

DRAFT AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

<< >>
<< >>

THE OWNER:

(Name, legal status and address)

<< >>< >>
<< >>

THE ARCHITECT:

(Name, legal status and address)

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, ~~or~~ (4) a written order for a minor change in the Work issued by the Architect, or (5) a Field Change (as defined herein). Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.6.2 Any reference in the Specifications to codes, standard specifications or manufacturer's instructions shall mean the indicated date of a specific document or the printed edition of each in effect as of the date the Specifications are dated. If any of these codes, specifications or instructions changes between the time the Agreement is executed between the Owner and Contractor and the Specifications are issued to the Contractor, the cost and time for the Work shall be adjusted, if necessary, to account for any actual increases in the direct cost of the Work.

§ 1.1.6.3 In some Sections of the Specifications, as an aid only to bidding, work has been delegated to others, i.e., installed by electrician, mason, etc., or plumber, etc., or furnished and installed by electrician, mason, etc., or furnished under Millwork and installed under Carpentry, etc. This procedure is used to avoid bidding of an item twice or omitting it entirely. The Contractor has the right to shift sections, trades, etc., and it is the definite responsibility of the Contractor to delegate work or branches of work to proper trades in accordance with good practice and within jurisdiction of local building trades

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the instructions to bidders, bidding requirements, sample forms, Conditions of the Contract, Specifications and other supplemental information. The Project Manual includes all Division 00 and 01 Sections. All reference to Division 00 or Division 01 are references to the Specifications.

§ 1.1.87 Instruments of Service

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

§ 1.1.98 [Intentionally Deleted] Initial Decision Maker

~~The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of any inconsistency among the Contract Documents, at Owner's discretion, the better quality or more stringent requirement shall apply.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade. In case work or materials are specified and/or shown on Drawings to be done or provided by more than one Prime Contractor, each such Contractor will be deemed to have included this item in their bid, and Architect will recommend to the Owner who shall furnish work and who shall submit credit to Owner for work. The Owner will make a final determination on who will furnish the work.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. In case of disputes over words and abbreviations that have well known or trade meanings, Architect's interpretation of terms shall be final.

§ 1.2.4 The general character and scope of Work is indicated by the Drawings. Where a portion of the Work is fully drawn and the remainder is merely indicated, the portion fully drawn shall apply to all similar parts of the Work to the extent it can be reasonably inferred.

§ 1.2.5 Lists of "work included" and "work excluded" are not intended to enumerate each and every item of work or appurtenant required. All work indicated shall be supplied except items specially noted as "by others", "by Owner," "not in contract," "existing," or similarly noted. Words and abbreviations which have well-known technical or trade meanings are used in the Contract Documents in accordance with such recognized meanings and consistent with the Contract Sum, as defined in Article 4 of the Agreement, and the detail provided therein.

§ 1.2.6 Where items of material, equipment and labor are referred to in the singular, such item or items shall be provided in the number necessary for the proper completion of the Work.

§ 1.2.7 Unless otherwise specifically indicated, all references to "days" refers to calendar days. If a deadline falls on a weekend or a legal holiday (as defined by Chapter 17.17 (3) of Milwaukee County Code of Ordinances), the deadline shall be extended to the next business day.

§ 1.2.8 Sections of Division 00 and 01 shall govern execution of work of all Sections of the Specifications.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.4.1 Project Manual Documents and Sections are numbered and titled in accordance with Construction Specifications Institute's MasterFormat.

§ 1.4.2 Each Specification Section contains "Section Includes", "Summary", or "Work Included" list of work items described in Section which is not intended to limit or restrict volume of work required by Section of Specifications. It is solely for convenience of reference.

§ 1.4.3 Where word "Contractor" occurs in Specification Sections of Divisions 2 through 50, it shall mean Contractor, Subcontractors, Erector, Fabricator, or Material Supplier for that particular Section. Contractor may be referred as CSI section number "XX XX XX" Contractor.

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights except as otherwise stated in contract with Owner. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and where applicable, the Architect's consultants.

§ 1.5.3 Contractor shall indemnify, hold harmless and defend Owner, Architect, Architect's Consultants, from and against any claim, loss, damage or injury resulting from Contractor's or Subcontractor's:- (1) unauthorized use of the Instruments of Service, including, without limitation-, use of the Instruments of Service on any other project. This duty shall include the reasonable attorneys' fees incurred by Owner in enforcing the terms set forth in this section.

§ 1.5.4 Agreement shall be signed by Contractor and Owner. In accord with Milwaukee County Code, Chapter 44, Public Works Contracts, Contractor shall return signed Contract and executed Performance Bond within 10 days from receipt of Contract or as approved by the Director of Administrative Services.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use (1) AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit or (2) another format agreed by the parties, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in (1) AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form or (2) another format agreed by the parties, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

~~§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen (15) days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. Owner upon reasonable request will furnish to Subcontractors information which is necessary for filing a lien on money due or to become due Prime Contractor.~~

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the

Contractor may disclose “confidential” information, after seven (7) days’ notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose “confidential” information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term “Architect” means the Architect or the Architect’s authorized representative.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor ~~to whom the Contractor has no reasonable objection and~~ whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 Except as provided in the Contract Documents, ~~the~~ Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Contractor shall notify Owner of any discrepancies or information which is lacking in the information provided by the Owner of which the Contractor is aware or reasonably should be aware.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and ~~relevant to the Contractor’s performance~~ that is necessary for the completion of the Work with reasonable promptness after receiving the Contractor’s written request for such information or services.

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

§ 2.4 Owner’s Right to Stop the Work

§ 2.4.1 If the Contractor (a) fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 after fifteen (15) days prior written notice, or (b) repeatedly fails to carry out Work in accordance with the Contract Documents and after fifteen (15) days prior written notice, and in either case (a) or (b) the Contractor does not undertake efforts to cure the non-conforming Work, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. Contractor shall not have a Claim for the increase in the Cost of the Work or for an extension of the Contract Time if the Work is stopped pursuant to this section.

§ 2.4.2 The Owner or the Owner’s inspectors may stop the Work until a condition deemed unsafe to persons is corrected. Should this occurrence delay the Work, the Contractor shall be responsible for any excess costs associated with the work stoppage and shall not be allowed an extension of time in which to perform. This provision does not relieve Contractor of its exclusive responsibility for safe Work practices nor impose upon the Owner any obligation to supervise Contractor’s work practices.

§ 2.5 Owner’s Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents or otherwise fails to comply with its obligations under the Contract Documents and fails within a ten/fifteen day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or

~~neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. In such a case, all such costs, including attorneys' fees and additional compensation for the Architect's additional services shall be deducted from payments then or thereafter due to the Contractor. Owner shall also be entitled to withhold payment otherwise due to Contractor until such remedial action is complete and fully accounted for. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within 30 days of Owner providing the amount due to the Contractor. If Contractor defaults or neglects to carry out Work in accordance with Contract Documents and fails within fifteen days after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may, after 15 days following receipt by Contractor and without prejudice to other remedies Owner may have, correct deficiencies. In such case, appropriate Change Order shall be issued deducting from payments then or thereafter due Contractor, cost of correcting such deficiencies, including compensation for Architect's additional services and expenses made necessary by such default, neglect or failure. Such action by Owner and amounts charged to Contractor are both subject to prior approval of Architect. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay difference to Owner.~~

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor and all applicable Subcontractors and Suppliers shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and Submittals approved pursuant to Section 3.12 herein.

