Sum shall be due to the Contractor for home office overhead (including but not limited to Eichleay), equipment not necessary on Site during the delay period or which is used in performing other Work during the delay period, consequential damages including anticipated profits, loss or interference with bonding capacity; markup of any sort; insurance, interest; or any other costs not specifically delineated herein.

It is agreed that the Contractor shall accept the specified costs as full compensation for any Owner Delay whether agreed or disputed.

These costs shall be subject to audit by the Owner's Representative.

111.05.04.11 The Contractor shall have no further claim whatsoever against the Owner for damage or loss of any kind resulting from suspension of operations or delays or interruptions caused by an Owner Delay.

111.05.04.12 Immediately upon (and not more than twenty-four (24) hours following the commencement of) the occurrence of an Owner Delay, the Contractor shall provide the Owner's Representative with a "Notice of Potential Claim" in the form and substance required by the Contract Documents. The Notice of Potential Claim shall set forth in detail the claimed delay, a description of the portions of the Work affected, the relief requested, and additional relevant details. Failure to submit this notice, including all supporting details, shall constitute a waiver of claim by the Contractor. In the case of a continuing cause of Owner Delay, only one (1) notice is necessary. If after receiving a Notice of Potential Claim, the Owner acknowledges the asserted Owner Delay, the claim will be addressed through the Change Order process; if the Owner determines that no Owner Delay occurred, the claim is subject to dispute resolution in accordance with the requirements of the Contract Documents. If the Owner's Representative has not issued a determination of the assertion of an Owner Delay by the end of the issue giving rise to the asserted delay, then the Contractor must precede with the requirements for Disputed Work until the Owner's Representative issues a determination.

111.05.04.13 Contractor shall ensure that each Subcontractor is bound by the foregoing provisions set forth in Section 111.05.04.

111.08 TERMINATION BY OWNER

111.08.01 OWNER'S RIGHT TO TERMINATE

When in the Owner's best interest, the Owner may unilaterally terminate the Contract Documents at any time, whether or not Contractor is in default of any of its obligations under the Contract, by giving written notice to the Contractor and the Surety. Contractor also may be terminated for cause for any one of the following reasons, including, without limitation:

- (a) Fails to start Work on notice to do so;
- (b) Fails to prosecute the Work with manpower, equipment, construction plant or materials sufficient to complete the Work by the date set for completion and according to the Project completion schedule;
- (c) Performs the Work improperly;
- (d) Discontinues the performance of the Work before completion without prior approval;

- (e) Neglects or refuses to remove rejected materials or to perform anew such Work as shall have been rejected as defective and unsuitable;
- (f) Fails to maintain any of the insurance coverages required under this Contract;
- (g) Fails for any other reason to carry on the Work in accordance with the Contract;
or
- (h) Material breach of the Contract Documents.

Upon terminating the Contract, Owner shall not incur any further liability to Contractor, except as provided in this Article, which sets forth Contractor's exclusive remedies. The termination notice must specify the effective date, at least ten (10) days prior to the effective date of the termination, and the Contract Documents will terminate as if the date were the date originally given for the expiration of the Contract.

Notwithstanding the foregoing, Owner shall have the right to terminate this Agreement and the Contract Documents, in their entirety, at any time prior, at no cost to Owner, it being agreed the Contractor waives all damage and liabilities (including but not limited to lost profits) and releases Owner from any and all liability relating to this Agreement and the Contract Documents.

111.08.02 CONTRACTOR'S RECOVERABLE EXPENSES IF TERMINATED FOR OWNER'S CONVENIENCE

If the Owner terminates the Contract Documents for its own convenience, the Owner's obligation to the Contractor shall be limited to the following: (i) the Contract Sum for all completed Work which conforms to the requirements of the Contract; and (ii) Contractor's actual cost of the Work in process and materials properly transferred to Owner (which shall be limited to those materials that Contractor cannot use itself or sell or transfer to others). All other costs arising out of or relating to the Owner's termination shall be borne solely by the Contractor, and upon receipt of Owner's termination notice the Contractor waives all damage and liabilities (including but not limited to lost profits) and releases Owner from any and all liability relating to this Agreement and the Contract Documents.

Within thirty (30) calendar days of termination of this Contract, the Contractor shall submit to the Owner an itemized statement for any fees or expenses incurred by the Owner, consistent with the foregoing. The Owner shall have no obligation for and shall not be required to make payments to the Contractor, directly or on account of claims by Contractor's subcontractors, for loss of anticipated profit, unabsorbed overhead, interest on claims, product development and engineering costs, tooling, facilities and equipment rearrangement costs or rental, unamortized depreciation costs, and general and administrative burden charges (unrelated to the actual administration of the termination as provided above), resulting from the termination of the Contract. The Owner, upon payment of any approved accrued amounts so invoiced, shall have no further liability or obligation to the Contractor whatsoever for any further fees, expenses or payment. If the Contractor accepts the payment, the Contract Documents are satisfied. The

Owner may audit the Contractor's records before payment to verify the amounts requested in the Contractor's termination claim.