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. In making its observations, the Contractor shall utilize any Owner provided information about the Project, Work or site, including, but not limited to, surveys, subsurface tests and data, the identification and location of hazardous substances and the condition and characteristics of structures on the site, unless Contractor has specific knowledge that the Owner provided information is contrary to existing conditions. If that occurs, then Contractor shall ask for clarification from Owner or Architect. Whenever possible, the Contractor and all of its necessary Subcontractors, as appropriate, shall endeavor to verify existing field conditions that are visible (i.e., accessible through normal and customary methods of observation and investigation). Where existing field conditions are not visible (e.g., below grade) or concealed within construction assemblies, and existing items are indicated on the drawings, such items shall be considered as being shown schematically only, if so represented or designated as such by Architect.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents. however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered, including design errors or omissions, by or made known to the Contractor as a request for information in such form as the Architect may

require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized such error, inconsistency, omission or difference and failed to report it to the Architect. If the Contractor performs any construction activity involving an error, inconsistency, omission or difference in the Contract Documents that Contractor knowingly recognized or should have reasonably recognized without such notice to the Architect and Owner, the costs for correction will be allocated among the responsible parties.

§ 3.2.5 The Contractor shall provide the necessary estimating and coordination services to evaluate the value engineering and cost savings options. Contractor shall not be entitled to an increase in the Contract Price for such services. For those options the Owner approves as a lump sum adjustment, the Contract Price shall be reduced by the full amount of direct costs associated with the change through the Change Order Process.

§ 3.2.6 The Contractor may submit requests for information to the Architect to help facilitate the Contractor's performance of the Contract. Prior to submitting each request for information, the Contractor shall first carefully study and compare the Contract Documents, field conditions, other Owner provided information, Contractor prepared Coordination Drawings, and prior Project correspondence and documentation to determine that the information to be requested is not reasonably obtainable from such sources.

§ 3.2.7 Each request for information shall be submitted to the Architect, in writing. The RFI form is to be agreed by Owner and Architect prior to use. Each request for information shall identify the specific sources which were reviewed by the Contractor in an effort to determine the information requested, and a statement to the effect that the information being requested could not be determined from such sources.

§ 3.2.8 The Contractor shall submit each request for information sufficiently in advance of the date by which such information is required in order to allow the Architect sufficient time to permit adequate review and response and to permit Contractor compliance with the latest construction schedule.

§ 3.2.9 The Contractor shall maintain a log at the Project site that sequentially numbers and lists each request for information. This log shall contain the Drawing reference or Specification section to which the request pertains, the date of the request, to whom the request was made, by whom the request was made, the nature of the request, and the Architect's resolution thereof. This log shall be reviewed at each Project meeting and the status of the requests for information shall be made part of the minutes of such meeting.

§ 3.2.10 The Contractor shall provide the Owner's representative with a copy of each request for information.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite

safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures, unless Contractor is negligent, intentionally causes misconduct, or acts recklessly.

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

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

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. The Owner will not be liable to assume any responsibility for the damage to the Contractor's tools, materials and/or equipment except to the extent covered by any applicable insurance or to the extent that the Owner and its agents, employees or contractors are responsible for the damage.

§ 3.4.2.1 The Contractor shall make good faith efforts to inform the Owner and Architect of any value-engineering alternatives during the term of the Project. If the Owner approves, the Architect shall consider incorporation of such value-engineering alternatives, including the substitution of products, equipment or systems, at any time during the Project. In presenting such alternatives, the Contractor shall provide to the Owner and Architect a description of the alternate along with the standard product or system information to help in their evaluation of the alternative. Upon the request of the Owner or Architect, Contractor shall obtain any additional information that they feel is necessary for their evaluation of the proposed alternative. Based on the available information, the Contractor shall submit to the Owner and Architect the cost and schedule impact of the alternative. Any alternative approved by the Owner shall be processed by a Change Order. The Contractor shall incorporate changes related to the approved alternatives according to the associated revisions to the Contract Documents, as issued by the Architect.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions of specified materials or equipment only with the consent and approval of the Owner, after evaluation and recommendation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 Where a definite material or method is specified, it is not the intention to discriminate against any "approved equal" product by another manufacturer. Rather, it is the intention to set a definite standard. Open competition is expected. The Contractor shall submit to the Architect the substitutions it proposes together with samples, complete evidence of quality and any credits that may accrue to the Owner for allowing the various substitutions. The Architect shall investigate all proposed substitutions, consult with the Owner for its review and approval, and render final decisions as is necessary to avoid any delay in the Work.

§ 3.4.2.1.1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (iii) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (iv) the adjustment, if any, in the time of completion of the Contract and the Project schedule in the event the substitution is acceptable; and (v) a statement setting forth that (a) the proposed substitution conforms and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect in sufficient time to allow no

less than ten (10) working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein.

§ 3.4.2.2 The Contractor shall ascertain that items offered as equals to specified items will fit the physical limits of space shown on the Drawings, and leave ample clearance for proper installation, operation and servicing of the item and all adjacent items.

§ 3.4.2.3 Materials and equipment proposed as substitutes for specified items may be rejected by the Architect and Owner.

§ 3.4.2.4 If during the performance of Work any materials or equipment specified in the Contract Documents become unavailable because of government restrictions or because of other market conditions (which are not the result of Contractor's delay in order or purchasing), the Owner, Architect and Contractor shall collectively suggest and consider alternatives and substitutes. The Architect shall then issue a final recommendation for consideration and approval by Owner. Such alternatives or substitutions shall not serve as a basis for an increase in the Contract Sum except in Owner's sole discretion.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall promptly remove any persons of whom Owner or Architect has a reasonable objection to their fitness for work.

§ 3.4.4 Contractor shall provide to Architect the required information for all materials and equipment which, pursuant to the Contract Documents must be approved by Architect. The Contractor shall provide such information to the Architect according to the submittal schedule included in the Construction Schedule, or, if not specifically included in the Construction Schedule, then timely enough to allow for Architect's review and to otherwise not cause a delay in the Project Schedule

§ 3.4.5 The Contractor shall employ only skilled labor on the Project capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbances.

§ 3.4.6 After Contract has been executed, Owner and Architect will consider a formal request for substitution of products in place of those specified only under conditions set forth in Division 01.

§ 3.4.7 Labor: Contractors and subcontractors employed upon work shall be required to conform to Labor Laws of the State of Wisconsin and various acts amendatory and supplementary thereto and to other laws, ordinances, and legal requirements applicable thereto.

§ 3.4.8 If this project is federally funded and requires that each contractor, subcontractor or agent performing work on this project shall staff and pay its workforce the minimum wage according to Federal Wage Decision Rates and provisions enclosed within this Project Manual.

- .1 To ensure that intent of this requirement is enforced, employees of contractors, subcontractors and agents shall be considered third-party beneficiaries of this contract for the sole purpose of enforcing their rights. Contractor shall issue its employees and shall require subcontractors and agents working for Contractor to issue to each employee a notice advising each employee of the right to bring an action against said contractor to recover Federal Wage Decision Rate if employee was not paid such wage as determined by pay of trade or occupation determination of Federal Wage Decision Rate.
- .2 If wage rate complaint is filed, every contractor shall, upon written notice from the Director of Administrative Services or such other officer as may be designated by County Board, file a true and correct copy of payroll records, including those of subcontractor, with Director of Administrative Services or such designated person. Copies so furnished shall be public records.
- .3 Each contractor and subcontractor shall submit with each application for payment, completed LCP Tracker Labor Compliance software documentation, furnishing payroll information regarding each employee engaged on project for which payment application is made.

- .4 Affidavit of Compliance confirming payment of total required wages and benefits paid to each employee at conclusion of Project shall be submitted with final application for payment. Application for payment.
- .5 Each contractor shall post a copy of prevailing wage rate determination in a conspicuous and easily accessible place at Project site. Owner will furnish prevailing wage rate determination to Contractors prior to starting construction. Contractor shall maintain wage rate determination at Project site.

§ 3.4.9 If the project is not federally funded, each contractor and subcontractor shall submit with each application for payment, completed LCP Tracker Labor Compliance software documentation, furnishing payroll information regarding each employee engaged on project for which payment application is made.

- .1 Affidavit of Compliance confirming payment of total required wages and benefits paid to each employee at conclusion of Project shall be submitted with final application for payment.

§ 3.5 Warranty

§ 3.5.1 Pursuant to Section 12.2.2 herein, ~~the~~ the Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 The Contractor's warranty under this Section is not exclusive, and any other express warranties stated elsewhere, may also be exercised by Owner at its option. In addition, the Contractor shall assign to the Owner all manufacturers' and suppliers' warranties, express or implied, respecting any part of the Work which Contractor or Subcontractors receive not later than at the time Final Payment is made. The assignments, copies of all warranties and all product operation manuals for proper use and maintenance of equipment shall be conveyed to the Owner prior to Final Payment for the Work (i.e., final retainage). Owner may, at its option, release final retainage for that portion of the Work for which all contract close-out requirements have been satisfied.

§ 3.5.4 The Contractor and any applicable Subcontractors agree, as part of its post completion Work and its warranty obligations, to participate in warranty walk-throughs at the Project Site with the Owner and its Architect eleven (11) months after Substantial Completion of each phase of the Work to identify warranty work and any other items which must be corrected to conform with the requirements of the Contract Documents.

§ 3.6 Taxes

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 The Owner represents that it is a non-profit entity holding a Wisconsin Sales and Use Tax Exemption Certificate. In reliance on this representation, the Contractor will purchase materials and equipment that will become a component of the Project on a sales tax exempt basis as permitted by Wis. Stats. §77.54(9m) currently in effect, as the same may be amended or renumbered from time to time ("Tax Exempt Items"). The Owner agrees to defend, indemnify and hold the Contractor harmless from and against any claim, loss, cost, penalty or expense arising out of the assessment or imposition of any such sales tax assessed against Contractor in reliance on Owner's representation. At its sole option, the Owner may dispute, contest or otherwise resist this imposition or assessment of any such sales tax at no expense to Contractor. The Contractor shall promptly notify the Owner of any actual or threatened imposition or assessment of a sales tax. Contractor shall be exempted from state sales tax under the following conditions: "The sales price [of a normally taxable item] sold to a construction contractor who, in

fulfillment of a real property construction activity, transfers the [item] to [a government entity, including Milwaukee County], if such [item] becomes a component of a facility in the State of Wisconsin that is owned by Milwaukee County. In this subsection, 'facility' means any building, shelter, parking lot, parking garage, athletic field, athletic park, storm sewer, water supply system, or sewerage and wastewater treatment facility, but does not include a highway, street or road. Contractor shall apply for the sales tax exemption and provide Owner with State sales tax exemption documentation.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Owner will pay State of Wisconsin or local authority having jurisdiction plan examination fee when applicable. Contractor shall secure and pay cost of permits. Certificates of Inspection and a copy of Permits shall be delivered to Architect and Owner promptly upon receipt.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. However, if the Contractor observes that portions of the Contract Documents are at variance therewith and promptly notifies the Architect and Owner in writing, necessary changes shall be accomplished by appropriate Modification. Any Modification shall be in accordance with Article 7. Notwithstanding the above, for those trades requiring licensed tradesmen, Work depicted for those trades shall be installed in a code conforming manner irrespective of references or representations in the documents to the contrary, at no additional cost to the Owner.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend, for Owner's review and approval or disapproval, that an equitable adjustment be made in the Contract Sum or Contract Time, or both. Any adjustments to the Contract Sum recommended by the Architect will be based on the factors set forth in Section 7. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor of its recommendations in writing, stating the reasons. If either party disputes the Architect's ~~determination or~~ recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. If requested by Contractor, any adjustment to the Contract Sum or Contract Time will be based on the factors set forth in Article 7 and Article 15.~~Section 7.3.7.1 to 7.3.7.5. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.~~

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection. See additional information in Division 01 Sections.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.8.4 If applicable, the Cost Reduction Allowance is set forth in the Agreement. The Contractor shall work in conjunction with the Owner and Architect to establish additional items for the Cost Reduction Allowance for consideration by the Owner. The Owner shall have the Architect review each Cost Reduction Allowance item, so that Architect is aware of any aesthetic, structural, functional or code issues that may arise as a result of Owner's acceptance of the Cost Reduction Allowance items. Upon approval of any Cost Reduction Allowance item, the Owner shall require the Architect to expeditiously incorporate any necessary revisions into the plans and specifications to ensure the documents properly reflect any accepted Changes.

§ 3.9 Superintendent and Project Manager

§ 3.9.1 The Contractor shall employ a competent superintendent, project manager and necessary assistants who shall be in attendance at the Project site during performance of the Work who shall not be replaced without the consent of the Owner. If the superintendent or an assistant leaves the employment of the Contractor, the replacement shall be subject to Owner's approval. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. All communications shall be confirmed in writing.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent and project manager. Within 14 days of receipt of the information, the Owner or Architect may notify the Contractor, stating whether the Owner ~~or the Architect~~ (1) has reasonable objection to the proposed superintendent and project manager or (2) requires additional time for review. Failure of the Owner or Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent or project manager to whom the Owner ~~or Architect~~ has made reasonable and timely objection. The Contractor shall not change the superintendent or project manager without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.4 The Contractor shall have the superintendent, project manager and other competent representatives familiar with the Work attend meetings which may be held at the job site or at such place as Owner designates.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's review and approval, and Architect's information a Contractor's construction schedule for the Work, both as a hardcopy and its native electronic format. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. Additional information is specified in Division 01 Sections.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's and Owner's review and approval, which- The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect and Owner reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance

with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect and approved by Owner.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. Additional information is specified in Division 01 Sections.

§ 3.11.2 At completion of each phase of the Work, record drawings of all Mechanical and Electrical systems, if any, shall be submitted to the Architect, which indicate all field changes. Such submission is a condition precedent to payment of subsequent Applications of Payment.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work. Additional information is specified in Division 01 Sections.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged. Samples shall be delivered to the Architect (for review) by the Contractor as soon as practicable so as not to delay the Contract Schedule after signing the Agreement or applicable Subcontract in the following manner:

.1 Furnish Samples for all items called out in the various sections of the Specifications and all other samples that may be required to establish the character, physical characteristics, and quality of materials to be used in the Work.

.2 A label on each Sample shall bear the following information: name of Project, name of Architect and Owner, the Contractor and Subcontractor; name, quality and finish of material; name of manufacturer and/or source; date of submission; and Contractor submittal number.

.3 Submit samples in duplicate unless a greater number is specified. In case samples are rejected, resubmit the same number of samples originally required. One Sample will be retained by the Architect, the balance will be returned to the Contractor.

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect and Owner or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. Additional information is specified in Division 01 Sections.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them for the purpose described in Section 3.12.5, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

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

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

§ 3.12.8.1 If there is a quantitative or qualitative difference between a submittal and the item identified in the Contract Documents, such difference shall be indicated in the submission.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or reject or take other appropriate action on submittals (i.e. "revised and resubmit" or "proceed as revised") in accordance with Section 4.2.7 herein, only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.12.11 Contractor shall furnish an electronic copy, in a format acceptable to the Owner, and one (1) complete set (hard copy) of operating manuals containing the manufacturers' warranties and instructions necessary for maintenance and operation of each item of equipment and apparatus it furnishes under the Contract Documents, warranty information and any additional data specifically requested under the various sections of the Specifications for each division of the Work to the Architect for subsequent conveyance with all Contractors' manuals to the

Owner at or before Final Payment. Documents shall be arranged in logical order, indexed and delivered in a format acceptable to the Owner.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Additional information is specified in Division 01 Sections.