111.08.03 CONTRACTOR'S LIABILITY UPON TERMINATION FOR CAUSE

If the Owner terminates the Contract Documents because the Contractor has failed to comply with any of the material terms and conditions of the Contract Documents, in addition to any legal remedies otherwise available to the Owner by law or equity, the Contractor shall be responsible for all additional costs, charges, and damages incurred by the Owner in connection with the completion of the Contract Documents, which obligation shall survive the termination of the Contract Documents. Such expenses shall be deducted from any monies due or which may become due the Contractor under the Contract. If such expense exceeds the sum which would have been payable under the Contract, then the Contractor shall pay, on demand, such excess amount to the Owner. If the amounts are less than the unpaid balance, the Owner may retain the difference. Should a deficiency exist, the Owner may offset such a deficiency against the compensation to be paid the Contractor in any concurrent, successive or future contracts between the parties. All excess procurement costs and damages shall not be considered by the parties to be consequential, indirect or incidental, and shall not be excluded by any other terms otherwise included in the Contract.

After the Work has been completed, Contractor may remove such materials, tools, plant, equipment and appliances as remain, but Owner shall not be liable for anything that has been lost, stolen, destroyed, worn or used.

111.08.04 TERMINATION BY WAYNE COUNTY COMMISSION

Contractor acknowledges the right of the Wayne County Commission by a two-thirds vote, under circumstances in which the County's Chief Executive Officer is required by the Michigan Standards of Conduct and Ethics Act, MCLA §15.341 et seq., to recuse himself or herself from acting on a contract, to terminate the Contract Documents for (a) an egregious breach of the terms and conditions hereof or (b) a violation of the ethics and anti-kickback provisions of Article 12 of Chapter 120 of the Wayne County Code and to debar the Contractor from any further work for or sales to the County for up to three (3) years, pursuant to the terms of Article 6 of the Procurement Ordinance.

111.08.05 Contractor's Obligations to Owner Upon Receipt of Termination Notice After receipt of a notice of termination and irrespective of whether Contractor disputes the Owner's right to terminate the Contract Documents pursuant to said notice, and except as otherwise directed by the Owner, the Contractor must:

- (a) Stop work under the Contract Documents on the date and to the extent specified in the notice of termination;
- (b) Make no further commitments with respect to the Contract Documents, including payroll costs beyond the date as the Owner specifies, except (i) as may be necessary to make the work and the worksite safe from and safe to the public or

- (ii) as may be necessary for completion of such portion of the Work under the Contract Documents that is not terminated;
- (c) Immediately take all action as may be necessary or as the Owner may reasonably direct to assure the protection of the property in the Contractor's possession and in which the Owner has or may acquire any interest, the cost of which action shall be paid by the Owner, unless the termination is the result of Contractor's default hereunder;
- (d) After securing the Work and the worksite, immediately vacate the same, taking no action which would interfere with or obstruct the commencement, by Owner or any other person or entity, of efforts to complete the Work;
- (e) As of the date the termination is effective, present all records and deliver to the Owner the records, data, notes, reports, discs, and documents ("Records") as the Owner specifies, all pertinent keys to files, and carry out such directives as the Owner may issue concerning the safeguarding or disposition of files and property;
- (f) Terminate all orders and subcontracts to the extent that they relate to the portion of services so terminated, except as otherwise directed by the Owner; in such case, the Contractor shall execute and deliver all such documents and take all such steps, including the legal assignment of its contractual rights, as the Owner may reasonably require, for the purpose of vesting in the Owner all of the Contractor's rights and benefits under all or any portion of the obligations, contracts, commitments and unsettled claims incurred or undertaken in compliance with this Contract; and provided that Contractor has complied with the terms of this Article 111.08, the Owner shall, subject to the limitations on liability set forth in this Contract, assume and become liable for such assigned obligations, contracts, commitments and unsettled claims described herein unless the termination is as a result of Contractor's default of its obligations under this Contract; and
- (g) Submit within thirty (30) days from the date of termination a final report listing all of the creditors, subcontractors, lessors, and other parties with which the Contractor has incurred financial obligations pursuant to the Contract, together with copies of all supporting receipts and other documents evidencing the expenditure of funds relating to the Contract.

111.08.06 Upon termination of the Contract Documents, all Records prepared by the Contractor under the Contract Documents or in anticipation of the Contract Documents shall, at the option of the Owner, become its exclusive property, whether or not in the possession of the Contractor. The Records shall be free from any claim or retention of rights on the part of the Contractor.