§ 3.13.2 The Contractor may store materials on the site and in such a manner as will not damage the area in which they are stored and ensure that the materials are properly secured and protected from the elements, vandalism, and/or theft. Material deliveries shall be scheduled so that they are not stored longer than necessary. All items furnished to the site by the Owner shall be stored as directed.

§ 3.13.3 Where the Contractor's operations will affect the Owner's operation and use of existing facilities, the Contractor will arrange its work to minimize its effect on the existing facility, and will coordinate the timing, sequencing and duration of the disruptions with the Owner's representative and proceed with such work only after receiving authority to do so.

§ 3.13.4 Contractor shall ensure that the Work is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. Contractor shall use its best efforts to perform the Work in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents. Additional information is specified in Division 01 Section.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. Additional information is specified in Division 01 Sections.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charges to the Contractor by deductive change order. The Contractor shall employ experienced workers or professional cleaners for final cleaning for all trades at the completion of the Work, the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a

copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

§ 3.18 Indemnification

~~§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's lender, Architect, Architect's consultants, and their officers, members, partners, agents, subsidiaries, successors, assigns agents and employees (the "Indemnified Parties") and agents and employees of any of them from and against any and all liabilities claims, demands, actions, costs, suits or matters in connection therewith including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to third party claims, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by breach of the Agreement or the negligent acts or omission of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable; provided, however, that the provisions of this Section shall not be construed to require the Contractor to indemnify any Indemnified Party for or against such person's or entity's own negligence. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. Contractor agrees to the fullest extent permitted by law to indemnify, defend and hold harmless, the County Owner, and its agents, officers and employees, from and against all loss and expense including costs and attorneys' fees by reason of liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of its employees or agents which may arise out of or are connected with the activities covered by this Agreement. Contractor shall further indemnify the County Owner from, and defend against any liability or expenses (including reasonable attorneys' fees) arising out of or relating to an act or omission by it or its employees arising out of or relating to (1) Federal, state, or other laws or regulations for the protection of persons who are members of a protected class or category of persons, (2) employment discrimination or harassment under any legal theory, (3) any personal injury (including death) received or sustained by any employee of a party, its subcontractors, agents, or invitees for any reason, and (4) any personal injury (including death) sustained by a third party or property damage by reason of any act or omission, negligent or otherwise, to the extent caused by a party or its employees.~~

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

~~§ 3.18.3 If any claim for which indemnification is required under Section 3.18.1 has not been settled or discharged when the Work is completed, Final Payment of the Stipulated Sum shall be deferred until such claim is paid or settled, or until the Contractor provides a bond or other security reasonably acceptable to the Owner in a sum equal to the amount of such claim. Notwithstanding the foregoing, if the Contractor is fulfilling its responsibilities under Section 3.18.1, withholding of Final Payment shall be limited to the reasonable amount of the claim (i.e., up to 300+25% of the reasonable cost to complete or correct) including the potential cost of defense and interest; however, no amount shall be withheld if applicable insurance covers the loss without any reservation of rights.~~

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative (1) during construction, (2) until the date the Architect issues the final Certificate for Payment, and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, (1) to become generally familiar with the progress and quality of the portion of the Work completed, and (2) to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents, and (3) when applicable, to determine whether to issue a Certificate for Payment. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents except as set forth herein. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

~~The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. In order to facilitate communications during the Project, the Owner, Contractor and Architect are permitted to communicate directly with each other about matters arising out of or relating to the Contract.~~ Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

§ 4.2.6 The Architect has authority to recommend rejection of the Work by the Owner that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will recommend to the Owner ~~have authority to require~~ inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve or reject, or take other appropriate action (i.e., "revise and resubmit" or "proceed as revised") upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, for the purpose of verifying that they comply with the requirements but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken as expeditiously as possible and in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness as to cause no delay in the Work or the Project Schedule or in activities of the Owner, Contractor or separate contractors while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which

remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Contractor shall be entitled to rely upon Architect's review and approval but the Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

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

§ 4.2.10 ~~If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives. Owner will have a Project representative to coordinate with and assist Architect in carrying out Architect's responsibilities at site.~~

§ 4.2.11 The Architect will ~~interpret and decide matters~~ provide recommendations concerning performance under, and requirements of, the Drawings and Specifications ~~Contract Documents~~ on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which recommendations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such recommendations until 10 days after written request is made for them.

§ 4.2.12 ~~Interpretations and decisions~~ Recommendations of the Architect will be consistent with the intent of, and reasonably inferable from, the Drawings and Specifications ~~Contract Documents~~ and will be in writing ~~and~~ in the form of drawings when appropriate. When making such ~~recommendations~~ ~~interpretations and decisions~~, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of ~~recommendations~~ ~~interpretations or decisions~~ rendered in good faith.

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. [Submit list of Subcontractors and Material Suppliers before or at preconstruction meeting.](#)

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. [If agreement on subcontractors cannot be reached, Owner reserves the right to delete that particular portion of work from Contract and let separate Prime Contractor for same.](#)

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

§ 5.3 Subcontractual Relations

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

[§ 5.3.2](#) ~~Owner is an intended third-party beneficiary of all subcontracts and material supply contracts of whatever tier, with the right to directly enforce, both during and after the construction period, subcontractor and material supplier obligations to meet prevailing standards or workmanship and to comply with the contract documents including but not limited to all applicable express and implied warranties. During the construction period, that right shall only be exercised in cooperation with Contractor, unless Contractor is in default under the Contract and fails to cure the same.~~

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

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

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

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

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and ~~the Architect will~~ allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. [Additional information is provided in Division 00 and 01 Sections.](#)

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Contractor shall not be entitled to any adjustment in the Contract Sum or Contract Time in connection with any changed Work unless such Work is authorized in a Change Order or Construction Change Directive. Accordingly, no course of conduct or dealing between the Parties, no express or implied acceptance of alterations or additions to the Work (without a Change Order/Construction Change Directive) and no claim that the Owner has been unjustly enriched by an alteration or addition to the Work, whether there is any unjust enrichment, shall be the basis of any Claim in connection with the Project or the Agreement.

§ 7.1.4 Except for reasons of emergency or for minor changes in the Work (see Sections 7.4 and 7.5 herein), there will be no Changes in the Work unless first authorized in writing by Owner and Architect pursuant to the terms of this Article 7.

§ 7.1.5 If the Owner directs a Change in Work (through either a proposed Change Order or a Construction Change Directive) for which there is no agreement between the Owner and the Contractor as to the modification (if any) of the Contract Sum or the Contract Time, Contractor shall proceed with the Work. Owner will pay Contractor for the Change in Work in accordance with Section 7.3.5.1. Such payment shall not serve as a waiver of the right of either party with respect to the Change in Work. Any disputes shall then be subject to the provisions of Article 15 herein.

§ 7.1.6 The Cost for Changes in the Work shall be supported by adequate documentation to demonstrate the costs related to a specific change. Cost should be broken down by labor (hours, costs), material (estimate of quantity, unit price, extension or vendor quote), subcontractor costs (with subcontract quotation and breakdown by labor, material equipment and markup), and equipment (rental rate, hours/days/weeks) in accordance with article 7.3.5.1.

§ 7.2 Change Orders

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

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

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3 as required by the Owner. Additional Change Order requirements, including required submission formats, are included in Division 00 and 01 Sections.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract

Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon in accordance with Section 7.3.5.1;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor and Owner agree or if the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum or the Contract Time, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount, all on a not-to-exceed basis unless otherwise agreed. In such case, and also under Section 7.3.3-3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Actual ~~C~~ costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance (itemized separately and subject to the provisions of the Agreement), permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Additional of overhead and profit as allowed under section 7.3.5.1.4~~Costs of supervision and field office personnel directly attributable to the change.~~

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time or Contract Sum, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.5.1 Unit Price of Lump Sum Adjustment

The Contractor shall adhere to the following with respect to any Construction Change Directive:

.1 Upon receipt of a Construction Change Directive, the Contractor must submit promptly to the Architect and Owner for review and consideration a written proposal to cover the adjustment of the Contract Sum for changes in the Work. The proposal must be in a format acceptable to the Owner and based on agreed upon unit prices (as set forth in Section 7.3.5.1.2 below), or in their absence, a detailed cost estimate of labor, insurance (itemized separately, and subject to the provisions of the Agreement between Owner and Contractor), payroll taxes, material, equipment, and premium on bond of the changed work. If after receipt of the Contractor's proposal Owner accepts the proposal or the parties agree on an equitable lump sum adjustment of the Contract Sum, a Change Order will be issued establishing the adjustment.