111.08.07 Contractor acknowledges that any intentional failure or delay by the Contractor to deliver the Records to the Owner will cause irreparable injury to the Owner not adequately compensable in damages and for which the Owner has no adequate remedy at law. The

Contractor will pay the Owner \$500.00 per day as damages, and not as a penalty, until it delivers the Records to the Owner. The Owner may seek and obtain injunctive relief in a court of competent jurisdiction and compel delivery of the Records which the Contractor consents to as well as all applicable damages and costs. The Owner shall have unrestricted use of the Records for the purpose of completing the Work.

111.08.08 Access to the records prior to delivery must be restricted to authorized representatives of the Owner and the Contractor. The Contractor has no right to disclose or use any information gathered in the course of performing the Work without obtaining the written concurrence of the Owner. All the information must be confidential and handled in such a manner at all times as to preserve confidentiality. The Records as well as any related products and materials are proprietary to the Owner, having been developed for the Owner for its own and sole use.

111.08.09 Each party will assist the other party in the orderly termination of the Contract Documents and the transfer of all assets or property, tangible or intangible, as may be necessary for the orderly, non-disrupted business continuance of each party.

SECTION 112: PAYMENTS AND COMPLETION

112.01 APPLICATIONS FOR PAYMENT

112.01.01 Payments shall be made as provided in Section 5 of the Contract. Applications for Payment shall be in a form satisfactory to the Architect.

112.01.02 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 be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests. The Contractor shall execute a Release in Exchange for Payment, on the form provided by the Owner, and as a requirement in order to receive payment.

112.02 CERTIFICATES FOR PAYMENTS

112.02.01 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 112.02.03.

112.02.02 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the date comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, 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.

112.02.03 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 Owner or Architect's opinion the representations to the Owner required by Section 112.02.02 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 112.02.01. 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 because of:

112.02.03.01 defective Work not remedied;

112.02.03.02 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

112.02.03.03 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

112.02.03.04 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

112.02.03.05 damage to the Owner or another contractor;

112.02.03.06 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

112.02.03.07 failure to carry out the Work in accordance with Contract Documents.

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

112.03 PAYMENTS TO THE CONTRACTOR

112.03.01 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in similar manner.

112.03.02 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor except as may otherwise be required by law.

112.03.03 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.

112.04 SUBSTANTIAL COMPLETION

112.04.01 Substantial Completion is the state 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.

112.04.02 When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion, establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and fix the time within which the Contractor shall finish all items on the list 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. Upon the issuance of the Certificate of Substantial Completion, the Architect will submit it to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

112.05 FINAL COMPLETION AND FINAL PAYMENT

112.05.01 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract Documents 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 stated in Section 11.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

112.05.02 Final payment shall not become due until the Contractor has delivered to the Owner a complete release of any and all claims and liens arising out of the Contract Documents, as well as any and all closeout documentation requested by the Owner, such as AS BUILT drawings and warranty information.

112.05.03 The making of final payment shall not constitute a waiver of claims by the Owner.

112.05.04 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute an irrevocable waiver of claims by entity accepting final payment.

SECTION 113: PROTECTION OF PERSONS AND PROPERTY

113.01 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. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

113.01.01 employees on the Work and other persons who may be affected thereby;

113.01.02 the Work and materials and equipment to be incorporated therein; and

113.01.03 other property at the site or adjacent thereto.

The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property 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 113.01.02 and 113.01.03, except for damage or loss attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor.

113.02 HAZARDOUS MATERIALS

113.02.01 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, 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. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time may be extended appropriately and the Contract Sum may be increased in accordance with the Contract Documents.

113.02.02 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's Representative, County of Wayne, 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 113.02.01 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 (other than the Work itself), and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

SECTION 114: CORRECTION OF WORK

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

114.02 In addition to the Contractor's obligations under Section 114.01, if, within one 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 104.03, 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 immediately correct it after receipt of written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition.

114.03 If the Contractor fails to correct nonconforming Work within an immediately upon written notice from the Owner's Representative and/or Architect, the Owner may correct it at the Contractor's sole cost and expense. In connection with such corrective and remedial action, Owner may exclude Contractor from all or part of the site, take possession of all or part of the Work, and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents, employees, Owner's other contractors and Architect and Architect's Consultants access to the site to enable Owner to exercise the rights and remedies under this Section. All claims, costs, losses and damages incurred or sustained by Owner in exercising such rights and remedies will be charged against Contractor and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Sum, and, if the parties are unable to agree as to the amount thereof, Owner may make a claim therefor as provided in Section 112. Such claims, costs, losses and damages will include but not be limited to all costs of repair or replacement of work of others destroyed or damaged by correction, removal or replacement of Contractor's defective Work.

Contractor shall not be allowed an extension of the Contract Time because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies hereunder.

114.04 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 performance of the Work.

114.05 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 114.

114.05 The one-year period for correction of Work shall not be construed as a statute of limitation, nor shall any warranty obligation under this Section 114 be construed to limit any of the Owner's rights under existing law.