.2 Where the change in the Work involves items for which agreed upon unit prices have been established and where the net aggregate quantity of the items is in excess of the Contract requirements, payment for the items will be at the established unit prices.

When the net aggregate quantity is less than the Contract requirement, a Change Order will be issued for a credit equal to the sum of: (i) the product derived by multiplying the established unit price times the net decrease in units and (ii) an amount equal to « 10% » of the product. Where the "agreed upon unit price" is a unit price bid on

the estimated quantities, then the Owner may, as its option, demand a readjustment of the "agreed upon unit price" in any case where the requirements for the particular unit price item exceeds « 125% » of the estimated quantity bid.

.3 In submitting the proposal, the Contractor must use its ability and buying power to obtain the best possible prices from suppliers of material and equipment and from Subcontractors consistent with its general responsibility for the performance and completion of the work. To this end, the Contractor, when submitting such a proposal, is considered to have represented by the submission that it has used the lowest prices obtained or obtainable from suppliers of material and equipment and from Subcontractors and that nothing has been added to the prices unless indicated in the submission.

Should the Contractor at any time, without disclosing the fact in writing to Owner, add any amount to the proposal of any supplier of material or equipment to the proposal of any Subcontractor, and should the Owner act on the same or make payment on any Work covered by the proposal or subsequent billing, then the Owner has the right to recover from the Contractor any such amounts as may have been so added and not disclosed. The recovery may be made by deducting the undisclosed additions from any payments due the Contractor, or by any and all other means available to the Owner. Contractor shall also be responsible for any costs Owner incurs in investigating such occurrence including, without limitation, any additional fees of Owner's Representative or attorneys' fees.

.4 The Contractor's proposal of cost for items of Work not covered by the agreed-upon prices for additional Work ordered may include a charge for overhead and profit, together, of « 15 »%, to the extent that the Contractor performs the items of Work with Contractor's own forces. For deleted Work, the price will be net cost; however, office and field overhead, insurance, and bond premiums, for example, are not considered or allowed to be included in "net cost." Where the items of Work involved in the change are performed by a Subcontractor, to which cost, as approved by the Owner, the Subcontractor may add a charge for overhead and profit, together, of « 15 »%. To this total only « 5 »% may be added to cover both overhead and profit for the Contractor. If more than one tier of Subcontractor is involved, the Subcontractor performing the Work may add to cost a charge for overhead and profit, together of « 15 »%, and each other Subcontractor involved and the Contractor may add only « 5 »% to cover both overhead and profit. For deductive changes the cost are net, regardless of the Contractor or Subcontractor performing the Work. The overhead and profit charges referred to above constitute full reimbursement for all costs of supervision, engineering, field and main office expense, small tools, and incidental job burdens.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

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

~~§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Contractor may request payment for changes in Work not in dispute in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.~~

§ 7.3.10 When the Owner and Contractor ~~reach an agreement~~ agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the

adjustments, such agreement shall be effective immediately and ~~the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.~~ shall be recorded by preparation and execution of an appropriate Change Order. The Contractor's agreement to a Change Order constitutes a waiver and release by the Contractor and its Subcontractors and suppliers for any claim for delay, cumulative impact, cost of extended general conditions, and any other indirect cost associated with the Owner-directed change in Work.

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. The Contractor shall carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Owner and Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 FIELD CHANGES

§ 7.5.1 Upon the written request of Contractor, Owner's designated representative may authorize minor changes in the Work which occur in the field ("Field Changes") without prior presentation to the Architect, so long as each of the following criteria is satisfied:

- .1 the proposed Field Change is consistent with the intent of the Contract Documents;
- .2 the proposed Field Change will not result in an extension of the Contract Time;
- .3 The proposed Field Change will not result in a cumulative increase in the GMP or the Contract Sum by more than \$« 0 ».

§ 7.5.2 By presenting the proposed Field Change, the Contractor is verifying that each of the criteria listed above is satisfied with respect to the proposed Field Change.

§ 7.5.3 If a Field Change may result in a cumulative increase in the Contract Sum of more than \$0, the Field Change set forth in Section 7.5.1 above does not apply. Rather, Contractor must follow the written change order provisions set forth in Sections 7.1 and 7.2 above.

§ 7.5.4 The issuance of a Field Change and the provisions of this Section 7.5 shall not limit the Owner's right of review and approval of any Field Change in the progress payment process or as part of final payment.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Notice to Proceed. Agreement. If there is no Notice to Proceed, it shall be the date of the Owner-Contractor Agreement, or such other date as may be established therein. Date shall not be postponed by failure to act of Contractor or persons or entities for which Contractor is responsible.

§ 8.1.3 The date of Substantial Completion of the Work or designated portion thereof is the date certified by the Architect in accordance with Section 9.8, when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner can occupy or utilize the Work or designated portion thereof for the use for which it is intended.

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

§ 8.2 Progress and Completion

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

dates established for Substantial Completion and Final Completion are reasonable. If required work cannot be performed during normal working hours on normal working days, special arrangements can be made to perform the work on evenings and on Saturdays and Sundays. No extra compensation will be allowed because of premium time which may be involved where premium work is through fault of Contractor. If and when overtime work is required and authorized by Owner, Owner will pay by Change Order, at established rates, increase to hourly pay due to overtime hours worked, exclusive of Contractor's overhead and profit, upon approval of payroll records.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the ~~Owner-Architect~~ determines, justify delay, then the Contract Time shall be extended for such reasonable time as the ~~Owner allows based on Architect's recommendation may determine. No such Change Order extending Milestone Dates or the Contract Time shall result in any increased payments to the Contractor for overhead or for any other amounts of any nature unless agreed to in writing by the Owner. In addition, notwithstanding the foregoing, the Contractor shall not be entitled to any time extension for any delay for which the Contractor or any of its Subcontractors or suppliers, or their subcontractor or suppliers at any level are at fault, or for any concurrent delays that do not affect the Project critical path based on generally accepted critical path method principals.~~

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. ~~In the event of a delay caused by the Owner, Architect, or an otherwise excusable delay (i.e. force majeure), Contractor shall be entitled to 1) an equitable extension of the Contract Time, and 2) may use Contractor's construction contingency funds to cover additional costs incurred as a result of any such delay. In the event the Contractor's construction contingency funds are not available, Contractor shall not be entitled to an adjustment in the Contract Sum or Guaranteed Maximum price due to any delay described in the preceding sentence without the mutual agreement of the Owner. In the event Extraordinary Measures (defined below) are required to maintain the Project schedule, the Contractor shall not be entitled to an adjustment in the Guaranteed Maximum Price to the extent Contractor or Contractor's Subcontractors are responsible for the underlying delay. Notwithstanding any implication to the contrary in Section 8.3.1 of the General Conditions, Contractor shall not be entitled to any time extension for any delay that is the fault of any of its Subcontractors or suppliers, or their Subcontractors or suppliers at any level. Owner shall not be liable to Contractor and/or Subcontractor for claims or damages or monetary claims caused by or arising out of delays. Sole remedy against Owner for delays shall be allowance to claimant of additional time for completion of Work, amount thereof to be determined by Architect in accordance with foregoing provisions of above subparagraphs.~~

§ 8.3.4 If there is a delay or anticipated delay of the Construction Schedule because of the actions or omissions of the Contractor or any Subcontractor and the Contractor is unable to produce within fifteen (15) working days after notice by the Owner a recovery schedule for its Work to address such delay or anticipated delay acceptable to the Owner, then the Owner shall have the right to order the Contractor to take such actions as may be necessary, consistent with the same performance of the Work affected thereby, to recapture the time lost by any such delay. Such action shall include increasing staff; increase in shifts or hours worked per day, or performance of work on Saturdays, Sundays or national holidays; use of any available work float in the Project schedule; and changing the sequence of work activities ("Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Project Schedule. Time slips covering said overtime must be submitted to Owner's designated representative for checking and approval.

§ 8.3.5 The Owner, at its option, shall also be entitled to accelerate performance of the Work where there is no delay or anticipated delay. The costs of such Extraordinary Measure ordered by the Owner where there is no delay or anticipated delay shall be paid for by the Owner.

§ 8.3.6 If Contractor intends to claim an extension of time to perform as a result of a delay not caused by Contractors or any of its Subcontractors or suppliers, Contractor must give Owner written notice within seven (7) days after the event giving rise to the claim and follow the procedures in Article 7 for securing a Change Order; otherwise such a claim shall be deemed waived.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum or Guaranteed Maximum Price is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner or Architect. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Owner or Architect may require, and unless objected to by the Owner/Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.2.2 Bond charges and allowances shall appear separately in Schedule.

§ 9.2.3 TBE/DBE participation contract value and work completed shall be separated, or payment will not be processed.

§ 9.3 Applications for Payment

§ 9.3.1 At least ~~ten~~five (5) days before the date established for each progress payment, the Contractor shall submit to the Owner and Architect an ~~itemized~~ Application for Payment prepared in accordance with the schedule of values, ~~if required under Section 9.2,~~ for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Each Pay Application submission shall include the completed Payment Application Checklist as required in Division 00 and 01.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

§ 9.3.1.3 Form of Application for Payment shall be notarized AIA Document G702. Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet. Separate columns for external and internal contract changes are required. The final format of the Application for Payment shall be submitted to the Architect and Owner for approval prior to billing.

§ 9.3.1.4 On or before tenth day of each month, Contractor shall submit to Architect and Owner an itemized Application for Payment for Work performed for prior calendar month, supported by such data substantiating Contractor's right to payment as Owner or Architect may require.

§ 9.3.1.5 With each Application for Payment, submit completed LCP Tracker Labor Compliance software Payroll Report information for payment application period per section 3.4.8 or 3.4.9.

§ 9.3.1.6 Until Work is 50 percent complete, Owner shall pay 95 percent of amount due Contractor on account of progress payments, less amount of notice of liens under laws of State of Wisconsin. At time Work is 50 percent complete and thereafter, and if head of department having jurisdiction over contract determines Contractor's performance and progress are satisfactory and with consent of Contractor's Surety, Owner will authorize remaining partial payments be paid in full. At 50 percent completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10% of the value of the work completed. Upon substantial completion of the work, an amount retained may be paid to the contractor. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by contractor and delivered to the work or properly stored and suitable for incorporation in the work embraced in the contract.

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

§ 9.3.2.1 Requests for payment involving materials stored off-site shall meet criteria established in advance by Owner and Architect.

§ 9.3.2.2 Requests for payment involving materials stored off-site will be considered conditional upon submission by Contractor of bills of sale or satisfactory evidence of payment and proof of suitable storage and protection at a local mutually agreed upon location. A Certificate of Insurance covering the material stored off-site shall be submitted with Request for Payment.

§ 9.3.2.3 Partial or complete payment for material stored off-site shall not relieve Contractor from total responsibility for care and protection of stored materials, nor does payment waive Owner's right to require fulfillment of terms of Contract.

§ 9.3.2.4 Material stored off-site shall be protected as required by storage conditions. Material shall be labeled "Property of Milwaukee County" and accessible for Owner's inspection. Inventory of such stored material, insurance certificates, and bill of sale or satisfactory evidence of payment, listing value of product, shall accompany request for payment. List bill of sale value separately on Application for Payment Form.

§ 9.3.2.5 Contractor shall submit the completed Advance Purchase Transmittal Letter, Affidavit, and Waiver of Lien, that is contained in Division 00 and 01.

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

§ 9.3.4 With each Application for Payment, the Contractor shall provide to Owner: (a) a partial lien waiver and release from each subcontractor or supplier who was to receive funds from the previous Application for Payment; (b) the Contractor's own conditional lien waiver for all funds to be received for that Application.

§ 9.3.5 Liens. Provided that Owner shall make payment of amounts due to Contractor, Contractor shall keep the Project Site free from any liens by Contractor, its Subcontractors, Architect or engineers retained by Contractor, or their respective assigns. No Uniform Commercial Code (UCC) or similar state statutory filings shall be made by Contractor, Subcontractors, or such Architect or engineers, except upon express prior written consent of Owner. If, because of any act or omission of Contractor or anyone claiming through or under Contractor, any mechanic's or other lien, encumbrance or order is filed against Owner or the Project Site, Contractor shall, at Contractor's own cost and expense, cause the same to be canceled and discharged of record or bonded over within thirty (30) days after receiving notice thereof, and shall indemnify, defend, and hold Owner harmless from and against all suits, actions, claims, loss, legal or administrative proceedings, liabilities, costs, expenses, damage or injury, including reasonable attorneys' fees resulting therefrom or by reason thereof. Contractor shall reimburse the Owner, its elected and appointed officials, officers, employees or authorized representatives for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contractor's obligation to indemnify shall not be restricted to insurance proceeds, if any received by the Owner, its elected and appointed officials, officers, employees or authorized representatives, the Architect, or Architect's Consultants. This indemnity provision shall survive the termination or expiration of this Contract.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect and Owner determines is properly due, and notify the Contractor ~~and Owner~~ of the Architect's and Owner's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor ~~and Owner~~ of the Architect's and Owner's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect ~~and~~ the Owner, based on the Architect's and Owner's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's and Owner's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. 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 and Owner. However, the issuance of a Certificate for Payment will not be a representation that the Architect ~~or Owner~~ 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 suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The ~~Owner/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's or Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner and the Owner shall pay Contractor in accordance with Section 9.6.1. The ~~Owner/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 Owner's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed not resulting from the Owner's failure or refusal to pay or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;

- .6 reasonable evidence that the Work will not be completed within the Contract Time as a result of the Contractor's fault, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; ~~or~~
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- ~~.8 failure of the Contractor to comply with the most current approved Project construction schedule;~~
- ~~.9 failure of the Contractor to comply with the monthly reporting requirements as detailed in 3.3.2.3+9.1; or~~
- .10 the existence of any event of material default under the Contract Documents.

§ 9.5.2 When either party disputes the Owner's or Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification in Section 9.5.1 are removed, certification will be made for amounts previously withheld.

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

§ 9.6 Progress Payments

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

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

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

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

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within fifteen (15) seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon fifteen (15) seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start up, plus interest as provided for in the Contract Documents. Non-payment of amounts in dispute shall not entitle Contractor to stop Work hereunder.~~ § 9.7.1 If Contractor is not paid within 30 days after receipt and acceptance of a properly completed Application for Payment or receipt and acceptance of property or service, whichever is later, Owner will pay interest on balance due Contractor from monies appropriated for administration of Contract.

- .1 Interest will be paid on balance due from 31st day of receipt and acceptance of properly completed Application for Payment or receipt and acceptance of property or service, whichever is later, at rate specified in Paragraph 13.5 compounded monthly.
- .2 Owner will notify Contractor of improperly completed Application for Payment and explanation of improper completion within 10 working days of receipt.

§ 9.7.2 Contractors who contract or engage Subcontractors to perform part of Work shall pay Subcontractors for satisfactorily completed work in timely fashion. Payment is timely if it is mailed or delivered to Subcontractor no later than 7 days after Contractor's receipt of payment by Owner.

- .1 If Subcontractor is not paid in timely fashion, Contractor shall pay interest on balance due from 8th day after Contractor's receipt of payment from Owner at rate specified in Paragraph 13.5, compounded monthly.
- .2 Subcontractors receiving payments under this Contract shall pay lower-tier Subcontractors in timely fashion and be liable for interest on late payment in same amount as Contractor is required to pay its Subcontractors.

If the project is federally funded, the following additional requirements apply:

- .3 Delay or postponement of payment beyond above referenced period may occur only for good cause with written approval of Owner. When Contractor delays or postpones payment due to dispute, Contractor shall notify Owner and Subcontractor in writing within 7 calendar days of being paid by Owner that Contractor is withholding payment. Notification shall indicate reasons and grounds for withholding payment. Amount not in dispute shall be paid to Subcontractor within 7 calendar days of Contractor receiving payment by Owner. If Owner determines that Contractor does not have good cause for delaying or withholding payment, Contractor shall pay Subcontractor within 5 calendar days of Owner's written decision.
- .4 If Owner reduces Contract retainage amount, Contractor shall reduce total amount retained from Subcontractors to no more than amount retained by Owner within 7 calendar days of receipt by Contractor of a retainage payment.
- .5 Contractors who contract or engage Subcontractors to perform part of the Work and who withhold retainage shall return said retainage in a timely fashion upon Subcontractor's satisfactory completion of their work.

§ 9.8 Substantial Completion

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

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of

items to be completed or corrected prior to final payment. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Observation by the Architect and/or the Owner during the construction shall not be considered as acceptance of any part of the Work, and the conditions found when final inspection is made shall be taken as governing fitness of the Work and whether or not it conforms with the provisions of the Contract. Substantial Completion will be established using Owner's form as identified in Division 00 Sections.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, ~~which is~~ not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. With Owner's approval and by Architect's determination, amount equal to 3 times established cost to complete or correct items on list may be retained until Final Completion, but in no event shall the total retainage be more than 10% of the value of the work completed.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; 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.

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

§ 9.8.6 Contractor shall reach Final Completion of the Work within 60 days of the date of Substantial Completion except for those items which (a) cannot be completed because of weather conditions or because of unavailability of products or materials or (b) Owner agrees do not have to be completed within the 60-day period.

§ 9.9 Partial Occupancy or Use

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

.1 A Certificate of Substantial Completion shall be prepared and executed as provided in Section 9.8.4, except that when, in the opinion of the Architect, the Contractor is chargeable with unwarranted delay in completing work or other Contract requirements the signature of the Contractor will not be required.

.2 Occupancy by the Owner shall not be construed by the Contractor as being an acceptance of that part of the Project.

.3 The Contractor shall not be held responsible for any damage to the occupied part of the Project resulting from the Owner's occupancy.

.4 Occupancy by the Owner shall not be deemed to constitute a waiver of existing claims on behalf of the Owner or Contractor against each other.

.5 Use and occupancy by the Owner prior to Project acceptance does not relieve the Contractor of its responsibility to maintain all insurance and bonds required of the Contractor under the Contract until the Project is completed and accepted by the Owner.

.6 Owner shall ensure that property insurance for the portion of the Project or the entirety of the Project (as applicable) is in effect prior to Owner's use and occupancy of any part of the property.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's 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. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and make recommendations on that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. Based on the Owner's review and approval, the Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.1.1 Subsequent inspection trips to check unfinished work on punchlist will be paid for by Contractor at Architect's regular rate.

§ 9.10.1.2 Additional items of work which cannot be completed by established completion date of original contract shall not preclude payment of final retainage of original base contract.

§ 9.10.1.3 Affidavit stating total wages and benefits paid to each employee shall accompany final application for payment. See section 3.4.8 and 3.4.9. (Copy of affidavit form is available from Owner.)

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and a marked-up version of all Construction Documents showing the record condition of the Work, (6) a complete set (in electronic format and hard copy) of operating manuals containing the manufacturer's warranties and instructions necessary for maintenance and operation of each item of equipment and apparatus Contractor furnishes under the Contract Documents, warranty information and any additional data requested under the various sections of the Specifications for each division of the Work arranged in logical order, indexed and suitably bound, (7) a Final Lien Waiver and Release from Contractor and from all subcontractors and suppliers who provided any labor, materials or Work for the project, and (8) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent

and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

§ 9.10.4 ~~The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~
~~.1 — liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;~~
~~.2 — failure of the Work to comply with the requirements of the Contract Documents;~~
~~.3 — terms of special warranties required by the Contract Documents; or~~
~~.4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment.~~ **[Intentionally Deleted]**

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

§ 9.10.6 Notwithstanding any provision to the contrary contained herein, if any Claim for which indemnification is required under Section 3.18.1 has not been settled or discharged when the Work is completed, final payment of the Contract Sum shall be deferred until such Claim is paid or settled, or until the Contractor provides a bond or other security reasonably acceptable to the Owner in a sum equal to the amount of such claim. Notwithstanding the foregoing, if the Contractor is fulfilling its responsibilities under Section 3.18.1, withholding of final payment shall be limited to the reasonable amount of the claim, in an amount up to 300% of the reasonable cost to complete or correct, including the potential cost of defense and interest; however, no amount shall be withheld if applicable insurance covers the loss without any reservation of rights.

§ 9.10.7 All applicable provisions of federal, state, and local laws, rules, regulations and ordinances shall apply to this agreement, including, but not limited to Wis. Stats. § 779.14(1m) which requires, among other things, that Milwaukee County shall reserve the authority in the case of contracts not exceeding \$100,000.00 (as further described in that section) to make direct payments to subcontractors or to pay the prime contractor with checks that are made payable to the prime contractor and to one or more subcontractor. In any such case where such payments are made by Milwaukee County, the prime contractor agrees that its sole remedy for any deficiency or disputed amounts paid to a subcontractor by the County shall be against the subcontractor and not Milwaukee County. The prime contractor specifically agrees to hold Milwaukee County harmless for any such deficient, disputed, or erroneous payments.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;

- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

Contractor shall promptly report in writing to the Architect and Owner all accidents whatsoever arising out of, or in connection with, the performance of the Work, whether on or off the Site, which caused death, personal injury or property damage, giving full details and statements of witnesses, if Contractor reasonably believes there may be a claim made against Owner. In addition, if death or serious injury or damages are caused, the accident shall be reported immediately to Owner by telephone or messenger. If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Owner or the Owner's inspectors may stop the Work until a condition deemed unsafe to persons or property is corrected. Should this occurrence delay the Work, the Contractor shall be responsible for any excess costs associated with the work stoppage and shall not be allowed an extension of time in which to perform. This provision does not relieve Contractor of its exclusive responsibility for safe Work practices nor impose upon the Owner any obligation to supervise Contractor's work practices.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or

polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

§ 10.3.5 The Contractor shall indemnify, defend and hold the Owner harmless against any and all liabilities, damages, losses, costs, penalties, expenses or responsibilities (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence, and (3) materials and substances which are Contractor's responsibility under Section 10.3.4.

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

§ 10.3.6 If the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred provided that Contractor provides prompt written notice to Owner of any such cost, expense, claim, demand, cause of action, suit, judgement, subpoena or administrative proceeding. – The duties and responsibilities of the Owner as set forth in this section shall not apply to the extent that the liability, damage, loss, economic loss, cost, penalty, expense or responsible results from hazardous substances or material brought onto the Project site by Contractor not required under the Contract Documents or arises out of the negligence of Contractor.

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies, rated A or better by A.M. Best, and lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 **Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor,

Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as ~~fiduciary~~ and made payable to the Owner ~~as fiduciary~~ for the insureds, ~~as their interests may appear~~, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's ~~or Owner's~~ request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for

the Architect's or Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect or Owner has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any 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 correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction of a defect of which the Owner is aware, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, except for Work not properly completed in the first instance.

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

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

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

§ 12.2.6 Approval of material or work at any time or stage of construction will not prevent its subsequent rejection for cause.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the ~~law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.State of Wisconsin.~~

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated testing, inspection or approval procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ Payment due and unpaid under Contract Documents shall bear interest at rate specified in Wisconsin Statutes 71.82 (1) (a) compounded monthly.

§ 13.6 Affirmative Action Policy

§ 13.6.1 Milwaukee County, by County Board Resolution and by Executive Order, has established an Affirmative Action Program, providing for equality in employment opportunities regardless of race, religion, color, national origin, age, sex, or functional limitation. Consistent with the foregoing program and Milwaukee County's Opportunity Employment Policy, contractors, subcontractors, vendors, and suppliers are requested to support Milwaukee County in this effort by providing equality in employment opportunities to women and minorities and shall not discriminate on the basis of race, religion, color, national origin, age, sex, sexual orientation, gender identity or expression, marital status, ancestry or disability.

§ 13.6.2 Equal Employment Opportunity: During the performance of this Contract, the Contractor agrees to meet the requirements stated in Equal Opportunity Contract Requirements. Additional information is provided in Division 00.

§ 13.6.3 Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of the Contract or such other remedy, as the recipient deems appropriate.

§ 13.7 Audit

§ 13.7.1 County Rights of Access and Audit. The Contractor, Lessee, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Section 34.09 (Audit) and Section 34.095 (Investigations Concerning Fraud, Waste, and Abuse) of the Milwaukee County Code of General Ordinances.

§ 13.8 Independent Contractor

§ 13.8.1 Nothing contained in this Contract shall constitute or be construed to create a partnership or joint venture between Owner or its successors or assigns and Contractor or its successors or assigns. In entering into this Agreement, and in acting in compliance herewith, Contractor is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder

§ 13.9 Prohibited Practices

§ 13.9.1 Contractor during the period of this contract shall not hire, retain or utilize for compensation any member, officer, or employee of County or any person who, to the knowledge of Contractor, has a conflict of interest with County.

§ 13.9.2 Contractor hereby attests that it is familiar with Milwaukee County's Code of Ethics which states, in part, "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family, may solicit or receive anything of value pursuant to an understanding that such officer's or employee's vote, official actions or judgment would be influenced thereby."

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~60~~ consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents and none of the circumstance prescribed in Sections 9.5.1.1 through 9.5.1.9 exist; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

§ 14.1.3 ~~If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect opportunity to cure, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and actual and direct costs incurred by reason of such termination. If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss as of date of the letter from Owner terminating the Contract with respect to materials, equipment, tools, construction equipment and machinery, including the overhead and profit allowance amount contained in Article 7.~~

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and ~~the Architect opportunity to cure~~, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials in accordance with Contractor's schedule for attaining Substantial Completion;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers if and only if Contractor fails to provide Owner with reasonable evidence that funds have been placed by Contractor in a commercial escrow account sufficient to pay Subcontractor for the disputed items, fails to post a bond for the amount due Subcontractors, fails to obtain an endorsement to a title policy with respect to liens of Subcontractor, or if the portion of the Contract Sum owing to the Contractor held in retainage by Owner pursuant to Article 9 is less than the amount allegedly owed by Contractor to Subcontractor;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; ~~or~~
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents; ~~or~~
- .5 becomes insolvent, is in bankruptcy or a similar proceeding, is in receivership, adopts a complete liquidation of its assets, or makes an assignment for the benefit of creditor or to an agent with authorization to liquidate any substantial amount of assets.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action~~, the Owner may, without prejudice to any other rights or remedies of the

Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, and provided the Contractor, within such (7) day period, has not cured such cause or breach, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, ~~shall be certified by the Initial Decision Maker,~~ upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 Upon termination of the Contract, Contractor shall immediately stop the Work hereunder except such as shall be essential to preserve and safeguard existing Work and immediately advise Owner of the status of all outstanding subcontracts and purchase orders. Such outstanding purchase orders and subcontracts shall be canceled or assigned to Owner as Owner may direct. In the event of any such termination, Contractor shall deliver all of the Work completed and in process to the date thereof to Owner and shall deliver to Owner all documents of title, reports, estimates, schedules, and other documents and data as Owner shall require.

§ 14.2.6 In the event an Owner termination for cause is determined to have been improper, such termination shall be deemed a termination for convenience pursuant to paragraph 14.4.

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause upon at least seven (7) days written notice to the Contractor.

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders; and-
- .4 shall deliver all of the Work completed and in process to the date thereof to Owner and shall deliver to Owner all documents of title, reports, estimates, schedules, and other documents and data as Owner shall require.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work

properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. In case of such termination for Owner's convenience, Contractor shall be entitled to receive payment from Owner on same basis provided in Subparagraph 14.1.3.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party, ~~and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.~~ Claims by either party under this Section 15.1.3.1 shall be initiated within ~~721~~ days after occurrence of the event giving rise to such Claim or within ~~721~~ days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. ~~In such event, no decision by the Initial Decision Maker is required.~~

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 ~~[Intentionally Deleted] The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Such Claim shall include detailed documentation to fully substantiate Contractor's entitlement to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. Such Claim shall include detailed documentation to fully substantiate Contractor's entitlement to the Claim. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time for the geographical region where the Project is located, could not have been reasonably anticipated, and had an adverse effect on the

scheduled construction and are in excess of the days that should have been included in the Project schedule based upon historical weather patterns, as more fully described elsewhere in the Contract Documents.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the ~~Architect~~Initial Decision Maker for initial ~~recommendations~~decision. ~~The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement.~~ Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the ~~Architect~~Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the ~~Architect~~Initial Decision Maker and all affected parties agree, the ~~Architect~~Initial Decision Maker will not ~~decide~~make recommendations regarding disputes between the Contractor and persons or entities other than the Owner.

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

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

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

§ 15.2.5 The ~~Architect~~Initial Decision Maker ~~will render an initial decision approving or rejecting~~will render an initial decision the Claim, or indicating that the ~~Architect is unable to make a recommendation~~Initial Decision Maker is unable to resolve the Claim. This initial decision. This initial recommendation shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, ~~if the Architect is not serving as the Initial Decision Maker,~~ of any change in the Contract Sum or Contract Time or both. ~~The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~

§ 15.2.6 Either party may file for mediation within 20 days after notice of the Architects recommendation or notice that the Architect is unable to make a recommendation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

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

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

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

§ 15.3 Mediation/Litigation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation ~~as a condition precedent to~~ litigation as determined in accordance with Section 15.5. ~~binding dispute resolution. The venue of any litigation shall be in Milwaukee, Wisconsin.~~

§ 15.3.2 Unless otherwise determined in accordance with Section 15.5, ~~the parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~

~~§ 15.3.3 [Intentionally Deleted] Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand request in writing that the other party file for binding dispute resolution. If such a demand request is made and the party receiving the demand request fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~

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

§ 15.4 Arbitration

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

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

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

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

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

~~§ 15.4.4 Consolidation or Joinder~~

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

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

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

§ 15.3.5 Notwithstanding anything to the contrary contained herein, Owner reserves right to have claims, disputes, or other matters in question decided by litigation. If Owner waives right to litigation, then provisions stated under paragraphs 15.2, 15.3 and 15.4 shall apply, except that additional parties, including Architect, Architect's employees, and consultants may be included.